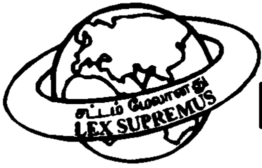

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CONSTITUTIONAL LAW- II

STUDY MATERIAL

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MESSAGE

Knowledge is power. Legal Knowledge is a potential power. It can be exercised effectively everywhere. Of all the domains of reality, it is Legal Knowledge, which deals with rights and liabilities, commissions and omissions, etc., empower the holder of such knowledge to have prominence over the rest. Law Schools and Law Colleges that offer Legal Education vary in their stature on the basis of their ability in imparting the quality Legal Education to the students. Of all the Law Schools and Colleges, only those that educate their students to understand the nuances of law effectively and to facilitate them to think originally, excel. School of Excellence in Law aims to be in top of such institutions.

The revolution in Information and Communication Technology dump lot of information in the virtual world. Some of the information are mischievous and dangerous. Some others are spoiling the young minds and eating away their time. Students are in puzzle and in dilemma to find out the right information and data. They do not know how to select the right from the wrong, so as to understand, internalise and assimilate into knowledge. Hence in the present scenario, the role of teachers gains much more importance in guiding the students to select the reliable, valid, relevant and suitable information from the most complicated, perplexed and unreliable data.

The teachers of the School of Excellence in Law have made a maiden attempt select, compile and present a comprehensive course material to guide the students in various subjects of law. The students can use such materials as guidance and travel further in their pursuit of legal knowledge. Guidance cannot be a complete source of information. It is a source that facilitates the students to search further source of information and enrich their knowledge. Read the materials, refer relevant text books and case laws and widen the knowledge.

Dr. P. Vanangamudi
Vice-Chancellor

PREFACE

Constitution of India is the basic law relating to the government of the country. It defines various organs of the State, enumerates their functions and demarcates their fields of operation. Constitution is the product of socio-economic forces operating at the time of its enactment but then these forces are not static. It is the vehicle a nation's progress. It has to reflect the best in the past traditions of the nation; it has also to provide a considered response to the needs of the present and to possess enough resilience to cope with the demands of the future. A Constitution at the same time has to be living thing, living not for one or two generations but for succeeding generations of men and women.

This study material in Constitutional Law – II is designed to guide the students to understand the powers and functions of the important functionaries like, Executive, Legislature and Judiciary of the Central as well as State Governments, the distribution of powers between the Centre and the States in all the matters, Emergency provisions and other miscellaneous matters under the Indian Constitution.This study material will also motivate the students to go through the statutory materials and Judgements passed in various matters. I believe that this material would be a best supportive document along with the prescribed text books and other reference books for better understanding of the subject.

I take this opportunity to extend my sincere thanks and gratitude to our Hon'ble Vice-Chancellor Prof. (Dr.) P.Vanangamudi, the Tamil Nadu Dr.Ambedkar Law University, for providing me this opportunity and for the guidance and valuable suggestions at every step of the way to prepare this study material. I also extend my sincere gratitude to Prof.(Dr.) N.Narayana Perumal Director i/c. the Tamil Nadu Dr.Ambedkar Law University for the motivation and valuable suggestions.

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CONSTITUTIONAL LAW - II

COURSE MATERIAL

CONTENTS	Page No.
UNIT - I: THE UNION AND STATE EXECUTIVE The Union Executive – the President Election, Term of Office, Impeachment, Powers and Functions of the President President and Union Council of Ministers The State Executive – the Governor Appointment, Immunities, Powers and Functions of the Governor Doctrine of Pleasure State Council of Ministers	1 - 15
UNIT - II: LEGISLATURE AND JUDICIARY Composition of Parliament and State Legislatures Legislative Procedures, Legislative Privileges Judicial Interpretations, Anti Defection Law, X Schedule Union Judiciary – The Supreme Court of India (Articles 124 – 147) Composition, Appointment and Removal of Judges of the Supreme Court Jurisdiction of the Supreme Court of India Independence of Judiciary Tribunals	16 - 42
UNIT - III: CENTRE AND STATE: DISTRIBUTION OF LEGISLATIVE, AND FISCAL POWERS & FREEDOM OF TRADE AND COMMERCE Distribution of Legislative Powers with reference to various Doctrines Parliament's Power to legislate in State List Administrative Relations Centre and Inter –State Conflict Management Fiscal Relations Freedom of Trade, Commerce and Intercourse (Art 301-307)	43 - 66

UNIT - IV: EMERGENCY PROVISIONS National Emergency – Power of Union Executive to issue directions and the effect of non-compliance State Emergency – Imposition of President's Rule in States, Grounds, Limitations, Parliamentary Control, Judicial Review. Financial Emergency – Emergency and Suspension of Fundamental Rights.	67 - 69
UNIT-V OTHER CONSTITUTIONAL FUNCTIONARIES Organization – Powers and Functions of Election Commission of India Union Public Service Commission, State Public Service Commission Comptroller and Auditor General, Attorney General & Advocate General Constitutional Safeguards for Civil Servants, Finance Commission, Planning Commission, Inter-State Council, Local Self Government.	70 -83
REFERENCES	84
MODEL QUESTION PAPER AND ANSWER KEY	85 - 95

UNIT – I

THE UNION AND STATE EXECUTIVE

The Central Executive consists of the President and the Council of Ministers headed by the Prime Minister. It is of the parliamentary type in so far as the Council of Ministers is responsible to the Lok Sabha. The President is the head of the State and the Formal Executive. All Executive action at the Centre is expressed to be taken in his name. According to Art.53(1): "the executive power of the Union shall be vested in the President and shall be exercised by him directly or through officers subordinate to him in accordance with this Constitution".

The Constitution formally vests many functions in the President but he has no function to discharge in his discretion, or in his individual judgment. He acts on ministerial advice and, therefore, the Prime Minister and the Council of Ministers constitute the real and effective executive. The structure of the Central Executive closely resembles the British model which functions on the basis of unwritten conventions. In India, however, some of these conventions have been written in the Constitution, for e.g., provisions regarding appointment, tenure and collective responsibility of the Ministers. But some matters are left to conventions, as for example, the Cabinet, and the concept of Minister's responsibility for the acts of his subordinates.

Union Executive:

In the Preamble to the Constitution, India is declared to be a "Sovereign Socialist Secular Democratic Republic". Being a republic, there can be no hereditary monarch as the head of State in India, hence the institution of the President. The President is elected not directly by the people, but by the method of indirect election. The procedure for indirect election would be, by an electoral college, in accordance with the system of proportional representation by means of the single transferable vote.

The electoral college shall consist of –

a) The elected members of both Houses of Parliament;

b) The elected members of the Legislative Assemblies of the States; and

c) The elected members of the legislative assemblies of Union Territories of Delhi and Pondicherry (Art 54).

As far as practicable, there shall be uniformity of representation of the different States at the election, according to the population and the total number of elected members of the Legislative Assembly of each State, and parity shall also be maintained between the States as a whole and the Union (Art.55). The second condition seeks to ensure that the votes of the States, in the aggregate, in the electoral college for the election of the President, shall be equal to that of the people of the country as a whole. In this way, the President shall be a representative of the nation as well as a representative of the people in the different States. It also gives recognition to the status of the States in the federal system.

Qualification for Election as President:

In order to be qualified for election as President, a person must-

a) Be a citizen of India;

b) Have completed the age of thirty-five years;

c) Be qualified for election as a member of the House of the people; and

d) Not hold any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Government. (Art.58)

But a sitting President or Vice-Presidentof the Union or the Governor of any State or a Minister either for the Union or for any State is not disqualified for election as President.(Art.58).

Term of Office of President:

The President's term of office is five years from the date on which he enters upon his office; but he is eligible for re-election (Arts.56-57).

The President's office may terminate within term of five years in either of two ways-

i) By resignation in writing under his hand addressed to the Vice-President of India,

ii) By removal for violation of the Constitution, by the process of impeachment (Art.56). The only ground for impeachment specified in Art.61(1) is 'violation of the Constitution'.

Conditions of President's Office:

The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President. The President shall not hold any other office of profit.[Art.59(1)].

Emoluments and Allowances of President:

The President shall be entitled without payment of rent to the use of his official residence and shall also be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law. By passing the President's Emoluments and Pension (Amendment) Act, 2008, Parliament has amended the President's Emoluments and Pension Act, 1951 (30 of 1951) and raised the emoluments to Rs.1,50,000/- per mensemwith effect from 01-01-2006. The emoluments and allowances of the President shall not be diminished during his term of office [Art.59(3)]

Powers and Duties of the President:

The Constitution says that the "executive power of the Union shall be vested in the President"[Art.53]. The President of India shall thus be the head of the 'executive power' of the Union. The'executive power' primarily means the execution of the laws enacted by the Legislature, but the business of the Executive in a modern State is not as simple as it was in the days of Aristotle. Owing to the manifold expansion of the functions of the State, all residuary functions have practically passed into the hands of the Executive. The executive power may, therefore, be shortly defined as 'the power of carrying on the business of government' or 'the administration of the affairs of the State', excepting functions which are vested by the Constitution in any other authority.

Constitutional Limitations on President's Powers:

Before a brief discussion about the different powers of the Indian President, it is necessary to note the constitutional limitations under which he is to exercise his executive powers.Firstly, he must exercise these powers according to the Constitution [Art 53(1)]. Thus Art 75(1) explicitly requires that Minister (other than the Prime Minister) can be appointed by the President only on the advice of the Prime Minister. There will be a violation of this provision if the President appoints a person as Minister from outside the list submitted by the Prime Minister. If the President violates any of the mandatory provisions of the Constitution, he will be liable to be removed by the process of impeachment.

Secondly, the executive powers shall be exercised by the President of India in accordance with the advice of his Council of Ministers [Art 74(1)].

The various powers that are included within the comprehensive expression 'executive power' in a modern State have been classified by political scientists under the following heads:

- Administrative power, i.e., the execution of the laws and the administration of the departments of government.
- Legislative power, i.e., the summoning, prorogation, etc., of the legislature, initiation of and assent to legislation and the like.
- Judicial power, i.e., granting of pardons, reprieves, etc., to persons convicted of crime.
- Military power, i.e., the command of the armed forces and the conduct of war.

Administrative Power:

In the matter of administration, not being a real head of the Executive like the American President, the Indian President shall not have any administrative function to discharge nor shall he have that power of control and supervision over the Departments of the Government as the American President possesses. But though the various departments of Government of the Union will be carried on under the control and responsibility of the respective Ministers in charge, the President will remain the formal head of the administration, and as such all executive action of the Union must be expressed to be taken in the name of the President. Though he may not be the 'real' head of the administration, all officers of the Union shall be his 'subordinates'[Art.53(1)] and he shall have a right to be informed of the affairs of the Union [Art 78(b)].

The administrative power also includes the power to appoint and remove the high dignitaries of the State. Under our Constitution, the President shall have the power to appoint -

i) The Prime Minister of India.

ii) Other Ministers of the Union.

iii) The Attorney-General for India.

iv) The Comptroller and Auditor-General of India.

v) The Judges of the Supreme Court.

vi) The Judges of the High Courts of the States.

vii) The Governor of a State.

viii) A Commission to investigate interference with water-supplies.

ix) The Finance Commission

x) The Union Public Service Commission and Joint Commissions for a Group of States.

xi) The Chief Election Commissioner and other members of the Election Commission.

xii) A Special Officer for the Scheduled Castes and Tribes.

xiii) A Commission to report on the administration of Scheduled Areas.

xiv) A Commission to investigate into the condition of backward classes.

xv) A Commission on Official Language.

xvi) Special Officer for linguistic minorities.

Legislative Powers

The President being an integral part of Parliament enjoys many legislative powers. These powers are given below: The President summons, and prorogues the Houses of Parliament. He may summon the Parliament at least twice a year, and the gap between two sessions cannot be more than six months. The President has the power to dissolve the Lok Sabha even before the expiry of its term on the recommendation of the Prime Minister. In normal course he/she dissolvesLok Sabha after five years. The President nominates twelve members to Rajya Sabhafrom amongst persons having special knowledge in the field of literature, science, art andsocial service. The President may also nominate two members of Anglo-Indian communityto the Lok Sabha in case that community is not adequately represented in the House. ThePresident can call a joint sitting of the two Houses of Parliament in case of a disagreementbetween Lok Sabha and Rajya Sabha on a non-money bill. So far thrice such joint sittings have been summoned.

The President has the right to address andsend messages to Parliament. The President addresses both Houses of Parliament jointlyat the first session after every general election as well as commencement of the firstsession every year. These addresses contain policies of the government of the day.Every bill passed by Parliament is sent to the President for his/her assent. The Presidentmay give his/her assent, or return it once for the reconsideration of the Parliament. Ifpassed again the President has to give her assent. Without his/her assent no bill can becomea law. The President may promulgate an ordinance when the Parliament is not in session.The ordinance so issued has the force of law. The ordinance so promulgated should be laidbefore both Houses of Parliament when they reassemble. If it is neither rejected by theParliament nor withdrawn by the President, it automatically lapses six weeks after thecommencement of the next session of Parliament. Generally a bill is moved by theGovernment to enact a law in place of the ordinance.

Financial Powers

All money bills are introduced in the Lok Sabha only with the prior approval of the President. The President has the control over Contingency Fund of India. It enables her to advancemoney for the purpose of meeting unforeseen expenses. Annual budget and railway budgetare introduced in the Lok Sabha on the recommendation of the President. If the Governmentin the middle of the financial year feels that more money is required than estimated in theannual budget, it can present supplementary demands. Money bills are never returned forreconsiderations. The President appoints the Finance Commission after every five years.It makes recommendations to the President on some specific financial matters, especiallythe distribution of Central taxes between the Union and the States. The President alsoreceives the reports of the Comptroller and Auditor-General ofIndia, and has it laid in theParliament.

Contingency Fund of India:

It is a fund kept by the Union Government to meetany unforeseen expenditure for which money is immediately needed. The Presidenthas full control over this Fund. The President permits withdrawals from this Fund.

Judicial Powers

You have seen above that the President appoints Chief Justice and other judges of theSupreme Court. The President also appoints Chief Justices and other judges of the HighCourts. The President appoints law officers of the Union Government including theAttorney-General of India.The President, as head of state, can pardon a criminal or reduce the punishment or suspend,commute or remit the sentence of a criminal convicted by the Supreme Court or HighCourts for an offence against the federal laws. The President can pardon a person convictedby a Court Martial. His/her power of pardon includes granting of pardon even to a personawarded death sentence. But, the President performs this function on the advice of LawMinistry.

The President enjoys certain immunities. He is above the law and no criminal proceedingscan be initiated against him/her. The office of the President is of high dignity and eminence, not of real powers. Thepowers formally vested in him/her are actually exercised not by his/her, but by the UnionCouncil of Ministers, in his/her name. If the President tries to act against the wishes of theministers, the President may create a constitutional crisis. The President may even faceimpeachment and may have to quit. Thus, the President has no alternative but to act inaccordance with the advice of the Prime Minister, who after all is head of the real executive.The Prime Minister is in regular touch with the President.The Council of Ministers is responsible to Lok Sabha, and can be removed on its adversevote only. In practice the ministers do not hold office during the pleasure of the President.

The Constitution, 42nd Amendment Act has made it obligatory for the President to act onlyon the advice of the Council of Ministers. The President cannot act independently.His/her powers are formal. It is the Council of Ministers headed by the Prime Ministerwhich is the real executive. In accordance with the 44th Amendment Act of the Constitution,the President can send back a bill passed by the Parliament for reconsideration only once.If the bill is again passed by the Parliament, the President has to give his assent to the bill.In the Constituent Assembly, Dr. B.R. Ambedkar had rightly said, "The President occupiesthe same position as the King in the British Constitution". But in reality the President ofIndia is not a mere rubber stamp. The Constitution lays down that the President has topreserve, protect and defend the Constitution.

The President can ask a newly appointedPrime Minister to seek a vote of confidence in the Lok Sabha within a stipulated period oftime. All the administration of the country is carried on in her name. The President can askfor any information from any minister. All the decisions of the Cabinet are communicatedto the President. The President is furnished with all the information relating to administration.It is in this context that the utility of the office of the President comes to be fully realized when the President gives suggestions, encourages and even warns the government. It is in this context, the President emerges as an advisor, a friend and even a critic.By way of conclusion, we may describe the position of the President in the words of Dr.B.R. Ambedkar. According to him/her, the President is the Head of State but not the

Diplomatic Powers:

International treaties and agreements are concluded on behalf of president.

Military Powers:

Supreme commander of Defense forces of India.He appoints chiefs of Army,Navy and Air force.He can declare war or conclude peace.

Emergency Powers of the President

The President of India has three types of Emergency Powers:

1. Proclamation of Emergency due to War, External Aggression or Internal Disturbances:

Under such a situation, the President will have the authority to frame laws for any part of country. The Fundamental Rights of the citizens are also suspended.

2. Proclamation of Emergency due to failure of Constitutional Machinery in a State:

In such a situation President's rule is imposed on a State and the Legislative Assembly of that State is dissolved. All the legislative powers of the State go to the Parliament.

3. Proclamation of Financial Emergency: In such a situation, the President may decrease the pay and allowances of the government employees. Moreover, the finances of the States also come under the control of the President. Can there be President's Rule at the Centre? The President is empowered to dissolve the House of the People or the Lok Sabha in terms of Article 85(2)(d). The Rajya Sabha or the Council of State on the other hand is a permanent House and is not subject to dissolution. According to Article 83(2)(d), the House of the People, unless sooner dissolved, continues for 5 years from the date fixed for its first meeting, and the completion of the said period of 5 years automatically operates as a dissolution of the House. The Parliament can also be dissolved if the Prime Minister so advises the President but it is up to the President to accept the advice or not. (Making such a recommendation is a political, but not a legal, right of the Prime Minister). In case a Prime Minister recommends dissolution of Parliament and the President accepts such advice, the latter is supposed to ask the Prime Minister to continue as the Head of a caretaker government till such time as fresh elections have been held and a new government commanding a majority comes into being. There is no provision for President's rule at the Centre.

Privileges and Immunities of the President

The President of India enjoys certain privileges and immunities which include the following:

1. The President is not answerable to any court of law for the exercise of his functions.
2. The President can neither be arrested nor any criminal proceedings be instituted against him in any court of law during his tenure.
3. The President cannot be asked to be present in any court of law during his tenure.
4. A prior notice of two months time is to be served before instituting a civil case against him.

Vacancy in the Office of the President

A vacancy in the office of the President may be caused in any of the following ways-

i) On the expiry of his term of five years.

ii) By his death

iii) By his resignation

iv) On his removal by impeach

v) Otherwise, e.g., on the setting aside of his election as President [Art.65(1)].

Whenever the office of the President falls vacant either due to death or resignation orimpeachment, the Vice-President officiates for a period not more than six months. TheConstitution has made it obligatory that in such cases (of vacancy in the office of President)election for a new President must be held within six months. The newly elected Presidentthen holds office for his full term of five years. Thus, when President Fakhruddin AliAhmad died in 1977, Vice-President B. D. Jatti officiated and the new President (SanjeevaReddy) was elected within six months.In case the President's office falls vacant and the Vice-President is not available (or Vice-President acting as President dies or resigns in less than six months), the Chief Justice ofIndia is required to officiate till the new President is elected. This provision was made in1969 by the Parliament to enable Chief Justice Hidayatullah to officiate when PresidentZakir Hussain had died, and Vice-President V. V. Giri resigned. If a President is temporarily unable to discharge his duties, due to illness or otherwise, theVice-President may discharge the functions of the President without officiating as thePresident.The Constitution has vested the President with vast powers. Broadly the powers of thePresident can be classified as Executive, Legislative, Financial and Judicial Powers.

Removal of the President

The President can only be removed from office through a process called impeachment.The Constitution lays down a detailed procedure for the impeachment of the President.He can only be impeached 'for violation of the Constitution'. The following procedure isintentionally kept very difficult so that no President should be removed on flimsy ground.The resolution to impeach the President can be moved in either House of Parliament.Such a resolution can be moved only after a notice has been given by at least one-fourthof the total number of members of the House. Such a resolution charging the President forviolation of the Constitution must be passed by a majority of not less than two-third of thetotal membership of that House before it goes to the other House for investigation.The charges levelled against the President are investigated by the second House. Presidenthas the right to be heard or defended when the charges against him are being investigated.The President may defend himself in person or through his counsel. If the charges are accepted by a two-third majority of the total membership of the second House, theimpeachment succeeds. The President thus stands removed from the office from the dateon which the resolution is passed.This procedure of impeachment is even more difficult than the one adopted in Americawhere only simple majority is required in the House of Representatives to initiate theproceedings.

Impeachment:

An impeachment is a quasi-judicial procedure leading to theremoval of a high public official, say, the President as in India, on the grounds of theviolation of the Constitution.

Procedure for Impeachment of the President:

An impeachment is a quasi-judicial procedure in Parliament. Either House may prefer the charge of violation of the Constitution before the other House which shall then either investigate the charge itself or cause the charge to be investigated.

But the charge cannot be preferred by a House unless-

a) A resolution containing the proposal is moved after a 14 days' notice in writing signed by not less than ¼ of the total number of members of that House; and

b) The resolution is then passed by a majority of not less than 2/3 of the total membership of the House.

The President shall have a right to appear and to be represented at such investigation. Since the Constitution provides the mode and ground for removing the President from his office. Since the Constitution provides the mode and ground for removing the President, he cannot be removed otherwise than by impeachment, in accordance with the terms of Arts. 56 and 61.

Vice – President of India:

The Constitution of India provides for the office of the Vice-President. The Vice-Presidentof India is elected indirectly by an electoral college consisting of members of both Houses of Parliament, on the basis of proportional representation by means of single transferablevote system. The voting is held by secret ballot. The Vice-President cannot be a memberof either Houses of Parliament, or of a State Legislature. The Vice-President has topossess the following qualifications:He/she has to be a citizen of India, who should not be less than 35 years of age, should nothold any office of profit and should be eligible to be elected as a member of the RajyaSabha.The Vice-President is elected for a term of five years. He/she may resign from the officeof the Vice-President even before the expiry of five years by writing to the President. TheVice President can be removed before five years if a resolution to this effect is passed bya majority of members of Rajya Sabha and agreed to by the Lok Sabha.

Functions of the Vice-President

The Vice-President is the ex-officio Chairman of Rajya Sabha which means that whosoeveris the Vice-President, he/she presides over the Rajya Sabha and performs normal dutiesof a presiding officer. These include maintenance of order in the House, allowing membersto speak and ask questions, and putting bills and motions to vote. Since the Vice-Presidentis not a member of the Rajya Sabha, he/she cannot vote in the House. But, in case of a tie(equality of votes in favour and against a bill), the Vice President exercises his/ her castingvote so that a decision can be reached.

If ever a vacancy arises in the office of President, due to death, resignation or impeachment,the Vice-President officiates as the President for not more than six months (see above).During that period, he enjoys all powers of the President, and does not preside over the

House when he officiates as President.In case the President is temporarily unable to discharge his/her functions, the Vice-Presidentmay be called upon to discharge his/her functions, without becoming officiating President.

The executive powers of the President are exercised by the Council of Ministers. TheConstitution provides that "there shall be a Council of Ministers with the Prime Minister atthe head to aid andadvice the President in the exercise of his functions". Here the word'shall' indicates that the President cannot function without the Council of Ministers. ThePresident is the constitutional head of State, but the real Head of the government is thePrime Minister.

Appointment of the Prime Minister

The Prime Minister is appointed by the President but the President does not have freedomin the selection of the Prime Minister. Normally the President has to invite leader of themajority party to form the government. In case no single party is in clear majority, thePresident invites the person who is likely to command support of two or more partieswhich make up majority in the Lok Sabha. Once appointed, the Prime Minister holdsoffice so long as he/she enjoys the support of the majority of members of Lok Sabha. ThePrime Minister is normally leader of the majority party in Lok Sabha. However, there havebeen cases when a member of Rajya Sabha was made the Prime Minister. This happenedwhen Mrs. Indira Gandhi was first appointed, Prime Minster in 1966, or when I. K. Gujralbecame Prime Minister in 1997 or when Rajya Sabha member Dr. Manmohan Singhbecame the Prime Minister in 2004. In 1996 H.D. Deve Gowda was not a member of anyHouse. He later entered the Rajya Sabha.Members of the Council of Ministers are appointed by the President on the advice of thePrime Minister. While selecting the ministers, the Prime Minister the PM keeps in mindthat due representation to different regions of the country, to various religious and castegroups. In a coalition government, the members of coalition parties have to be given duerepresentation in the Council of Ministers.

The Prime Minister decides portfolios of theMinisters, and can alter these at his will.In order to be a Minister, a person has to be a member of either of the two Houses ofParliament. Even a person who is not a member of any of the two Houses can become aMinister for a period of six months. Within six months the Minister has to get himself/herself elected to either House of Parliament, failing which he/she ceases to be a Minister.All the Ministers are collectively as well as individually responsible to the Lok Sabha.The Council of Ministers consists of two category of ministers. These are: Cabinet Ministersand Ministers of State. The Cabinet Ministers are usually senior members of the party/coalition of parties. The Ministers of State come next to Cabinet Ministers. Some of theMinisters of State have independent charge of a department while other Ministers of Stateonly assist the Cabinet Ministers. Sometimes even deputy ministers are also appointed toassist the ministers.

Ministers other than Cabinet Ministers normally do not attend the meetings of the Cabinet.The Prime Minister presides over the meetings of the Cabinet. All policy matters aredecided by the Cabinet. The Prime Minister has the authority to reshuffle the portfolios ofthe Ministers or even ask for their resignation. In case of resignation or death of the PrimeMinister the entire Council of Ministers also goes out of office. This is because the Councilof Ministers is created by the Prime Minister, who also heads it. The entire Council ofMinisters is responsibility to the Lok Sabha.

Powers and Functions of the Prime Minister

The Prime Minister is the most important and powerful functionary of the Union Government.The President is head of the government and leader of Lok Sabha. The President isprincipal advisor to the President, and the country's visible face and spokesperson in theinternational affairs. His/her role is unparalled and the President gives direction to thegovernance of the country.The Prime Minister being the head of the Council of Ministers, selects the Ministers to besworn in by the President. The Ministers in fact are chosen by the Prime Minister andremain Ministers as long as they enjoy the confidence of the Prime Minister.

The PrimeMinister distributes portfolios among Ministers. The President can change the portfolios as and when he desires. The Prime Minister can drop a Minister or ask for his/herresignation.The Prime Minister presides over the meetings of the Cabinet and conducts its proceedings.As head of the Cabinet, he/she largely influences the decisions of the Cabinet. The PrimeMinister co-ordinates the working of various ministers. The President resolves disagreementif any amongst different Ministers. Prime Minister is the link between the President andthe Cabinet. The decisions of the Cabinet are conveyed to the President by the PrimeMinister. It is he who keeps the President informed of all the policies and decisions of theGovernment. No Minister can meet the President without the permission of the PrimeMinister. All important appointments are made by the President on the advice of the PrimeMinister. It is on the advice of the Prime Minister that the President summons and proroguesthe session of the Parliament and even dissolves the Lok Sabha.

The Prime Minister is the "principal spokesman" and defender of the policies of theGovernment in the Parliament. When any Minister is unable to defend his/her actionsproperly, the Prime Minister comes to the help of that Minister both inside and outside theParliament. The Prime Minister is the leader of the nation. The nation looks to his/her forguidance. At the time of general elections, it is the Prime Minister who seeks mandate ofthe people. The Prime Minister plays an important role in the formulation of domestic andforeign policies. The President represents the country in the world arena, by participatingin the international meetings such as NAM, SAARC and United Nations. All internationalagreements and treaties with other countries are concluded with the consent of the PrimeMinister. The President is the Chief spokesperson of the policies of the country.

The Prime Minister has a special status both in the Government and in the Parliament.This makes him/her the most powerful functionary. His/her position and powers dependupon his/her personality. A person of the stature of Jawaharlal Nehru or Indira Gandhi, isalways more effective than a person who lacks vision or depends on support from outsidehis party. The Prime Minister is not only leader of the Parliament but also leader of the nation. The Prime Minister has to secure the willing cooperation of all important members of his/her own party. In a minority government, the Prime Minister has to depend onoutside help that might act as hindrance in his effective role.

The terms Council of Ministers and 'The Cabinet' are often used as inter-changeableterms. In reality, they are not. Prior to 44th Amendment of the Constitution, the word'Cabinet' was not mentioned in the Constitution. Let us distinguish between the Council ofMinisters and the Cabinet.The main points of difference are: The Council of Ministers consists of all category of Ministers i.e., Cabinet Ministers and

Ministers of State. TheCabinet on the other hand consists of Senior Ministers only. Its number varies from 15 to30 while the entire Council of Ministers can consist of even more than 70. The Council ofMinisters as a whole rarely meets. The Cabinet on the other hand meets as frequently aspossible. It is the Cabinet that determines the policies and programmes of the Governmentand not the Council of Ministers. Thus, 'Cabinet is an inner body within the Council ofMinisters'. It acts in the name of the Council of Ministers and exercises all powers on itsbehalf.

Powers and Functions of the Cabinet

It has enormous powers and manifold responsibilities. All the executive powers of the President is exercised by the Cabinet headed by the Prime Minister. The Cabinet determines and formulates the internal and external policies of the country. Ittakes all major decisions regarding defence and security of the country. It has also toformulate policies so as to provide better living conditions for the people.Cabinet has controlover national finance. The Cabinet is responsible for whole of the expenditure of thegovernment as well for raising necessary revenues. It is the Cabinet that prepares the textof President's address to the Parliament.

The Cabinet is also responsible for the issuanceof Ordinances by the President when the Parliament is not in session. The sessions of theParliament are convened by the President on the advice of the Cabinet conveyed throughthe Prime Minister. The Cabinet prepares the agenda of the sessions of the Parliament pleasure of the President. But, in fact, they are responsible to, and removable by the LokSabha. Actually the Constitution has itself declared that the Council of Ministers shall beresponsible to the Lok Sabha (not to both the Houses). Ministerial responsibility is theessential feature of parliamentary form of government. The principle of ministerialresponsibility has two dimensions: collective responsibility and individual responsibility.

Collective Responsibility

Our Constitution clearly says that "The Council of Ministers shall be collectively responsibleto 'House of the People'." It actually means that the Ministers are responsible to the LokSabha not as individuals alone, but collectively also. Collective responsibility has twoimplications. Firstly, it means that every member of the Council of ministers acceptsresponsibility for each and every decision of the Cabinet. Members of the Council ofMinisters swim and sink together. When a decision has been taken by the Cabinet, everyMinister has to stand by it without any hesitation. If a Minister does not agree with theCabinet decision, the only alternative left to him/her is to resign from the Council of Ministers. The essence of collective responsibility means that, 'the Minister must vote with thegovernment, speak in defence of it if the Prime Minister insists, and he/she cannot afterwards reject criticism of his act, either in Parliament or in the constituencies, on the ground that he/she did not agree with the decision.' Secondly, vote of no-confidence against the PrimeMinister is a vote against the whole Council of Ministers. Similarly, adverse vote in the LokSabha on any government bill or budget implies lack of confidence in the entire Council ofMinisters, not only the mover of the bill.

Individual Responsibility

Though the Ministers are collectively responsible to the Lok Sabha, they are also individuallyresponsible to the Lok Sabha. Individual responsibility is enforced when an action taken bya Minister without the concurrence of the Cabinet, or the Prime Minister, is criticized and not approved by the Parliament. Similarly if personal conduct of a Minister is questionableand unbecoming he may have to resign without affecting the fate of the Government. If aMinister becomes a liability or embarrassment to the Prime Minister, he may be asked toquit.

No-Confidence Motion

It is a motion moved by a member of legislatureexpressing no-confidence of the House in the Council of Ministers. If adopted by thelegislature, the Council of Ministers has to resign.India has adopted parliamentary form of government where the President is the constitutionalhead of state. The Council of Ministers headed by the Prime Minister is the real executive.The President of India is indirectly elected by an Electoral College consisting of electedmembers of both Houses of Parliament and the elected members of State LegislativeAssemblies (VidhanSabhas) by means of single transferable vote system of proportionalrepresentation. The President is elected through a complicated system which ensuresequal voice (value of votes) of the national Parliament on the one side and all the StateLegislative Assemblies on the other.The President is elected for a term of five years. The President is eligible for re-election.The President may resign before the expiry of his/her term or can be removed from office by impeachment.

The President enjoys vast powers. His/her powers can be classified into Legislative,Executive, Financial and Judicial. But his/her powers are exercised by the Council ofMinisters headed by the Prime Minister. The President enjoys numerous privileges andimmunities, and exerts influence in the field of administration. The President possesses the right to be informed, to be consulted and to warn. The President is a guide and advisor ofthe Council of Ministers. The Prime Minister is the real head of the Government. ThePresident is appointed by the President. The Prime Minister has to appoint the leader of themajority party in Lok Sabha or leader of a group of parties as the Prime Minister.

The Council of Ministers headed by the Prime Minister aids and advises the President inthe exercise of his functions. The Council of Ministers consists of two levels of Ministers–Cabinet Ministers and Ministers of State. The President appoints the Ministers on themadvice of the Prime Minister.The Prime Minister is the leader of the nation. He/she is responsible for administration ofthe country. He/she presides over the meetings of the Cabinet. The Council of Ministersworks under his/her. The President represents the nation at all national and internationalforums.

The Prime Minister is the link between the President and the Council of Ministers.He/she supervises and co-ordinates the working of different Ministries. He/she remains inoffice as long as he/she enjoys the support of the majority of members in the Lok Sabha. Allimportant appointments are made by the President on the recommendation of the PrimeMinister.

The Council of Ministers consists of all category of Ministers, while the Cabinet is a smallergroup consisting of senior Ministers. The Council of Ministers as a whole rarely meets. It isthe Cabinet which determines the policies and programmes of the Government. All theMinisters are collectively as well as individually responsible to the Lok Sabha. The Councilof Ministers can be removed from office by Lok Sabha if a vote of no-confidence is adoptedby it.The Cabinet formulates the external and internal policies of the government. It coordinatesthe working of various departments. It has full control over the national finance. A moneybill can only be introduced in the Lok Sabha by a Minister.

The Attorney-General of India:

- Appointed by the President.
- The person to be appointed as Attorney-General must be qualified to be appointed as a Judge of the Supreme Court. Art.76(3).
- He holds office during the pleasure of the President.
- He shall get such remuneration as the President may determine. Art.76(4).

Functions of the Attorney-General of India:

- He is to give advise to the Govt. of India upon such legal matters as may from time to time, be referred or assigned to him by the President.
- Performs such other duties of legal character may be assigned by the President.
- He has also to discharge the functions conferred on him by the Constitution or by any other law. Art.76(2).
- According to the rules made by the President under this Article the Attorney-General is required to appear on behalf of the Govt. of India in all cases in which the Govt. of India is concerned. He may also be required to appear in any High Court in any case in which the Govt. of India is concerned.
- He shall neither advise nor hold a brief against the Govt. of India in cases in which he is called upon to advise the Govt. of India nor defend accused persons for criminal prosecutions without the permission of the Govt. of India. he is prohibited to take appointment as a director in any company.
- In the performance of his duties he has right to audience in all courts in the territory of India.
- He has right to speak and take part in proceedings of either House of Parliament without a right to vote. (Art.88)
- He is entitled to all the privileges and immunities as a member of parliament. [Art 105(3)].

THE STATE EXECUTIVE

THE GOVERNOR

Governors of States

Art.153, there shall be a Governor for each State, provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.

Art.154, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

Art.155. Appointment of Governor

The Governor of a State shall be appointed by the President by warrant under his hand and seal.

Term of office of Governor Art.156

(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Art.157. Qualifications for appointment as Governor

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases Art.161.

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

Extent of executive power of State – Art.162

The executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Legislative Power of the Governor

Art.213. Power of Governor to promulgate Ordinances during recess of Legislature

(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—

(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or

(c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance—

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

Council of Ministers

Art.163. Council of Ministers to aid and advice Governor

(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court..

The Advocate-General for the State

Advocate-General for the State - Art.165

The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State. It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

Conduct of Government Business

Conduct of business of the Government of a State - Art.166

(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

Duties of Chief Minister as respects the furnishing of information to Governor, etc.

Art.167.

It shall be the duty of the Chief Minister of each State—

(*a*) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(*b*) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(*c*) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

UNIT - II

LEGISLATURE AND JUDICIARY

The Parliament

(Articles 79 - 122)

Composition of Parliament:

Parliament of India consists of three organs.

- The President
- Council of States (Rajya Sabha)
- House of the People (Lok Sabha)

Though the President is not a member of either House of Parliament yet, like the British Crown, he is an integral part of the Parliament and performs certain functions relating to its proceedings. The President summons the two Houses of Parliament dissolves the House of People and gives assent of Bills. It is to be noted that, though the India Constitution provides for the Parliamentary form of Govt. but unlike in Britain, the Parliament is not supreme under the India Constitution. In India, the Constitution is supreme. In England, laws passed by the Parliament cannot be declared unconstitutional while the Indian Constitution expressly vests this power in the courts. The Indian Parliament is the creature of the Constitution and derives all its powers from the Constitution. It is not a sovereign body.

The Rajya Sabha:

The Rajya Sabha or the Council of States is the Upper House of the Union Parliament. The maximum membership of the Rajya Sabha is fixed at 250 of whom 12 shall be nominated by the President, and the remainder 238 shall be representatives of States and the Union Territories. Art.80(1).

Mode of selection:

The representatives of States are elected by the members of the Legislative Assemblies in accordance with the system of proportional representation by means of a single transferable vote. The representatives from the Union Territories are chosen in such manner as Parliament may by law determine. The allocation of seats to each State or Union Territories and number of seats allocated to each in the Rajya Sabha are specified in the Fourth Schedule.The 12 nominated persons are by the President from amongst the persons having special knowledge or practical experience in Literature, Science, Art and Social Service. Art.80(3).

The nominated members do not participate in the election of the President of India.

Chairman and the Deputy Chairman of Rajya Sabha:

The Vice-President shall be the ex-officio chairman of the Rajya Sabha. The Rajya Sabha shall also elect a member of the House to be a Deputy Chairman (Art.89).

When the office of then Chairman is vacant or he is acting as the Vice-President or discharging the function of President, his duties shall be performed by the Deputy Chairman. If the office of the Deputy Chairman is also vacant the duties shall be performed by the by such member of the Rajya Sabha as the President may appoint for that purpose. The Chairman presides over the sittings of the House and in the absence the Deputy Chairman presides.

The Deputy Chairman shall vacate his office if he ceases to be a member of the council. He may resign his office by writing to the Chairman. He may also be removed from his office by a resolution of the council passed by a majority of all the members present. (Art.90).

But such a resolution can only be moved by giving at least 14 days notice.

The Chairman shall have the right to speak and take part in the proceedings but shall have no right to vote on such resolution or on any other proceedings. (Art 92). The Rajya Sabha is the permanent House. It is not subject to dissolution. Its members are elected for a period of six years but one third of its members retire after every two years.

Utility of the Rajya Sabha:

Although, the Rajya Sabha is a permanent body but in regard to powers it enjoys inferior position vis-à-vis the Lok Sabha.

- A money bill can only be introduced in the Lok Sabha.
- The Rajya Sabha has no powers in respect of a money bill
- A vote of no-confidence cannot be passed against the Govt. by the Rajya Sabha.
- Even in the case of ordinary bill if a deadlock is created between the two Houses and the joint session is held then by virtue of the numerical strength of the Lok Sabha the bill will be passed.

The weak position of the Rajya Sabha is severely criticized by the constitutional jurists and they plead for its abolition.but in a Federal Constitution a second chamber is a necessity and it plays an important role in matters of legislation and therefore it should be retained.

LOK SABHA

The Lok Sabha is a popular House. Its members are directly elected by the people. The maximum No. of its membership is fixed at 550. Out of whom,

a) not more than 530 are elected by the votes in the States.

b) not more than 20 to represent the Union Territories. (Art.81).

Under Art.331 the President may nominate not more than 2 members of the Anglo-Indian Community if in his opinion that community is not adequately represented in the Lok Sabha. The representatives of States are elected directly by the people of the State on the basis of adult franchise. The representatives of Union Territories shall be elected in the manner prescribed by Parliament by law.

Territorial Constituencies:

For the purposes of elections to the Lok Sabha each State is divided into territorial constituencies in such manner that ratio between that number and its population, so far as practicable is the same for all the States. Art. 81(2).i.e., Uniformity of representation.

Tenure of Lok Sabha:

The Lok Sabha shall continue for five years from the commencement of its first session. The President, may, however, dissolve it even earlier. But while a proclamation of emergency is in operation the life of the House of People may be extended by law of Parliament for one year at a time. The Lak Sabha, whose

life has been so extended, cannot continue beyond a period of six months after the proclamation of emergency has ceased to operate [Art 83(2)].

Qualification for Membership of Parliament:

- must be acitizen of India.
- not less than 30 years of age in case of the Council of States and not less than 25 years of age in the case of House of the People.
- Possessing such other qualifications as may be prescribed by Parliament.
- Taken an oath before some person authorized in that behalf by the election commission according to form set out for the purpose in third schedule. (Art 84).
- The Representation of Peoples Act, 1951, requires that a person's name should be registered as a voter in any parliamentary constituency.
- The Constitution does not prescribe any educational qualification for membership of Parliament.

Disqualifications: (Art.102):

- If he holds any office of profit under Central or the State Government other than an office declared by Parliament by law not to disqualify its holder. Art.102(1)(b).
- If he is of unsound mind and a competent court has declared him to be so.
- If he is an undischarged insolvent
- If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or under any acknowledgement of allegiance or adherence of a foreign State.
- If he is so disqualified under any law made by Parliament. For this purpose, Parliament has prescribed the necessary disqualifications in the representation of People's Act, 1951.

In K.B.Pohmaray v. Shankar Rao, AIR 1975 SC 575, it has been held that the honorarium paid to the members of the wage board under the Bombay Industrial Act, 1946 is not profit because it is not sufficient even for his pocket expenses.

Parliament has enacted the Parliament (Prevention of Disqualification) Act, 1959 which exemps certain offices as not to disqualify their holders for membership of Parliament.

In Jaya Bachchan v. Union of India, AIR 2006 SC 2119, the the Supreme Court held that the petitioners disqualification from the membership of the Rajya Sabha was valid. If the pecuniary gain is 'receivable' in connection with the office then it becomes an office of profit irrespective of whether such pecuniary gain is actually received or not.

Disqualification under the Representation of Peoples Act:

- Corrupt practice at an election
- Conviction for an offence resulting in imprisonment for two or more years.
- Failure to lodge an account for election expenses
- Having an interest or share in the contract for supply of goods or execution of any work or performance of a service to the Govt.
- Being a director or managing agent or holding an office of profit in a corporation in which the Govt. has 25% share.
- Dismissal from Govt. service for corruption or disloyalty to the State.

Disqualification on the ground of defection:

The 52nd amendment has amended Arts. 101,102,190 and 191 and added a new schedule, the Tenth Schedule to the Constitution which specifies the disqualifications on the ground of defection. The Amendment has added a new clause(2) to Arts,102 and 191 which provides that, a member shall be disqualified for being a member of either House of Parliament or of State Legislatures if he incurs the disqualifications specified in the Tenth Schedule.

The Constitution 91st Amendment Act, 2003:

This Act added a new clause to Arts.75 and 164 of the Constitution. Clause (1-B) provides that a member of either House of Parliament belonging to any political party who is disqualified for being a member of that House on the ground of defection under para (2) of the Tenth Schedule shall also be disqualified to be appointed as a minister under Clause (1) of Arts. 75 and 164 until he is re-elected. If any question arises as to whether a member of a House has become subject to any disqualification under the Tenth Schedule, the question shall be referred to the Chairman or the Speaker of such House, whose decision shall be final.

The decision of the presiding officer shall be final and shall not be called into question in any court of law (Paragraph 7). In a landmark Judgment of KihotaHollohon v. Zachilhu (1992) 1 SCC 309, the Supreme Court has been struck down para 7 (Tenth Schedule) of the anti-defection law, which provided that the Speaker's decision shall be final and no court could examine its validity. The Court held that the function of the Speaker, while applying the anti-defection law is that of a Tribunal and therefore is open to judicial review. But by a 3:2 majority the court held that Schedule 10 is not violative of freedom of speech, freedom of vote and conscience of Members of Parliament and Legislatures of States.

Vacation of Seats:

A member of either House of Parliament may resign his seat by writing to the Chairman or to the Speaker, as the case may be. His seat then shall become vacant.[Art.101(3)(1)]. Without the permission of the House, absents himself from all the meetings of the Houses for a period of sixty days the House may declare his seat vacant. [Art.101 (4)]. A declaration to that effect is necessary otherwise that seat will not become vacant. The 33rdAmendment now provides that if a member of Legislature resigns his seat the Speaker or the Chairman shall not accept his resignation, if on enquiry, he is satisfy that such resignation is not voluntary or genuine. This amendment is an outcome of the Gujarat movement where members were compelled to resign from the Legislative Assembly.

Speaker and Deputy Speaker of Lok Sabha:

- The Lok Sabha elects two of its members as Speaker and Deputy Speaker.
- The Office of Speaker is one of the great responsibility.
- He presides over the sittings and controls its working.
- He upholds the dignity and privileges of the House.
- Once elected, he must rise above the party interests.
- In England, there is a convention that the Speaker has to resign from his party.
- This is necessary to maintain impartiality on his part.
- The Constitution of India also contains certain provisions for maintaining independence and impartiality of the Speaker.
- His salary is changed on the Consolidated Fund of India.
- He cannot be removed from his office except by a resolution passed by a special majority.

When the office of Speaker is vacant the Deputy Speaker performs the duties of Speaker. (Art.93). If the office of Deputy Speaker is also vacant, then the duties of the Speaker shall be performed by such member of the House as the president may appoint for this purpose.Art.95(1).

Vacation of Seats: (Speaker or Deputy Speaker):

As soon as they cease to be members of the House they have to vacate their offices. The Speaker continues his office even if the Lok Sabha is dissolved, till newly elected Lok Sabha meets. They may resign their offices or they may be removed from their offices by a resolution of the House of the people passed by a majority of all the then members of the House. [Art.94 (a)(b)(c)]. Fourteen days notice has been given of the intention to move the resolution. (Art 94 proviso).

Sessions of Parliament:

The President shall from time to time summon each House of the Parliament to meet at such time and place as he thinks fit. But this right is subject to the condition that six months should be intervene between its last sitting in one session and the date appointed for its sitting in the next session.Art.85(1). At the commencement of the first session after the general election to the Lok Sabha, the President shall address both Houses of Parliament assembled together and shall inform the causes of its summons.Art.87(1). The Presidential address is with regard to the general policies of the Government and indication of its future programmes to be taken by the Govt. it is not the private speech of the President and it is prepared by the Cabinet. The President is empowered to address either House or both the Houses assembled together at anytime and for that purpose require the attendance of members. Art 86(1). The President may send message to either House of Parliament whether with respect to a Bill pending in Parliament or otherwise.

Prorogation:

Prorogation merely ends a session. It does not end the life of the House. The House meets again after prorogation. The power to prorogue the house is vested in the President.Art.85(9). In England prorogation brings to an end all Bills or Business then pending before the House. But in India a pending Bill or business does not lapse on the prorogation of a session. It means the House ceases to do a business at a particular time. It takes up pending business for consideration when it meets after prorogation.

Dissolution:

A dissolution ends the very life of the House and general election then must be held to elect a new Lak Sabha. The Rajya Sabha is a permanent body and not subject to dissolution. A dissolution ends the very life of the House while a prorogation ends a session. The power to dissolve is vested in the President. [Art.85(5)]. On the advice of the Prime Minister. In England, it is a well settled convention that the sovereign can dissolve the House when advised by the Prime Minister.

Effect of dissolution on the business pending in the houses:

1) A bill pending in the RajyaSabha but not passed by the Lok Sabha does not lapse;

2) Abill pending in the Lok Sabha lapses;

3) A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses unless it is saved by the president's intention to call a joint sitting of the two houses.

Procedure in the Home:

Art.100 provides that all question at a sitting of the houses shall he decided by a majority of the votes of the members present and voting other than the speaker or person acting as a chairman.In the first instance they shall not vote hut shall exercise a casting vote in the case of an equality of votes.Either houses of parliament have power to act not withstanding any vacancy in the membership.

Functions of parliament:

Making of laws and theLegislative procedure is initiated in the form of bill.

Ordinary Bill:

Bill other than money bill or financial bills and may originate in either houses of parliament.The bill must be passed by the both the houses of parliament and then only it can be sent for president's assent.If becomes law when it is assented to by the president.The procedure to pass a bill has to be laid down by each House. According to a bill has to pass through threestages commonly known as readings .they are,First second and third reading:

At the first stage:

The bill is introduced in the houses. No discussion takes place.

The second reading:

It is consideration stage when the bill is discussed clause by clause. Amendments may be moved.

Third stage:

A brief general discussion of the bill takes place and the bill is finally past.

When the bill is passed by the one house it is sent to the other House. If there is any disagreement between the houses over any bill,the bill cannot be deemed to have been passed. Ifthe two houses do not agree a deadlock is created. To resolve such a deadlock the constitution provides the method of joint sitting of the Houses.

Joint sitting of the houses:Art.108 the circumstances are:

1) Is rejected by the house; or
2) The houses disagrees as the amendment to be made in the bill; or
3) The other house does not pass the bill and more than six months have passes.

Then the president may summon a joint sessions of both the Houses. Theparliament, however cannot summon a joint sitting if the bill in question has lapsed by reason of dissolution of the Lok Sabha. If the dissolution takes place after the president has notified his intention to summon a joint sitting, such sitting will be held notwithstanding the dissolution. If at the joint sitting the bill is passed by a majority of the total numbers of members of both the houses presents and voting it shall be deemed to have been passed by both the houses.[Art.108 (4)].at a joint session,no new amendments shall be proposed in the bi9ll except such which are made necessary by the delay in the passage of the bill. if at all any amendments is necessary the decision of the presiding officer will be final,Art.108 (4)(b).the joint session shall be presided over by the speaker of the Lok Sabha or in his absence such person as may be determined by rules or procedure[Art. 118 (4)].But this provision does not apply to money bills.

Money Bill:

Art.110(1)a money bill is a bill which contains only provisions with request to all or any of the following matters:-

a) The imposition abortion remission alternation or regulation of any tax,

b) The regulating of the borrowing of money or the giving of any guarantee by the Government of India.

c) Thecustody of the consolidated fund, thepayment or the contingency fund the payment or withdrawal of the money from such fund,

d) Theappropriation of money out of the consolidated fund of India,

e) The declaring of any expenditure to be charged on the consolidated fund of India.

f) the receipt of money on account of the consolidated fund of India or the public account of India or the custody or issue of such money or the audit of the account of the union or of a state.

g) Any matter incidental to any of the matters specified in the sub-clause (a) to (f)

But a bill is not a money bill by reason only that it provides for:-

a) The composition of fines or other pecuniary penalties,or

b) The payment of fees for license or services rendered,

c) Imposition, abolition,remission, alteration or regulation of any tax by any local authority or body for local purpose. Art 113(2).

The question about whether the bill is money bill or not the decision of the speaker of Lok Sabha shallbe final ,when a bill is sent to Rajya Sabha or presented to the president to assent, a certificate of the speaker shall be endorsed on that it is a money bill [Art110(4)].

A money bill can only be introduced in the Lok Sabha with the recommendation of the president. But such recommendation is not necessary for the moving of amendmentsmaking provisions for the reduction or abolition of any tax. Art 117(1) proviso.After a money bill has been passed by the Lok Sabha, it is sent to the Rajya Sabha for its recommendations. The Rajya Sabha must return it within 14 days from the receipt of the bill with its recommendations.

The Lok Sabha may either accept or reject all or any of the recommendations of the Rajya Sabha. If the Lok Sabha accepts any of the recommendations of the Rajya Sabha, the money bill shall be deemed to have been passed by both Houses with the amendments by the Rajya Sabha and accepts by the Lok Sabha. The money bill shall be deemed to have been passed by both the Houses even if:The bill is not returned to the Lok Sabha within 14 day. The Lok Sabha rejects all the recommendations of the Rajya Sabha

Then it will be presented to the president for his assent. A money bill introduced in the Lok Sabha only on the recommendations of the president.

Financial bills are of three kinds:-

1. Money bill-Art 110 (1)
2. Other than financial bill Art 117(3)
3. Bills involving expenditure Art 117(3)

Distinction between money bills, financial bills and bills involving expenditures:-

1. Money bill contain only matters mentioned in the Art 110(1).a financialbill, apart from dealing with one or more than matters mentioned in Art 110(1), deals with other matters also.

Thus a financial bill is a money bill to which provisions of general legislations are also added apart fromone or morematters of Article 110(1). All money bills are financial bill but all financial bills are not money bills.

2. In two matters the money bill and the financial bill do not differ.

i) Afinancial bill like the money bill, can only originate in the Lok Sabha.

ii) Cannot be introduced without the recommendations of the president [Art 117(1)]

3. Financialbill and other boils involving expenditure differ from a money bill in so far as

i) The former can be amended or rejected by the Rajya Sabha like any ordinary bill.

But the money bill cannot be amended and rejected by the Rajya Sabha.

ii) If there is dead lock between the Houses it cannot be resolved by the joint session of the Houses. Thus the Rajya Sabhahas some control over financial and other bills involving expenditure.

4.As regards the procedure for its passage a financial bill is passed according to the ordinary procedure providing for passing of an ordinary bill.As far as presidential assent is concerned, in case of financial bill he may, however, in addition, refer it back to the Houses with a message for reconsideration.

Annual Financial Statement – Budget (Art.112):

The President shall in respect of every financial year cause to be laid before both the Houses of Parliament an annual financial statement commonly known as the Budget. This statement gives out the estimated income and expenditure for that year. This estimated expenditure is shown separately under two heads:

- ✓ The sums changed upon the Consolidated Fund of India.
- ✓ The sums required to meet other expenditure out of the Consolidated Fund of India.

The following expenditures are changed on the Consolidated Fund of India.

1. The salary and allowances of the President and other expenditure relating to his office.
2. Salaries and allowances of the Chairman and the Deputy Chairman of the Rajya Sabha and the Speaker and the Deputy Speaker of the Lok Sabha.
3. Debt charges for which the Govt. of India is liable.
4. Salaries and allowances and pensions payable to Judges of the Supreme Court, HCs, and Federal Court and the Comptroller and Auditor-General of India.
5. Any sums requires to satisfy any judgment, decree, or award of by any Court or Tribunal.
6. Any other expenditure declared by this Constitution or by Parliament by law to be so charged.

Discussion and Voting on Budget:

Art.113: the expenditure which is charged on the Consolidated Fund of India shall not be submitted to the vote of Parliament. However, Houses are not prevented from discussing any of these items of expenditure. The estimates must be submitted to the Lok Sabha in the form of demands for grants. The Lok Sabha has powers to assent or refuse to assent to any demand or to assent to any demand subject to the reduction of the amount specified therein. No demand for a grant is to be made except on the recommendation of the President.

Appropriation Bills:

No money can be taken out from the Consolidated Fund of India unless the Appropriation Act is passed. [Art.114(3)]. Therefore after the demands for grants under Art.113 are passed by the Lok Sabha, a Bill known as Appropriation Bill is introduced in the Lok Sabha. No amendment shall be proposed to the Appropriation Bill.

Supplementary Additional or Excess Grants: (Art 115)

If the amount authorized by the Appropriation Act to be expended for a particular service is found to be insufficient for the purpose of that year or when a need has arisen during the current financial year upon some new service not contemplated for that year, for any additional expenditure a supplementary grant is made by the Parliament. The procedure is the same for both the Appropriation Act and the Supplementary grant.

Votes on Account – Votes on Credit and Exceptional Grant:

Before the Appropriation Act is passed no money is to be withdrawn from the Consolidated Fund of India. But the Govt. may need money to spend before it is passed. Accordingly, under Art.116 (a) of the Lok Sabha can grant a limited sum from the Consolidated Fund of India to the Executive to spend till the Appropriation Act is passed by the Parliament.

General rules of Procedure:

Art.118 empowers each House of Parliament to make rules for regulating its procedure and conduct of its business. This power is subject to the provisions of the Constitution. This rule making power of the Houses is, however subject to the provisions of this Constitution. The purposes are timely completion of financial business in each Houses of Parliament in relation to any financial matter or to any Money Bill.(Art.119). The business of Parliament shall be transacted either in Hindi or in English. However, the Chairman of Rajya Sabha or the Speaker of Lok Sabha, may permit any member who cannot be adequately express himself in Hindi or in English to address the House in mother tongue.

Courts not to inquire into proceedings of Parliament:

Art 122 lays down that the validity of any proceedings in Parliament cannot be called in question in any court on the ground of any alleged irregularity of procedure.The courts cannot issue a writ against the Speaker from presiding over meetings of the House. Hemachandrasen Gupta v. The Speaker, AIR 1956 Cal. 378or stop the passage of a Bill. Chhotey Lal v. State of UP, AIR 1951 All 258.The courts cannot go into the question as to the validity of the proceedings in the House of Parliament. Smt. Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299.

The Comptroller and Auditor-General of India Arts. (148-151):

Duties and Powers:

He is to perform such duties and exercise such powers in relation to the accounts of the Union and of States as may be prescribed by or under any law made by Parliament. Until such law is passed, he shall perform such duties and exercise such powers as were exercisable by the Auditor-General of India immediately before the commencement of the Constitution.(Art.149).

He performs two duties and those are,

- as an accountant he controls all withdrawal of money disbursed by Central or State Governments.
- He shall keep the account of the Union and of the State in the manner prescribed by the President.(Art.150)

The report of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President who shall cause them to be laid before the Parliament. He shall submit the reports of accounts of State to the Governor of the State who may lay it before the Legislature.

THE STATE LEGISLATURE

Constitution of Legislatures in States Art.168

(1) For every State there shall be a Legislature which shall consist of the Governor, and—

(*a*) in the States of Bihar, Maharashtra, Karnataka and Uttar Pradesh, two Houses;

(*b*) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

Abolition or creation of Legislative Councils in States Art.169

(1) Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Art.170. Composition of the Legislative Assemblies

(1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

Explanation.—In this clause, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 2001 census.

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust—

(*i*) the total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census; and

(*ii*) the division of such State into territorial constituencies as may be readjusted on the basis of the 2001 census, under this clause.

Art.171. Composition of the Legislative Councils

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(*a*) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(*b*) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(*c*) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(*d*) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(*e*) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (*a*), (*b*) and (*c*) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (*d*) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (*e*) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely: *Literature, science, art, co-operative movement and social service.*

Art.172.Duration of State Legislatures

(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

Art.173. Qualification for membership of the State Legislature

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

(*a*) is a citizen of India, and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(*b*) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and

(*c*) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Art.174. Sessions of the State Legislature, prorogation and dissolution

(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time—

(*a*) prorogue the House or either House;

(*b*) dissolve the Legislative Assembly.

Officers of the State Legislature

The Speaker and Deputy Speaker of the Legislative Assembly - Art.178

Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker - Art.179

A member holding office as Speaker or Deputy Speaker of an Assembly—

(*a*) shall vacate his office if he ceases to be a member of the Assembly;

(*b*) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(*c*) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly:

Provided that no resolution for the purpose of clause (*c*) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

The Chairman and Deputy Chairman of the Legislative Council – Art.182

The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman - Art.183

A member holding office as Chairman or Deputy Chairman of a Legislative Council—

(*a*) shall vacate his office if he ceases to be a member of the Council;

(*b*) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office; and

(*c*) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (*c*) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman Art.186

There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Disqualifications of Members

Art.190. Vacation of seats

(1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one house or the other.

(2) No person shall be a member of the Legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

(3) If a member of a House of the Legislature of a State—

(*a*) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 191; or

(*b*) resigns his seat by writing under his hand addressed to the speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant:

Provided that in the case of any resignation referred to in sub-clause (*b*), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

Art.191. Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(*a*) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(*b*) if he is of unsound mind and stands so declared by a competent court;

(*c*) if he is an undischarged insolvent;

(*d*) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(*e*) if he is so disqualified by or under any law made by Parliament.

Explanation.—For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) 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.

Powers, Privileges and Immunities of State Legislatures and their Members

Art.194. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof

There shall be freedom of speech in the Legislature of every State. No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978. The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

Art.195. Salaries and allowances of members

Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined, by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province.

Legislative Procedure

Art.196. Provisions as to introduction and passing of Bills

(1) Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

(2) Subject to the provisions of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

Art.197. Restriction on powers of Legislative Council as to Bills other than Money Bills

(1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

(*a*) the Bill is rejected by the Council; or

(*b*) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(*c*) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

(*a*) the Bill is rejected by the Council; or

(*b*) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(*c*) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

The Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill.

Art.198. Special procedure in respect of Money Bills

(1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

Art.199. Definition of "Money Bills"

(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;

(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;

(d) the appropriation of moneys out of the Consolidated Fund of the State;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or

(g) any matter incidental to any of the matters specified in sub-clauses *(a)* to *(f)*.

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

Art.200. Assent to Bills

When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President: Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

THE UNION JUDICIARY – THE SUPREME COURT

(Arts.124-147)

The Supreme Court is the final interpreter of the general law of the country and it is the highest court of appeal in civil and criminal matters. It maintains the supremacy of the Constitution and guardian of the fundamental rights of the people. The Supreme Court has been called to safeguard civil and minority rights and play the role of "guardian of the social revolution".

Composition of the Court:

The Supreme Court of India consists of a Chief Justice and, not more than seven other Judges, until Parliament may by law prescribes a large number. In 1977, this was increased to 17 excluding the Chief Justice. After the Supreme Court (No. of Judges) (Amendment) Act, 1986, this has been increased to 25 excluding the Chief Justice. In 2009, the number has been increased to 30 excluding the Chief Justice. Thus the total number of Judges in the Supreme Court at present is 31. The Constitution does not provide for the minimum No. of Judges who will constitute a Bench for hearing case.

Appointment of Judges:

- ✓ The appointments will be made by the President. The Chief Justice is appointed by the President with the consultation of such of the Judges of the Supreme Court and the High Courts as he deem necessary for the purpose. But in appointing other Judges the President shall always consult the Chief Justice of India.
- ✓ He may consult such other Judges of the Supreme Court and the High Courts as he may deem necessary. Art.124(2).
- ✓ It should, however be noted that the power of the President to appoint Judges is purely formal because in this matter he acts on the advice of the Council of Ministers.,

There was an apprehension that Executive may bring politics in the appointment of Judges. The Indian Constitution therefore does not leave the appointment of Judges on the discretion of the Executive. The

Executive is required to consult persons who are ex-hypotheses well qualified to give proper advice in matters of appointment of Judges. Till 1973, the practice was to appoint senior most Judge of the Supreme Court as the Chief Judge. In 1956, the Law Commission headed by the then Attorney-General M.C.Setalvad had criticized this practice and recommended that in appointing the Chief Justice, the experience of a person as a Judge, his administrative competence and merit should be judged and seniority should not only be the main consideration.

The reports of the Law Commission were published as far back as in 1956. Since then 17 years had passed but no attempt was made by the Govt. to implement it. Instead, the Government continue to follow the principle of seniority as a matter of rule in appointing the Chief Justice of India. On April 25, 1973, however, this 22 year old practice was suddenly broken by the Govt. within few hours of the delivery of the judgment in the fundamental right case. Mr. A.N.Ray was appointed as Chief justice of India superseding three of the senior colleagues justice Shelat, Hegde and Grover. Eight years after the swearing ceremony of Mr. A.N.Ray, as CJ of India, the three Judges resigned from the Supreme Court. The action of the Govt. raised a great controversy.

The Supreme Court Bar Association condemned the action of the Govt. by passing a resolution that the Govt. action was a blatant and outrageous attempt and undermining the independence and impartiality of the Judiciary and lowering the prestige and dignity of the Supreme Court. But the Govt. justified its action on the following grounds:

Firstly, under Art.124 of the Constitution the President has absolute discretion to appoint anyone whom he finds suitable for the post of the Chief Justice of India.

Secondly, it was argued that the Govt. followed the recommendations of the Law Commission in appointing the CJ and superseding the three senior Judges.

Thirdly, it was argued that executive was entitled to take into consideration the mental outlook or the social philosophy of Judges.

Supremacy of the Executive:

Though according to the language used in Art.124 the President is required to consult "legal experts" but prior to the decision of the Supreme Court in Supreme Court Advocate-on-Record Association, it has always been interpreted that the President was not bound to act in accordance with such consultation. The meaning of the word 'consultation' came for the consideration of the Supreme Court in the Sankalchandsheth's case, AIR 1977 SC 2328 which was related to the scope of Art.222 of the Constitution. It was held that the word consultation means full effective consultation. For a full and effective consultation it is necessary that the three constitutional functionaries "must have for its consideration full and identical facts" on the basis of which they would be able to take a decision. The President, however, has a right to differ from them and take a contrary view. Consultation does not mean concurrence and the President is not bound by it.

In S.P.Gupta v. Union of India, AIR1982 SC 149, popularly known as Judges Transfer Case, the SC unanimously agreed with the meaning of the term consultation as explained by the majority in Sankalchandsheth's case. The meaning of the word consultation in Art.124(2) is the same as the meaning of the word in Art.212 and 222. The only ground on which the decision of the Govt. can be challenged is that it is based on mala fide and irrelevant considerations, that is, when constitutional functionaries expressed an opinion against the appointment. This means that the ultimate power to appoint Judges is vested in the executive from whose dominance and subordination it was sought to be protected.

The Supreme Court had abdicted its power by ruling that constitutional functionaries had merely a consultative role and that power of appointment of Judges is 'solely and exclusively' vested in the Central Government. The majority judgment of the Supreme Court in the judges transfer case was bound to have an adverse effect on the independence and the impartiality of the judiciary which is the only hope for the citizens in democracy.

Judicial Supremacy:

S.C.Advocate on Record Association v. Union of India,(1993) 4 SCC 441.popularly known as Judges Transfer Case II (1993) 4 SCC 441. a nine judge Bench of the Supreme Court by a 7-2 majority overruled its earlier judgment in the Judges Transfer Case I (S.P.Gupta v. Union of India) and held that in the matter of appointment of Judges of the Supreme Court and the High Courts the Chief Justice of India should have primacy. The majority held that the initiation of proposal for appointment in case of Supreme Court must be by the Chief Justice of India and in the case of High Court by the Chief Justice of the High Court and for the transfer of a judge of the Chief Justice of the High Court the proposal has to be initiated by the Chief Justice of India.

No appointment of any Judge to the Supreme Court or any High Court can be made, unless it is in confirmation with the opinion of the Chief Justice of India. Only in exceptional cases and for strong reasons, the names recommended by the Chief Justice may not be made.

Appointment and Transfer of Judges Case III:

In re Presidential Reference, a nine judge bench of the Supreme Court hasunanimously held that the recommendation made the Chief Justice of India on the appointment of Judges of the Supreme Court and the High Courts without following the consultation process to be adopted by the Chief Justice of India requires consultation of plurality of Judges. The expressions 'consultation with the Chief Justice of India' in Arts.217(1) and 222(1) of the Constitution of India requires consultation with plurality of Judges in the formation of opinion of the Chief Justice of India. The sole individual opinion of the Chief Justice of India does not constitute consultation within the meaning of the said articles. The majority held that in regard to the appointment of Judges to the Supreme Court under Art 124(2), the Chief justice should consult 'a collegium of four seniormost Judges of the Supreme Court' and made it clear that if two judges give adverse opinion the Chief Justice should not send the recommendation to the Government. the collegiums must include the successor Chief Justice of India.

Art.125. Salaries, etc., of Judges

(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Art.126. Appointment of acting Chief Justice

When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

Art.127. Appointment of *ad hoc* Judges

(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an *ad hoc* Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

Supreme Court to be a court of record - Art.129

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Seat of Supreme Court - Art.130:

The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

Original jurisdiction of the Supreme Court – Art.131

Subject to the provisions of the Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

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

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

(*c*) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases – Art.132

An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies

under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution. Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters - Art.133

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A—

(*a*) that the case involves a substantial question of law of general importance; and

(*b*) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

Appellate jurisdiction of Supreme Court in regard to criminal matters Art.134

(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

(*a*) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(*b*) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(*c*) certifies under article 134A that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (*c*) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

Art.134A. Certificate for appeal to the Supreme Court

Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause

(1) of article 132 or clause (1) of article 133, or clause (1) of article 134, —

(*a*) may, if it deems fit so to do, on its own motion; and

(*b*) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence,determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (*c*) of clause (1) of article 134, may be given in respect of that case.

Special leave to appeal by the Supreme Court - Art.136

The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

Art.137. Review of judgments or orders by the Supreme Court

Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

Art.138 - Enlargement of the jurisdiction of the Supreme Court

(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

Conferment on the Supreme Court of powers to issue certain writs – Art.139

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them, for any purposes other than those mentioned in clause (2) of article 32.

Law declared by Supreme Court to be binding on all courts - Art.141

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc – Art.142

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Art.143. Power of President to consult Supreme Court

(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

THE HIGH COURTS IN THE STATES

Art.214. High Courts for States

There shall be a High Court for each State.

Art.215. High Courts to be courts of record

Every High Court shall be a court of record and shall have all the powers of such a court *in*cluding the power to punish for contempt of itself.

Constitution of High Courts - Art.216

Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

Art.217. Appointment and conditions of the office of a Judge of a High Court

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years:

Provided that—

(*a*) a Judge may; by writing under his hand addressed to the President, resign his office;

(*b*) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;

(*c*) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(*a*) has for at least ten years held a judicial office in the territory of India; or

(*b*) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession.

Art.219. Oath or affirmation by Judges of High Courts

Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Art.221. Salaries, etc., of Judges

(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Art.225. Jurisdiction of existing High Courts

Subject to the provisions of the Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

Art.226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

- (*a*) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
- (*b*) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

Art.227. Power of superintendence over all courts by the High Court

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(*a*) call for returns from such courts;

(*b*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(*c*) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Art.228. Transfer of certain cases to High Court

If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

(*a*) either dispose of the case itself, or

(*b*) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

229. Officers and servants and the expenses of High Courts

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorized by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

SUBORDINATE COURTS

Art.233.Appointment of district judges

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

Art.233A. Validation of appointments of, and judgments, etc., delivered by, certain district judges

Notwithstanding any judgment, decree or order of any court,—

(*a*) (*i*) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and

(*ii*) no posting, promotion or transfer of any such person as a district judge, made at any time before the commencement of the Constitution (Twentieth Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions;

(*b*) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceedings done or taken, before the commencement of the Constitution (Twentieth Amendment) Act, 1966 by, or before, any person appointed, posted, promoted or transferred as a district judge in any State otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or invalid or ever to have become illegal or invalid by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions.

Control over subordinate courts - Art.235

The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

UNIT - III

CENTRE AND STATE : DISTRIBUTION OF LEGISLATIVE, AND FISCAL POWERS & FREEDOM OF TRADE AND COMMERCE

Distribution of Legislative Powers with reference to various Doctrines:

Doctrine of Pith and Substance

The basic purpose of this doctrine is to determine under which head of power or field i.e. under which list (given in the Seventh Schedule) a given piece of legislation falls. Pith means 'true nature' or 'essence of something' and Substance means 'the most important or essential part of something'.

Doctrine of Pith and Substance says that where the question arises of determining whether a particular law relates to a particular subject (mentioned in one List or another), the court looks to the substance of the matter. Thus, if the substance falls within Union List, then the incidental encroachment by the law on the State List does not make it invalid.

This is essentially a Canadian Doctrine now firmly entrenched in the Indian Constitutional Jurisprudence. This doctrine found its place first in the case of *Cushing v. Dupey*. In this case the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was *intra vires*, regard must be had to its pith and substance.

Need for the Doctrine of Pith and Substance in the Indian Context

The doctrine has been applied in India also to provide a degree of flexibility in the otherwise rigid scheme of distribution of powers. The reason for adoption of this doctrine is that if every legislation were to be declared invalid on the grounds that it encroached powers, the powers of the legislature would be drastically circumscribed.

"It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude."

Incidental or Ancillary Encroachment

The case of *Prafulla Kumar Mukherjee v. The Bank of Commerce* succinctly explained the situation in which a State Legislature dealing with any matter may incidentally affect any Item in the Union List. The court held that whatever may be the ancillary or incidental effects of a Statute enacted by a State Legislature, such a matter must be attributed to the Appropriate List according to its true nature and character.

However, the situation relating to Pith and Substance is a bit different with respect to the Concurrent List. If a Law covered by an entry in the State List made by the State Legislature contains a provision which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to the

provisions of any existing law with respect to that matter in the Concurrent List, then the repugnant provision in the State List may be void unless it can coexist and operate without repugnancy to the provisions of the existing law.

Important Supreme Court Judgments on the Doctrine of Pith and Substance

There are hundreds of judgments that have applied this doctrine to ascertain the true nature of legislation.

1. The State of Bombay And Another vs F.N. Balsara:

This is the first important judgment of the Supreme Court that took recourse to the Doctrine of Pith and Substance. The court upheld the Doctrine of Pith and Substance and said that it is important to ascertain the true nature and character of a legislation for the purpose of determining the List under which it falls.

2. Mt. AtiqaBegam andAnr. v. Abdul Maghni Khan and Ors.:

The court held that in order to decide whether the impugned Act falls under which entry, one has to ascertain the true nature and character of the enactment i.e. its 'pith and substance'. The court further said that "it is the result of this investigation, not the form alone which the statute may have assumed under the hand of the draughtsman, that will determine within which of the Legislative Lists the legislation falls and for this purpose the legislation must be scrutinized in its entirety".

3. Zameer Ahmed LatifurRehman Sheikh v. State of Maharashtra and Ors.:

Pith and Substance has been beautifully explained in this case:"This doctrine is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists. If there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme. This doctrine is an established principle of law in India recognized not only by this Court, but also by various High Courts. Where a challenge is made to the constitutional validity of a particular State Act with reference to a subject mentioned in any entry in List I, the Court has to look to the substance of the State Act and on such analysis-and examination, if it is found that in the pith and substance, it falls under an entry in the State List but there is only an incidental encroachment on any of the matters enumerated in the Union List, the State Act would not become invalid merely because there is incidental encroachment on any of the matters in the Union List."

Doctrine of Colourable Legislation:

Like any other constitutional law doctrine is a tool devised and applied by the Supreme Court of India to interpret various Constitutional Provisions. It is a guiding principle of immense utility while construing provisions relating to legislative competence.Before knowing what this doctrine is and how it is applied in India, let us first understand the genesis of Doctrine of Colourable Legislation.

Doctrine of Colourable Legislation is built upon the founding stones of the Doctrine of Separation of Power. Separation of Power mandates that a balance of power is to be struck between the different components of the State i.e. between the Legislature, the Executive and the Judiciary. The Primary Function of the legislature is to make laws. Whenever, Legislature tries to shift this balance of power towards itself then the Doctrine of Colourable Legislation is attracted to take care of Legislative Accountability.

Definition

Black's Law Dictionary defines 'Colourable' as:

1. Appearing to be true, valid or right.
2. Intended to deceive; counterfeit.
3. 'Colour' has been defined to mean 'Appearance, guise or semblance'.

The literal meaning of colourable Legislation is that under the 'colour' or 'guise' of power conferred for one particular purpose, the legislature cannot seek to achieve some other purpose which it is otherwise not competent to legislate on.

This Doctrine also traces its origin to a Latin Maxim:

"Quandoaliquidprohibetur ex directo, prohibeturet per obliquum"

This maxim implies that "when anything is prohibited directly, it is also prohibited indirectly". In common parlance, it is meant to be understood as "Whatever legislature can't do directly, it can't do indirectly". In our Constitution, this doctrine is usually applied to Article 246 which has demarcated the Legislative Competence of the Parliament and the State Legislative Assemblies by outlining the different subjects under List I for the Union, List II for the States and List III for both, as mentioned in the Seventh Schedule.This doctrine comes into play when a Legislature does not possess the power to make law upon a particular subject but nonetheless indirectly makes one. By applying this principle the fate of the Impugned Legislation is decided.

Supreme Court on colourable Legislation

One of the most cogent and lucid explanations relating to this doctrine was given in the case of K.C. Gajapati Narayana Deo and Other v. The State Of Orissa"If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers.Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression 'Colourable Legislation' has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere presence or disguise."

Limitations on the Application of Doctrine of Colourable Legislation

1. The doctrine has no application where the powers of a Legislature are not fettered by any Constitutional limitation.
2. The doctrine is also not applicable to Subordinate Legislation.
3. The doctrine of colourable legislation does not involve any question of *bona fides* or *mala fides* on the part of the legislature. The whole doctrine resolves itself into the, question of competency of a particular legislature to enact a particular law.

4. A logical corollary of the above-mentioned point is that the Legislature does not act on Extraneous Considerations. There is always a Presumption of Constitutionality in favour of the Statute. The principle of Presumption of Constitutionality was succinctly enunciated by a Constitutional Bench in *Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors. "That there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles."*

   There is a very famous rule of interpretation as well that explains why the courts strongly lean against a construction which reduces the statute to a futility. The Latin Maxim "*construction ut res magis valeat quam pereat*"implies that a statute or any enacting provision therein must be so construed as to make it effective and operative. The courts prefer construction which keeps the statute within the competence of the legislature.

5. When a Legislature has the Power to make Law with respect to a particular subject, it also has all the ancillary and incidental power to make that law an effective one.

6. As already discussed above that the transgression of Constitutional Power by Legislature may bepatent, manifest or direct, but may also be disguised, covert and indirect and it is only to this latter class of cases that the expression "Colorable Legislation" is being applied.

Doctrine of Waiver

Definition

The Doctrine of Waiver seems to be based on the premise that a person is his best judge and that he has the liberty to waive the enjoyment of such rights as are conferred on him by the state. Black's Law Dictionary defines Waiver as *"the voluntary relinquishment or abandonment (express or implied) of a legal right or advantage"*. It also says that the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it.

Doctrine of Wavier in India

There have been plethora of cases that have discussed the doctrine of Waiver. Some of the important ones are.

1. JaswantsinghMathurasingh&Anr. v. Ahmedabad Municipal Corporation &Ors.:

In this case, the court said that everyone has a right to waive an advantage or protection which seeks to give him/her. For e.g. In case of a Tenant-Owner dispute, if a notice is issued and no representation is made by either the owner, tenant or a sub-tenant, it would amount to waiver of the opportunity and such person cannot be permitted to turn around at a later stage.

2. Krishna Bahadur v. M/s. Purna Theatre &Ors.:

This case made a differentiation between the principle of Estoppel and the principle of Waiver. The court said that "the difference between the two is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration".

The court also held that:

"A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct."

3. Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association &Ors.:

This case said that even though Waiver and Estoppel are two different concepts, still the essence of a Waiver is an estoppel and without Estoppel, there cannot be any Waiver. The court also said "Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case".

Doctrine of Waiver and Fundamental Rights in India

Fundamental Rights are the most special of the rights in Indian Context. These rights though sacrosanct are not absolute in nature. Our Constitution imposes various reasonable restrictions upon the exercise of fundamental rights. However, the scope of the Doctrine of Waiver with respect to Fundamental rights is a bit different. It was discussed in the case of BasheshrNath v. Income Tax commissioner, The Court said that:

"Without finally expressing an opinion on this question we are not for the moment convinced that this Doctrine has any relevancy in construing the fundamental rights conferred by Part III of our Constitution. We think that the rights described as fundamental rights are a necessary consequence of the declaration in the preamble that the people of India have solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens justice, social, economic and political; liberty, of thought, expression, belief, faith and worship; equality of status and of opportunity. These fundamental rights have not been put in the Constitution merely for the individual benefit though ultimately they come into operation in considering individual rights. They have been put there as a matter of public policy and the 'doctrine of waiver' can have no application to provisions of law which have been enacted as a matter of Constitutional policy. Reference to some of the articles, inter alia, Articles 15(1) 20, 21, makes the proposition quite plain. A citizen cannot get discrimination by telling the State 'You can discriminate', or get convicted by waiving the protection given under Articles 20 and 21."

Thus, the primary objective of Fundamental Rights is based on Public Policy. The individuals are not allowed to waive off such fundamental rights. Also, it is the constitutional mandate of the Courts to see that Fundamental Rights are enforced and guaranteed even if one might wish to waive them.

Doctrine of severability

This doctrine provides that if an enactment cannot be saved by construing it consistent with its constitutionality, it may be seen whether it can be partly saved.R.M.D. Chamarbaugwalla v. The Union of India (UOI) is considered to be one of the most important cases on the Doctrine of Severability. In this case, the court observed that:

"The doctrine of severabilityrests, as will presently be shown, on a presumed intention of the legislature that if a part of a statute turns out to be void, that should not affect the validity of the rest of it, and that that intention is to be ascertained from the terms of the statute. It is the true nature of the subject-matter of the legislation that is the determining factor, and while a classification made in the statute might go far to support a conclusion in favour of severability, the absence of it does not necessarily preclude it."

The court further said that:

"When a statute is in part void, it will be enforced as regards the rest, if that is severable from what is invalid."In the above-mentioned case, it was also said that:"Another significant canon of determination of constitutionality is that the Courts would be reluctant to declare a law invalid or ultra vires on account of unconstitutionality. The Courts would accept an interpretation, which would be in favour of constitutionality rather than the one which would render the law unconstitutional.The court can resort to reading down a law in order to save it from being rendered unconstitutional. But while doing so, it cannot change the essence of the law and create a new law which in its opinion is more desirable."

There are many important cases that have discussed about the Doctrine of Severability. Some of them are:

1. In the case of KihotoHollohan vs Zachillhu And Others, it was said that the doctrine of severability envisages that if it is possible to construe a statute so that its validity can be sustained against a constitutional attack it should be so construed and that when part of a statute is valid and part is void, the valid part must be separated from the invalid part.
2. In the case of D.S. Nakara& Others v. Union of India, the court said that whenever a classification is held to be impermissible and the measure can be retained by removing the unconstitutional portion of classification or by striking down words of limitation, the resultant effect may be of enlarging the class. In such a situation, the Court can strike down the words of limitation in an enactment. That is what is called reading down the measure.
3. The principles of severability was also discussed in the case of A. K. Gopalan v. State of Madras, wherein the Court observed that what we have to see is, whether the omission of the impugned portions of the Act will "change the nature or the structure or the object of the legislation".

Doctrine of Eclipse

In the case of KeshavanMadhava Menon v. The State of Bombay, the law in question was an existing law at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed to the citizens of India by Article 19(1)(g) restrictions which could not be justified as reasonable under clause (6) as it then stood and consequently under Article 13(1) that existing law became void "to the extent of such inconsistency".The court said that the law became void not in toto or for all purposes or for all times or for all persons but only "to the extent of such inconsistency", that is to say, to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights on the citizens.

This reasoning was also adopted in the case of BhikajiNarainDhakras and Others v. The State of Madhya Pradesh and Another. This case also held that "on and after the commencement of the Constitution, the existing law, as a result of its becoming inconsistent with the provisions of article 19(1)(g) read with clause (6) as it then stood, could not be permitted to stand in the way of the exercise of that fundamental right. Article 13(1) by reason of its language cannot be read as having obliterated the entire operation of the inconsistent law or having wiped it out altogether the statute, book. Such law existed for all past transactions and for enforcement of rights and liabilities accrued before the date of the Constitution. The law continued in force, even after the commencement of the Constitution, with respect to persons who were not citizens and could not claim the fundamental right".

The court also said that article 13(1) had the effect of nullifying or rendering the existing law which had become inconsistent with fundamental right as it then stood, ineffectual, nugatory and devoid of any legal force or binding effect, only with respect to the exercise of the fundamental right on and after the date of the commencement of the Constitution. Finally the court said something that we today know of as the crux of Doctrine of Eclipse.

Thus the Doctrine of Eclipse provides for the validation of Pre-Constitution Laws that violate fundamental rights upon the premise that such laws are not null and void ab initio but become unenforceable only to the extent of such inconsistency with the fundamental rights. If any subsequent amendment to the Constitution removes the inconsistency or the conflict of the existing law with the fundamental rights, then the Eclipse vanishes and that particular law again becomes active again.

Doctrine of Repugnancy

It is Article 254 of the Constitution of India that firmly entrenches the Doctrine of Repugnancy in India. According to Black's Law Dictionary, Repugnancy could be defined as "an inconsistency or contradiction between two or more parts of a legal instrument (such as a statute or a contract)".

Article 245 states that Parliament may make laws for whole or any part of India and the Legislature of a State may make laws for whole or any part of the State. It further states that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Article 246 also talks about Legislative power of the Parliament and the Legislature of a State. It states that:

1. The Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I or the Union List in the Seventh Schedule.
2. The Legislature of any State has exclusive power to make laws for such state with respect to any of the matters enumerated in List II or the State List in the Seventh Schedule.
3. The Parliament and the Legislature of any State have power to make laws with respect to any of the matters enumerated in the List III or Concurrent List in the Seventh Schedule.
4. Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Supreme Court's Interpretation of Doctrine of Repugnancy

Article 254 has been beautifully summarized by the Supreme Court in M. Karunanidhi *v. Union of India*, The court said that:

"1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevailto the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List, the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only.

Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

The conditions which must be satisfied before any repugnancy could arise are as follows:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.
2. That such an inconsistency is absolutely irreconcilable.
3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."

Thereafter, the court laid down following propositions in this respect:

"1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

Distribution of Powers: Legislative, Administrative and Financial:

Our Constitution is one of the very few that has gone into details regarding the relationship between the Union and the States. A total of 56 Articles from Article 245 to 300 in Part XI and XII are devoted to the State-Centre relations. Part XI (Articles 245-263) contains the legislative and administrative relations and Part XII (Articles 246-300) the financial relations. By going into great details of the relations, the Constitution framers hope to minimize the conflicts between the Centre and the States. By and large, the confrontations between the two have been minimal.

Legislative Relations (Articles 245-255):

From point of view of the territory over which the legislation can have effect, the jurisdiction of a State Legislature is limited to the territory of that State. But in the case of Parliament, it has power to legislate for the whole or any part of the territory of India i.e.States, Union Territories or any other areas included for the time being in the territory of India. Parliament has the power of 'extraterritorial legislation' which means that laws made by the Union Parliament will govern not only persons and property within the territory of India, but also Indian subjects resident and their property situated anywhere in the world. Only some provisions for scheduled areas, to some extent, limit the territorial jurisdiction of Parliament.

Legislative Methods of the Union to Control over States:

(i) Previous sanction to introduce legislation in the State Legislature (Article 304).

(ii) Assent to specified legislation which must be reserved for consideration [Article 31 A (1)].

(iii) Instruction of President required for the Governor to make Ordinance relating to specified matters [Article 213(1)].

(iv) Veto power in respect of other State Bills reserved by the Governor (Article 200).

The Three Lists:

As for the subjects of legislation the Constitution has adopted, as if directly from the Government of India Act, 1935, a three-fold distribution of legislative powers between the Union and the States, a procedure which is not very common with federal constitutions elsewhere. The Constitutions of the United States and Australia provided a single enumeration of powers—power of the Federal Legislature— and placed the residuary powers in the hands of the States. Canada provides for a double enumeration, dividing the legislative powers between the Federal and State legislatures. The Indian Constitution introduces a scheme of three-fold enumeration, namely, Federal, State and Concurrent.

List I includes all those subjects which are in the exclusive jurisdiction of Parliament.

List II consist of all the subjects which are under exclusive jurisdiction of the State Legislature, and

List III which is called the Concurrent List, consists of subjects on which both Parliament and the State legislatures can pass laws.

(i) Union List:

List I, or the Union List, includes 99 items, including residuary powers, most of them related to matters which are exclusively within the jurisdiction of the Union. Subjects of national importance requiring uniform legislation for the country as a whole are inducted in the Union List. The more important examples are defence, armed forces, arms and ammunition, atomic energy, foreign affairs, coinage, banking and insurance. Most of them are matters in which the State legislatures have no jurisdiction at all. But, there are also items dealing with inter-state matters like inter-state trade and commerce regulation and development of inter-state rivers and river valleys, and inter-state migration, which have been placed under the jurisdiction of the Union Parliament. Certain items in the Union List are of such a nature that they enable Parliament to assume a role in certain spheres in regard to subjects which are normally intended to be within the jurisdiction of the States; one such example is that of industries.

While assigned primarily to the State List; industries, the control of which by the Union is declared by a law of Parliament, to be expedient in the public interest' are to be dealt with by parliamentary legislation alone. Parliament, by a mere declaration, can take over as many industries as it thinks fit. It is under this provision that most of the big industries, like iron, steel and coal, have been taken over by Parliament under its jurisdiction. Similarly, while museums, public health, agriculture etc. come under State subject, certain institutions like the National Library and National Museum at New Delhi and the Victoria Memorial in Calcutta have been placed under the jurisdiction of Parliament on the basis of a plea that they are financed by the Government of India wholly or in part and declared by a law of Parliament to be institutions of national importance.

The university is a State subject but a number of universities have been declared as Central Universities and placed under the exclusive jurisdiction of Parliament. Elections and Audit, even at the State level, were considered matters of national importance. The Extensive nature of the Union List thus places enormous powers of legislation even over affairs exclusively under the control of the States in the hands of Parliament.

(ii) State List:

List II or the State List, comprises 61 items or entries over which the State Legislature has exclusive power of legislation. The subject of local importance, where variations in law in response to local situations may be necessary, has been included in the State List. Some subjects of vital importance in the list are State taxes and duties, police, administration of justice, local self-government, public health, agriculture, forests, fisheries, industries and minerals. But, in spite of the exclusive legislative jurisdiction over these items

having been given to the States, the Constitution, through certain reservations made in the Union List has given power to Parliament to take some of these items under its control. Subject to these restrictions, one might sasay, the States have full jurisdiction over items included in the State list.

(iii) Concurrent List:

The inclusion of List III or the Concurrent List, in the Constitution gives a particular significance to the distribution of legislative power in the Indian federal scheme. The Concurrent List consists of 52 items, such as criminal law and procedure, civil procedure, mar-riage, contracts, port trusts, welfare of labour, economic and social planning. These subjects are obviously such as may at some time require legislations by Parliament and at other by a State Legislature. The provision of a Concurrent List has two distinct advantages.

In certain matters in which Parliament may not find it necessary or expedient to make laws, a Sate can take the initiative, and if other States follow and the matter assumes national importance, Parliament can intervene and bring about a uniform piece of legislation to cover the entire Union Territory. Simi-larly, if a State finds it necessary to amplify a law enacted by Parliament on an item included in the Concurrent List in order to make it of a greater use of its own people, it can do so by making supplementary laws.

The items included in the Concurrent List can be broadly divided into two groups-those dealing with general laws and legal procedure, like criminal law, criminal procedure, marriage, divorce, property law, contracts etc, and those dealing with social welfare such as trade unions, social security, vocational and technical training of labour, legal, medical and other professions etc.; while the items coming under the first group are of primary importance to the Union Government, they have been left, by convention, to Parliament. In matters of social welfare, it is open to the State legislatures either to take the initiative in making laws or to enact laws which are supple-mentary to the Parliamentary laws.

Predominance of Union Law:

In case of over-lapping of a matter between the three Lists, predominance has been given to the Union Legislature, as under the Government of India Act, 1935. Thus, the power of the State Legislature to legislate with respect to matters enumerated in the State List has been made subject to the power of the Union Parliament to legislate in respect of matters enumerated in the Union and Concurrent Lists, and the entries in the State List have to be interpreted accordingly.In the Concurrent sphere, in case of repugnancy between a Union and a State law relating to the same subject, the former prevails. If however, the State law was reserved for the assent of the President and has received such assent, the State law may prevail notwithstanding such repugnance. But it would still be competent for Parliament to override such State law by subsequent legislation.

Residuary Powers:

The Constitution vests the residuary power, i.e., the power to legislate with respect to any matter not enumerated in any one of the three Lists in the Union Legislature (Art. 248). It has been left to the courts to determine finally as to whether a particular matter falls under the residuary power or not. It may be noted, however, that since the three lists attempt an exhaustive enumeration of all possible subjects of legislation, and courts generally have interpreted the sphere of the powers to be enumerated in a liberal way, the scope for the application of the residuary powers has remained considerably restricted.

Expansion of the Legislative Powers of the Union under Different Circumstances:

(a) In the National Interest:

Parliament shall have the power to make laws with respect to any matter included in the State List for a temporary period, if the Council of States declares by a resolution of 2/ 3 of its members present and voting, that it is necessary in the national interest.

(b) Under the Proclamation of National or Financial Emergency:

In this circumstance, Parliament shall have similar power to legislate with respect to State Subjects.

(c) By Agreement between States:

If the Legislatures of two or more States resolve that it shall be lawful for Parliament to make laws with respect to any matters included in the State List relating to those States, Parliament shall have such power.It shall also be open to any other State to adopt such Union legislation in relation to itself by a resolution passed on behalf of the State legislature. In short, this is an extension of the jurisdiction of the Union Parliament by consent of the Legislatures.

(d) To implement treaties:

Parliament shall have the power to legislate with respect to any subject for the purpose of implementing treaties or international agreements and conventions.

(e) Under a Proclamation of Failure of Constitutional Machinery in the States:

When such a Procla-mation is made by the President, the President may declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament.

Administrative Relations (Articles 256-263):

The distribution of executive powers between the Union and the States follows, in general, the pattern of distribution of the legislative powers. The executive power of a State is treated as coexten-sive with its legislative powers, which means that the executive power of a State extends only to its territory and with respect to those subjects over which it has legislative competence. Looking at from the point of view of the Union Government, we can say that the Indian Constitution provides exclu-sive executive power to the Union over matters with respect to which Parliament has exclusive powers to make laws, (under List I of Schedule VII) and over the exercise of powers conferred upon it, under Article 73, by any treaty or agreement at the international level. On the other hand, the States have exclusive executive powers over matters included in List II.

In matters included in the Concurrent List (List III) the executive function ordinarily remains with the States, but in case the provisions of the Constitution or any law of Parliament confer such functions expressly upon the Union, the Union Government is empowered to go beyond giving directions to the State executive to execute a Central law relating to a Concurrent subject and take up the direct administration of Union law relating to any Concurrent subject. In the result, the executive power relating to Concurrent subjects remains with the States, ex-cept in two cases-(a) Where a law of Parliament relating to such subject vests some executive functions specifically in the Union, e.g., the Land Acquisition Act, 1894; the Industrial Disputes Act, 1947 [Provision to Art. 73(1)].

So far as these functions specified in such Union Law are concerned, it is the Union and not the States which shall have the executive power while the rest of the execu-tive power relating to the subjects shall remain with the States, (b) where the provisions of the Constitution itself vest some executive functions

upon the Union. Thus, (i) the executive power to implement any treaty or international agreement belongs exclusively to the Union; (ii) the Union has the power to give directions to the State Governments as regards the exercise of their executive power in certain matters.The Constitution has devised techniques of control over the States by the Union to ensure that the State governments do not interfere with the legislative and executive of the Union. Some of these administrative avenues of control are as under:

In Normal Times:

(i) The power to appoint and dismiss the Governor (Article 155-156)

(ii) The power to appoint other dignitaries in the State such as judges of the High Court, members of the State Public Service Commission (Article 217, 317).

There are some other specified agencies for Union Control:

(i) Directions to the State Government:

The Constitution prescribes a Coercive Sanction for the enforcement of the directions issued under any of the foregoing powers, namely the power of the President to make a Proclamation under Article 356.

(ii) Delegation of Union Functions:

While legislating on a Union Subject, Parliament may delegate powers to the State Governments and their officers in so far as the Statute is applicable in the respective States [Article 258 (2)].

(iii) All-India Services:

Besides the person serving under the Union and the States, there are certain services which are 'common to the Union and the States'. There are called 'All-India Services' of which the Indian Administrative service and the Indian Police Service are the existing examples [Article 312 (2)]. The Indian Constitution has provision for the Organization of certain all-India services, recruited and controlled by the Union Government as far as their general administration is concerned. The British Government had instituted the Indian Civil Services (ICS) in order to establish a kind of direct control over the provincial administration.

The idea was adopted by the Constituent Assem-bly and, under Article 312; power has been given to the Council of States, by a resolution sup-ported by not less than a two-thirds majority of the members present and voting, to constitute all- India service common to the Union and the States. It was further provided that the Indian Admin-istrative Service (IAS) and the Indian Police Service (IPS), which had been constituted before the Constitution came into force, would be deemed to have been constituted under this Article. The Union Government is able to penetrate quite deep into the administrative affairs of the States through these all India services.

The IAS and the IPS are not the only all-India services. Serial new services, governed by the same conditions, have been added, like the Indian Engineering Service, the Indian Economic Service, the Indian Statistical Service, the Indian Agriculture Ser-vice and the Indian Education Service.

(iv) Grant-in-Aid:

The Parliament is given such powers to make such grants as it may deem neces-sary to give financial assistance to any State which is in need of such assistance (Article 275). Besides this, the Constitution provides for specific grants on the following two matters:

(i) (a) For schemes of development;

(b) For welfare of scheduled tribes;

(c) For raising the level of administration of scheduled areas.

(ii) To the State of Assam, for the development of the tribal areas in that State [Article 275 (1)]

(v) Inter-state Council:

Article 263 says that the President is empowered to establish an inter-State Council. The Constitution assigned three fold duties to this body.

(a) To investigate and discuss subjects of common interest between the Union and the States or between two or more States;

(b) Research in such matters as agriculture, forestry, public health etc., and

(c) To make recommendations for co-ordination of policy and action relating to such subjects.

The Sarkaria Commission has recommended the Constitution of a permanent inter-State Council. Such a council, consisting of six Union Cabinet Ministers and the Chief Ministers of all the States, has been created in April 1990.

(vi) Inter-State Commerce Council

For the purpose of enforcing the provisions of the Constitution, relating to the freedom of trade, commerce and intercourse throughout the territory of India (Article 301-305), Parliament is empowered to constitute as authority similar to the Inter-State Commerce Commission in the U.S.A. and to confer on such authority such powers and duties as it may deem fit (Article 307).

(vii) Extra-Constitutional Bodies:

Apart from the above Constitutional agencies for Union Control, there are some advisory bodies and conferences which held at the Union level which further the co-ordination of State policy and eliminate differences as between the States.

(viii) Planning Commission:

This extra-Constitutional and non-statutory body was set up by a reso-lution (1950) of the Union Cabinet and its main objective was to formulate an integrated Five Year Plan for economic and social development and to act as an advisory body to the Union Government.

(ix) National Development Council (NDC):

This council was formed in 1952 as an adjunct to the Planning Commission to associate the States in the formulation of the Plans. The main func-tions of this council are:

(a) To strengthen and mobilize the efforts and resources of the nation in support of the plans;

(b) To promote common economic policies in all vital spheres; and

(c) To ensure the balanced and rapid development of all parts of the country.

(x) National Integration Council (NIC):

Another non-constitutional body was created in 1986 to deal with the welfare measures for the minorities on an all India basis. Some of the burning issues before it were communal harmony, increased violence by secessionists, the problems in respect of Punjab, Kashmir, and Ram Janambhoomi-Babri Masjid.

During Emergency:

In 'Emergencies' the government under the Indian Constitution will work as if it were a unitary government.

Some of the important Provisions during 'Emergency' are as under:

(i) During a Proclamation of Emergency, the power of the Union to give directions extends to the giving of directions as to the manner in which the executive power of the State is to be exercised, relating to any matter [Article 353(a)]. (So as to bring the State Government under the complete control of the Union, without suspending it).

(ii) Upon a Proclamation of failure of Constitutional machinery in a State, the President shall be entitled to assume to himself all or any of the executive powers of the State [Article 356(1)].

During a Proclamation of Financial Emergency:

(a) To observe canons of financial propriety, as may be specified in the directions [Article 360(3)].

(b) To reduce the salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and High Courts [Article 360(4)(b)].

(c) To require all Money Bills or other Financial Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State [Article 360(4)].

Financial Relations Related to the Distribution of Revenue (Article 264-281):

Financial Relations:

All feasible sources of taxation have been listed and allocated either to the Centre or to the States. These are as follows:

(i) There are certain items of revenue in the State List which are levied, collected and appropriated by the States. For example, naval revenue etc.;

(ii) There are certain-items of revenue in the Union List which are levied, collected and appropriated by the Union, e.g. Customs duties etc.;

(iii) There are certain duties levied by the Union but collected and appropriated by the States. For example, stamp duties etc.;

(iv) There are certain taxes levied and collected by the Union but assigned to the States e.g. succession and estate duties, taxes on railway fares and freights, etc;

(v) There are certain taxes levied and collected by the Union and distributed between the Union and the States, e.g. excise duties etc.

Consolidated Funds and Public Accounts of India and of the States:

Subject to the provi-sions of Article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the

Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one Consolidated Fund to be entitled "the Consolidated Fund of India", and all revenues re-ceived by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State" [Article 266(1)].All other public money received by or on behalf of the Government of India or the Government of a State shall be credited to the Public Account of India or the Public Account of the State, as the case may be (Article 266(2)).

No money out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution [Article 266(3)].

Contingency Fund:

Parliament may by law establish a Contingency Fund in the nature of an impress to be entitled "the Contingency Fund of India" into which shall be paid, from time to time, such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorization of such expenditure by Parliament by law under Ar-ticle 115 or Article 116 [Article 267(1)].

The Legislature of a State may by law establish a Contingency Fund in the nature of an impress to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorization of such expenditure by the Legislature of the State by law under Article 205 or Article 206 [Article 267(2)].

Finance Commission:

Arts. 270, 273, 275 and 280 provide for the Constitution of a Finance Commission (at stated inter-vals) to recommend to the President certain measures relating to the distribution of financial re-sources between the Union and the States, for instance, percentage of the net proceeds of income- tax which should be assigned by the Union to the States and the manner in which the share to be assigned shall be distributed among to the States [Art. 280].

The Constitution of the Finance Commission is laid down in Art. 280, which has to be read with the Finance Commission (Miscellaneous Provisions) Act of 1951, which has supplemented the pro-visions of the Constitution. Briefly speaking, the Commission has to be reconstituted by the Presi-dent, every five years.

The Chairman must be a person having 'experience in public affairs', and the other four members must be appointed from amongst the following

(a) A High Court Judge or one qualified to be appointed as such;

(b) a person having special knowledge of the finances and ac-counts of the Government;

(c) a person having wide experience in financial matters, and administra-tion;

(d) a person having special knowledge of economics,

(e) a person familiar with treasures needed to augment the consolidated fund of a State to supplement the resources of the Panchayat, in the State.

It shall be the duty of the Commission to make recommendations to the President as to:

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid of revenues of the States out of theConsolidated Fund of India;

(c) any other matter referred to the Commission by the President in the interests of sound finance.

The First Finance Commission was constituted in 1951, with Sri Neogy as the Chairman and it submitted its report in 1953.

Some Details of Distribution:

(i) Taxes which are exclusively Central and the revenues which are wholly appropriated for the use of the Central Government form one group. These include export duties, corporation tax, taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies,

(ii) Income tax constituting a separate category in as much as while it is the Centre which levies, fixes rates and collects the tax, it has to share the proceeds with the States as prescribed by the President on the basis of the recommendations made by the Finance Commis-sion.

(iii) Union duties of excise other than duties which have been given to States, which may be shared if Parliament has so decided.The Constitution has left it to the discretion of Parliament to decide by law whether any of the union duties of excise should be shared with the States, how these are to be shared, and how the shares are to be distributed to the States,

(iv) Taxes which are to be levied and collected by the Centre, but to be distributed entirely (except for those proceeds which are attributable to the Union territories) to the States in accordance with such principles of distribution as may be laid down by Parliament by law.These taxes consist of succession and estate duties; termi-nal taxes on passengers and goods carried by rail, sea or air taxes on railway fares and freights; taxes on the sale or purchase of newspapers; sale or purchase taxes on inter-State trade,

(v) Taxes levied by the Centre but collected by the States and appropriated by them for their own use.They are stamp duties and excise duties on medicinal and toilet preparations containing alcohol; in connection with these two taxes, the Centre only levies the tax, and fixes the rate of duty to be paid on the alcohol contained in the medical and toilet preparations, but each State collects the tax and appropri-ates it for its own purpose.

Grants and Loans:

Besides the devolution of revenues the Union meets the financial needs of the State in two other ways: (i) by making grants-in-aid of State revenues and other grants, and (ii) by giving loans. According to the Constitution, both the Union and the States are empowered to make grants. But by virtue of the sums at its disposal, the Union's power is greater. The Union can make grants for purposes outside its legislative jurisdiction, and it is under this provision that many of the large capital grants for national development schemes are made. Grant-in-aid may be made to a State to defray its budgetary deficits, or it may make grant-in-aid on the basis of budgetary need, and to aid States whose revenues, even after devolution fall short of their expenditures.

Efforts are generally made to keep these grants-in-aid to a minimum by making devolution adequate. Other grants are generally unconditional, but in certain cases, as in Assam, grants have been made for the development of backward areas and tribes. Besides grants-in-aid, States also sometimes depend heavily on the Union for loans. The Union government has unlimited power to borrow either within India or outside, and may exercise this power subject only to such limits as might be fixed by Parliament from time to time. In the case of the States, however, their borrowing power is subject to a number of Constitutional limitations. A State cannot borrow outside India. The State executive has the power to borrow within the territory of India, subject to many conditions.

Borrowing Powers:

The Union has unlimited power of borrowing, upon the security of the rev-enues of India either within India or outside. The Union Executive can exercise the power; subject only to such limits as may be fixed by Parliament from time to time.

The borrowing power of a State is, however, subject to a number of Constitutional limitations:

(i) It cannot borrow outside India,

(ii) The State Executive shall have the power to borrow, within the territory of India upon the security of the revenues of the State, subject to the following conditions:

(a) limitation as may be imposed by the State Legislature;

(b) if the Union has guaranteed an outstanding loan of the State, no fresh loan can be raised by the State without consent of the Union Government;

(c) The Government of India may itself offer a loan to a State, under a law made by Parliament; so long as such a loan or any part thereof remains outstanding, no fresh loan can be raised by the State without the consent of-the Government.

Distribution of Taxes between Union and the States:

The distribution of the tax-revenue be-tween the Union and the States, according to the foregoing principles, stands as follows:

1. Taxes Belonging to the Union Exclusively:

(i) Customs,

(ii) Corporation tax,

(iii) Taxes on capital value of assets of individuals and Companies,

(iv) Surcharge on income tax, etc.,

(v) Fees in respect of matters in the Union List (List I).

2. Taxes belonging to the States Exclusively:

(i) Land Revenue,

(ii) Stamp duty except in docu-ments included in the Union List,

(iii) Succession duty, estate duty, and Income tax on agricultural land,

(iv) Taxes on passengers and goods carried on inland waterways,

(v) Taxes on lands and buildings, mineral rights,

(vi) Taxes on animals and boats, on road vehicles, on advertisements, on consumption of electricity, on luxuries and amusements, etc.,

(vii) Taxes on entry of goods into local areas,

(viii) Sales Tax.

(ix) Tolls,

(x) Fees in respect of matters in the State List,

(xi) Taxes on professions, trades, etc., not exceeding Rs. 2,500 per annum (List II).

3. Duties Levied by the Union but Collected and Appropriated by the States:

Stamp duties on bills of Exchange, etc., and Excise duties on medicinal and toilet preparations containing alcohol, though they are included in the Union List and levied by the Union, shall be collected by the States insofar as leviable within their respective territories, and shall form part of the States by whom they are collected (Article 268).

4. Taxes Levied as well as Collected by the Union, but Assigned to the States within which they are Leviable:

(i) Duties on succession to property other than agricultural land,

(ii) Estate duty in respect of property other than agricultural land,

(iii) Terminal taxes on goods or passengers carried by railway, air or sea.

(iv) Taxes on railway fares and freights,

(v) Taxes on stock exchange other than stamp duties,

(vi) Taxes on sales of and advertisements in newspapers,

(vii) 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,

(viii) Taxes on Inter-State consignment of goods (Article 269).

5. Taxes Levied and Collected by the Union and Distributed between Union and the States:

Certain taxes shall be levied as well as collected by the Union, but their proceeds shall be divided between the Union and the States in a certain proportion, in order to effect an equitable division of the financial resources. These are:

(i) Taxes on income other than on agricultural income (Article 270).

(ii) Duties of excise as are included in the Union List, excepting medicinal and toilet preparations may also be distributed, if Parliament by law so provides (Article 272).

Distribution of Non-Tax Revenue:

The principal sources of non-tax revenues of the Union are the receipts from:

Railways; Posts and Telegraphs; Broadcasting; Opium; Currency and Mint; Industrial and Commercial Undertakings of the Central Government relating to the subjects over which the Union has jurisdiction. Of the Industrial and Commercial Undertakings relating to Central subjects may be mentioned. The Industrial Finance Corporation; Air India; Indian Airlines.Industries in which the Government of India have made investments; such as the Steel Authority of India; the Hindustan Shipyard Ltd; the Indian Telephone Industries Ltd.

The States, similarly, have their receipts from: Forests, Irrigation and Commercial Enterprises (like Electricity, Road Transport) and Industrial Undertakings (such as Soap, Sandalwood, Iron and Steel in Karnataka, Paper in Madhya Pradesh, Milk Supply in Mumbai, Deep-sea Fishing and Silk in West Bengal).

Role of the Planning Commissions:

The institution which is sometimes held responsible for giving the maximum strength to the forces of centralization in the country and yet has continued to remain an extra-statutory and extra-constitutional body is the Planning Commission.

A Planning Commission was set up under Nehru's Chairmanship by the Indian National Congress more than ten years before the country became independent to draw up a national plan. It had produced some voluminous reports. A Planning and Development Department was set up and a Development Board was organized by the British Government during the Second World War but these were, comparatively, minor efforts. One might, therefore, say that real planning began with the setting up of the Planning Commission in 1950. No attempt was, however, made to take resort to legislation or to an amendment of the Constitution. It was set up by a simple resolution of the Union Cabinet put forward by Prime Minister Nehru with himself as its Chairman, to formulate an integrated five-year plan for the economic and social development of the country and to act as an advisory board to the Union Government in this sphere.But, even though the Planning Commission was set up without legislation or constitutional amendment, it has been growing in strength from year to year. Consisting of the Prime Minister, some important Cabinet Ministers of the Union and some non-officials, it has grown over the years as a heavy bureaucratic organization.

The function of the Planning Commission, in theory, is to prepare a plan for the most effective and balanced utilization of the country's resources, with a view to initiate "a process of development which will raise living standards and open out to the people new opportunities for a richer and more varied life". Its function, in other words, is to formulate a plan. Development being related mostly to State subjects, the implementation of the plan rests with the States. The role that the Commission plays with regard to the States is merely advisory. Once the advice has been tendered by the Plan-ning Commission, it has no direct means of securing the implementation of the plan. The practice, however, is different.

The States have to depend on the Centre for financial assistance without which the plans cannot be implemented. Since the States cannot implement the plans without financial assistance from-the Centre, and the Union would like different States to follow a more or less uniform policy the Centre comes to exercise an immense control over the implementation part of the plans in the States.

National Development Council (NDC):

Constituted as the another part of the Planning Commission, it works in close cooperation with the Government of India. In order to promote coordination with the States, a National Development Council, consisting of all the Cabinet Ministers of the Government of India, the Members of the Planning Commission and the Chief Ministers of all the States, was set up. Having no statutory or constitutional basis, the National

Development Council is an ad hoc improvised body, but, thanks to a convention, its decisions are regarded as binding on the Centre as well as on the State government.

It is interesting to note that there is no body analogous to the Planning Commission at the State level, though generally there are Planning Departments and sometimes Development Commission-ers in the States. All planning is done at the Union level and it is the responsibility of the States to implement the plans.

Part XI Articles 245-293: A Combination of Conflicts and Cooperation:

The relationship between the Centre and the States covers a wide range and embraces a very large part of the functions and activities in the administrative, social and economic spheres. Since 1950, many events have occurred which have a direct or indirect bearing on the Centre-State relations. For instance, the Planning Commission was set up by a resolution of the Government of India in March, 1950 with the object of accelerating the economic growth of the country and to meet the social urge for the extension of social services. Though not a creation of the Constitution, not even endowed with a statutory sanction, the Planning Commission assumed the role of the architect of India's destiny. There were widespread complaints and it was contended that Five-Year Plans had reduced the federal structure to almost a unitary system. The reorganization of the States in 1956 and there-after, especially with the emergence of non-Congress Governments in some States after the 1967 gave the issue of Centre-State relations a new dimension and importance.

Grievance of States in General against the Centre:

(i) The States regard as inadequate the resources placed at their disposal and demand transfer of more financial resources. The tight control exercised by the Centre over the financial institutions of India restricts the action of States.

The States have, consequently, to look to the Centre for funds in case of unforeseen calamities or to carry out various schemes. They do not see eye to eye with the Centre on the issue of overdraft facilities and debt and repayment liabilities of State governments.

(ii) The Centre has the prerogative to decide finally the location of various industries and projects. Undue delays in clearance of projects have adversely affected the interests of the States.

(iii) The States resent the Centre's encroachment into their sphere, evidence in the transfer of subjects from the State List to the Concurrent List. It may be noted that even the Congress-ruled States have objected to this. Nor do the States like the persistence of the Centre in the matter of getting sales tax abolished.

(iv) The States disapprove of the Centre's practice of unilaterally increasing the wages and salaries of its staff, as this creates problems for the State governments vis-a-vis their own staff. The administered prices are controlled by the Centre, and arbitrary and drastic increase in the prices upset State budgets.

(v) Resentment is also caused because of conflicting interests in location of new and important projects and industries.

Grievances of 'Opposition-Ruled' States against the Centre:

Besides the general grievances stated above, there are some specially felt by the States ruled by parties different from that of ruling at the Centre.

(i) They are critical of the role of the Governors; the manner of their appointment, transfers and dismissals. They feel that party considerations outweigh constitutional conventions in the matter Of Governors' appointment. They see the Governor as the Centre's agent.

(ii) They resent the frequent (and sometimes arbitrary) imposition of President's Rule and dismissal of State governments. This is seen as unwarranted and unconstitutional action on the Centre's part.

(iii) The State governments resent deployment of paramilitary forces such as CRPF, RPF, Central Industrial Security Force, etc. in the States without requisition from the States.

(iv) The States allege that the Centre shows little respect for the views expressed by State Chief Ministers or Ministers at conferences convened by the Centre. The Centre is alleged to expect unquestioned submission by the State governments like the appointment of Commission of in-quiry by the Centre against the governments and ministries, invariably, of those States ruled by parties other than that at the Centre.

Centre's Grievances against States:

The Centre, for its part, feels displeased at the attitude of the States over various issues. Its aim is to achieve equitable development of the country. It feels perturbed at the objections of the more advanced States over its special concessions and measures to develop the backward areas. The Centre also alleges that State governments tend to divert funds allocated for a particular scheme to other purpose. The Centre also resents the States' claiming credit for the successful implementation of Centrally-sponsored projects.

Reforming Centre-State Relations:

Some of the major recommendations made by different committees and teams are as under:

1. The Setalvad Study Team:

The Setalvad Study Team had recommended the Constitution of an inter- State Council composed of the Prime Minister and other central ministers holding key portfolios, Chief Ministers and others, invited or co-opted. It suggested measures to rationalize the relationship between the Finance Commission and the Planning Commission. Besides, it recommended that the office of Governor be filled by a person having ability, objectivity and independence and the incumbent must regard himself as a creation of the Constitution and not as an errand boy of the Central Government

2. The Administrative Reforms Commission:

The Administrative Reforms Commission noticed that the Central Government had even moved into the fields earmarked for the States under the Constitu-tion and asked it to withdraw from such areas. It recommended the setting up of an inter-State Council but made a novel suggestion about its composition. Instead of giving seats in this body to all the Chief Ministers, it wanted to have five representatives one each from the five zonal councils. Much more importantly, the ARC highlighted the need for formulation of guidelines for governors in the exercise of their discretionary powers. This would ensure uniformity of action and eliminate all suspicions of partnership or arbitrariness.

The question whether a Chief Minister enjoys majority support or not should be tested on the floor of the Legislature and for this he should summon the Assembly when-ever a doubt arises. It also opined that when a ministry suffers a defeat in the Legislative Assembly on major policy issues and the outgoing chief minister advises the governor to dissolve the Assembly with a view to obtaining the verdict of the electorate, the governor should normally accept the advice.

3. Rajamannar Committee Report:

The DMK government of Tamil Nadu appointed a Commission with a direction to suggest changes in the existing level of Union-State relations. Their terms of reference were to examine the entire question regarding the relationship that should exist between the Centre and the States in a federal set-up and to suggest amendments to the Constitution so as to "secure utmost autonomy to the States."

The Committee headed by P.V. Rajamannar, a retired Chief Justice of Madras High Court, presented its report on May 27, 1971. Some of the important recommendations of the Committee were:

(i) The Committee recommended the transfer of several subjects from the Union and Concurrent Lists to the State List. It recommended that the 'residuary power of legislation and taxation' should be vested in the State Legislatures.

(ii) An Inter-State Council comprising Chief Ministers of all the States or their nominees with the Prime Minister as its Chairman should be set up immediately.

(iii) The Committee recommended the abolition of the existing Planning Commission and that its place must be taken by a statutory body, consisting of scientific, technical, agricultural and economic experts, to advise the States which should have their own Planning Boards.

(iv) The Committee advocated deletion of those articles of the Constitution empowering the Centre to issue directives to the States and to take over the administration in a State. The Committee was also opposed to the emergency powers of the Central Government and recommended the deletion of Articles 356, 357 and 360.

(v) The Committee recommended that every State should have equal representation in the Rajya Sabha, irrespective of population.

(vi) The Governor should be appointed by the President in consultation with the State Cabinet or some other high power body that might be set up for the purpose and once a person had held this office, he should not be appointed to any other office under the Government.

(vii) On recruitment to the services, the Committee recommended that Article 312 should be so amended as to omit the provision of the creation of any new All-India cadre in future.

(viii) The High Courts of States should be the highest courts for all matters falling within the jurisdiction of States.

(ix) The Committee said that 'territorial integrity' of a State should not be interfered with in any manner except with the consent of the State concerned.

(x) It recommended that the States should also get a share of the tax revenues from corporation tax, customs and export duties and tax on the capital value of assets and also excise duties.

4. Sarkaria Commission Report:

In view of the various problems which impeded the growth of healthy relations between the Centre and the States, the Central Government set up a Commission in June 1983, under the Chairmanship of Justice R.S. Sarkaria mainly to suggest reforms for an equitable distribution of powers between the Union and the States. The Commission submitted its report in 1988.

Major Recommendations:

(i) Though the general recommendations tilt towards the Centre – advocating the unity and integrity of the nation, the Commission suggested that Article 258 (e.g. the Centre's right to confer authority to the States in certain matters) should be used liberally.

(ii) Minimal use of Article 356 should be made and all the possibilities of formation of an alternative government must be explored before imposing President's Rule in the State. The State Assem-bly should not be dissolved unless the proclamation is approved by the Parliament.

(iii) It favoured the formation of an Inter-Government Council consisting of the Prime Minister and the Chief Ministers of States to decide collectively on various issues that cause friction be-tween the Centre and the States.

(iv) It rejected the demand for the abolition of the office of Governor as well as his selection from a panel of names given by the State Governments. However, it suggested that active politicians should not be appointed Governors.

When the State and the Centre are ruled by different political parties, the Governor should not belong to the ruling party at the Centre. Moreover, the retiring Governors should be debarred from accepting any office of profit.

(v) It did not favour disbanding of All India Services in the interest of the country's integrity. Instead, it favoured addition of new All India Services.

(vi) The three-language formula should be implemented in its true spirit in all the States in the interest of unity and integrity of the country.

(vii) It made a strong plea for Inter-State Councils.

(viii) The Judges of the High Courts should not be transferred without their consent.

(ix) It did not favour any drastic changes in the basic scheme of division of taxes, but favoured the sharing of corporation tax and 'every of consignment tax.

(x) It found the present division of functions between the Finance Commission and the Planning Commission as reasonable and favoured the continuance of the existing arrangement.

Trade, Commerce and Intercourse

Barriers to Inter-State Trade and Commerce

Free flow of trade without geographical barriers is *sine-qua-non* for economic prosperity nationally as well as internationally. Therefore, progressive removal of such barriers has been a general phenomenon in social evolution in the modern world. Today we are vigorously pursuing the goal of free flow of trade among the nations of the world under the banner of globalization through, for example, the WTO among the nations of the world. Regionally, member states of the European Community, for example, have already achieved that goal almost fully.

As economy is the most important source of power and identity in the world of today, the nations or regions that constitute the federation do not want to lose their hold on economic power. Nor do the economically strong States want the economically weak States to become parasites on them. Therefore, an

arrangement must be devised which will ensure free flow of trade, encourage fair competition and simultaneously remain capable of discouraging and regulating unfair trade practices.

One common arrangement found in all federations in this regard, is the division between the interstate and intrastate trade and commerce. While the regulation of the former is assigned to the federal authority, the States retain the regulation of the latter. Some federations have gone further and made interstate trade free from regulation both by the federal authority as well as the authority of the States. Australia is the foremost example of that. India goes one step further than Australia in so far as it makes flow of interstate as well as intrastate trade free from regulation by the Union as well as the States. However, unlike Australia, after making such a general declaration, the Constitution of India gives adequate powers to the Union and the States, particularly to the former, to regulate trade and commerce.

Trade and Commerce Commission:

In order that the country's competitiveness in trade, commerce and industry is enabled to respond to the increasing pressures of globalization, it is necessary that barriers to Interstate trade and commerce, particularly, the free movement of goods on the inter-state routes should be progressively reduced with a view to their final elimination. A statutory authority contemplated under article 307 of the Constitution requires to be set-up. As the effects of such an authority could as well go beyond the purposes of article-307, the legislation could be comprehensive drawing on Entry 42 of List -I and, if necessary, Entry 97 of List-I of the Seventh Schedule. The composition of the authority may provide for representation of the FICCI, CII, Railway Board, FSIME (Federation of Small Industries and Micro Enterprises), Indian Society of Automobile Manufacturers, National Highway Authority of India, NCAER, National Institute of Public Finance and Policy, Inter-State Council, School of International Studies (Jawaharlal Nehru University), Planning Commission and Ministry of Surface Transport.

For carrying out the objectives of articles 301, 302, 303 and 304, and other purposes relating to the needs and requirements of inter-state trade and commerce and for purposes of eliminating barriers to inter-state trade and commerce Parliament should by law establish an authority called the "Interstate Trade and Commerce Commission" under the Ministry of Industry and Commerce under article 307 read with Entry 42 of List-I.

UNIT - IV

EMERGENCY PROVISIONS

Emergency is a unique feature of Indian Constitution that allows the center to assume wide powers so as to handle special situations. In emergency, the center can take full legislative and executive control of any state. It also allows the center to curtail or suspend freedom of the citizens. Existence of emergency is a big reason why academicians are hesitant to call Indian constitution as fully federal. Emergency can be of three types - Due to war, external aggression or armed rebellion, failure of constitutional machinery in a state, or financial emergency.

Proclamation of Emergency:

Art 352 says that if the President is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened due to outside aggression or armed rebellion, he may make a proclamation to that effect regarding whole of India or a part thereof. However, sub clause 3 says that President can make such a proclamation only upon the written advice of the Union Cabinet. Such a proclamation must be placed before each house of the parliament and must be approved by each house within one month otherwise the proclamation will expire. An explanation to art 352 says that it is not necessary that external aggression or armed rebellion has actually happened to proclaim emergency. It can be proclaimed even if there is a possibility of such thing happening.

- In the case of Minerva Mills vs Union of India AIR 1980, the Supreme Court held that there is no bar to judicial review of the validity of the proclamation of emergency issued by the president under 352(1). However, court's power is limited only to examining whether the limitations conferred by the constitution have been observed or not. It can check if the satisfaction of the president is valid or not. If the satisfaction is based on mala fide or absurd or irrelevant grounds, it is no satisfaction at all.
- Prior to 44th amendment, duration of emergency was two months initially and then after approval by the houses, it would continue indefinitely until ended by another proclamation. However after 44th amendment, the period is reduced to 1 month and then 6 months after approval.

Art 353

1. executive power of the Union shall extend to giving directions to any state.
2. parliament will get power to make laws on subjects that are not in Union list.
3. if the emergency is declared only a part of the count, the powers in 1 and 2 shall extend to any other part if that is also threatened.

Art.354

Provisions of art 268 to 279, which are related to taxation, can be subjected to exceptions as deem fit by the president. Every law such made shall be laid before each house of the parliament.Art.355says that it is the duty of the Union to protect States against external aggression.

Art.358

While proclamation of emergency declaring that security of India or any part of the territory of India is threatened due to war or external aggression, is in operation, the state shall not be limited by art 19. In other words, govt may make laws that transgress upon the freedoms given under art 19 during such emergency.

However, such a law will cease to have effect as soon as emergency ends. In the case of M M Pathak vs Union of India AIR 1978, SC held that the rights rights granted by 14 to 19 are not suspended during emergency but only their operation is suspended. This means that as soon as emergency is over, rights transgressed by a law will revive and can be enforced.

In this case, a settlement that was reached before emergency between LIC and its employees was rendered ineffective by a law during emergency. After emergency was over, SC held that the previous settlement will revive. This is because the emergency law only suspended the operation of the existing laws. It cannot completely wash away the liabilities that preexisted the emergency.

Art.359

This article provides additional power to the president while proclamation of emergency is in operation, using which the president can, by an order, declare that the right to move any court for the enforcement of rights conferred by part III except art 20 and 21, shall be suspended for the period the proclamation is in operation of a shorter period as mentioned in the order. Further, every such law or every executive action recite that it is in relation to the emergency.In the case of *Makhan Singh vs State of Punjab AIR 1964*, SC distinguished between Art 358 and 359 as shown below:

Art 358	Art 359
Freedoms given by art 19 are suspended.	Fundamental rights are not suspended. Only the courts cannot be moved to enforce fundamental rights.
Any actions done or omitted to be done cannot be challenged even after emergency.	Any action done by the legislature or executive can be challenged after the suspension is over.
Art 19 is suspended for the period of emergency.	Right to move courts is suspended for the period of emergency or until the proclamation of the president to remove suspension.
Effective all over the country.	May be confined to an area.

Provisions in case of failure of constitutional machinery is States
Art 356 says that if, upon the report of the Governor of a state, the president is satisfied that the govt. of the state is cannot function according to the provisions of the constitution, he may, by proclamation, assume to himself all or any of the functions of the govt, or all or any of the powers vested in the governor, or anybody or any authority in the state except the legislature of the state. The power of the legislature of the state shall be exercised by the authority of the parliament. Under this article, president can also make such incidental and consequential provisions which are necessary to give effect to the objectives of the proclamation. This includes suspension of any provision of this constitution relating to anybody or authority in the state. However, this article does not authorize the president to assume the powers vested in the High Courts.

Art 357 provides that in the case of proclamation under art 356

- Parliament can confer upon the President the power of legislature of the state to make laws or the power to delegate the power to make laws to anybody else.
- the Parliament or the president can confer power or impose duties on the Union or Union officers or Union authorities.
- President can authorize the expenditure from the consolidated fund of the stat pending sanction of such expenditure by the parliament.

Important instances of invocation of Art.356

This article has been invoked over a hundred times.

1. Dissolution of 9 state assemblies in 1977 by Janata Party Govt. This was challenged in the case of *State of Rajasthan vs Union of India AIR 1977.* In this case, SC held that the decision of the president is not only dependent on the report of the governor but also on other information. The decision is entirely political and rests with the executive. So it is not unconstitutional per se. However, courts can validate the satisfaction of the president that it is no mala fide.
2. Dissolution of 9 state assemblies in 1980 by Congress party govt.
3. Dissolution of BJP Govt in MP, HP, and Raj. in 1992.This was challenged in the case of *SR Bommai vs Union of India AIR 1994.* In this case SC held that secularism is a basic feature of the constitution and a state govt. can be dismissed on this ground. It further observed that no party can simultaneously be a religious party as well as a political party.

Financial Emergency

Art 360 provides that if the president is satisfied that a situation has arisen whereby the financial security of India or the credit of India or of any part of India is threatened, he may make a declaration to that effect. Under such situation, the executive and legislative powers will go to the center.This article has never been invoked

Changes made by 44th Amendment

The 44th amendment substantially altered the emergency provisions of the constitution to ensure that it is not abused by the executive as done by Indira Gandhi in 1975. It also restored certain changes that were done by 42nd amendment. The following are important points of this amendments-

- "Internal disturbance" was replaced by "armed rebellion" under art 352.
- The decision of proclamation of emergency must be communicated by the Cabinet in writing.
- Proclamation of emergency must be by the houses within one month.
- To continue emergency, it must be re approved by the houses every six month.
- Emergency can be revoked by passing resolution to that effect by a simple majority of the houses present and voting. 1/10 of the members of a house can move such a resolution.
- Art 358 - Under this article art 19 will be suspended only upon war or external aggression and not upon armed rebellion. Further, every such law that transgresses art 19 must recite that it is connected to art 358. All other laws can still be challenged if they violate art 19.
- Art 359, under this article, suspension of the right to move courts for violation of part III will not include art 20 and 21.
- Reversed back the term of Lok Sabha from 6 to 5 years.

UNIT-V

OTHER CONSTITUTIONAL FUNCTIONARIES

Election Commission: A Constitutional Body

India is a Socialist, Secular, Democratic Republic and the largest democracy in the World. The modern Indian nation state came into existence on 15th of August 1947. Since then free and fair elections have been held at regular intervals as per the principles enshrined in the Constitution, Electoral Laws and System. The Constitution of India has vested in the Election Commission of India the superintendence, direction and control of the entire process for conduct of elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.

Election Commission of India is a permanent Constitutional Body. The Election Commission was established in accordance with the Constitution on 25th January 1950. The Commission celebrated its Golden Jubilee in 2001.Originally the commission had only a Chief Election Commissioner. It currently consists of Chief Election Commissioner and two Election Commissioners.

For the first time two additional Commissioners were appointed on 16th October 1989 but they had a very short tenure till 1st January 1990. Later, on 1st October 1993 two additional Election Commissioners were appointed. The concept of multi-member Commission has been in operation since then, with decision making power by majority vote.

Appointment & Tenure of Commissioners

The President appoints Chief Election Commissioner and Election Commissioners. They have tenure of six years, or up to the age of 65 years, whichever is earlier. They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India. The Chief Election Commissioner can be removed from office only through impeachment by Parliament.

Transaction of Business

The Commission transacts its business by holding regular meetings and also by circulation of papers. All Election Commissioners have equal say in the decision making of the Commission. The Commission, from time to time, delegates some of its executive functions to its officers in its Secretariat.

The Setup

The Commission has a separate Secretariat at New Delhi, consisting of about 300 officials, in a hierarchical set up.

Two or three Deputy Election Commissioners and Director Generals who are the senior most officers in the Secretariat assist the Commission. They are generally appointed from the national civil service of the country and are selected and appointed by the Commission with tenure. Directors, Principal Secretaries, and Secretaries, Under Secretaries and Deputy Directors support the Deputy Election Commissioners and Director Generals in turn. There is functional and territorial distribution of work in the Commission. The work is organised in Divisions, Branches and sections; each of the last mentioned units is in charge of a Section Officer. The main functional divisions are Planning, Judicial, Administration, Systematic Voters' Education and Electoral Participation, SVEEP, Information Systems, Media and Secretariat Co-ordination. The territorial work is distributed among separate units responsible for different Zones into which the 35 constituent States and Union Territories of the country are grouped for convenience of management.

At the state level, the election work is supervised, subject to overall superintendence, direction and control of the Commission, by the Chief Electoral Officer of the State, who is appointed by the Commission from amongst senior civil servants proposed by the concerned state government. He is, in most of the States, a full time officer and has a small team of supporting staff.

At the district and constituency levels, the District Election Officers, Electoral Registration Officers and Returning Officers, who are assisted by a large number of junior functionaries, perform election work. They all perform their functions relating to elections in addition to their other responsibilities. During election time, however, they are available to the Commission, more or less, on a full time basis.

The gigantic task force for conducting a countrywide general election consists of nearly five million polling personnel and civil police forces. This huge election machinery is deemed to be on deputation to the Election Commission and is subject to its control, superintendence and discipline during the election period, extending over a period of one and half to two months.

Organization – Powers and Functions of Election Commission of India

The Constitution of India ushered in a democratic republic for the free people of the country. The founding fathers of the Constitution took solemn care to devote a special chapter to elections niches safely in Part XV of the Constitution. The draft of Art 289 of the Constitution of India (which on adoption later became the present Art 324 in Part XV of the Constitution) was introduced in the Constituent Assembly on 15 June 1949 by Dr BR Ambedkar, Chairman of the Drafting Committee of the Constituent Assembly and one of the chief architects of the Indian Constitution.

Article 324. Superintendence, direction, and control of elections to be vested in an Election Commission.

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission.

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause(1)

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine. Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment.

(6) The President, or the Governorof a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Clause (1).

The Supreme Court in TN Seshan v Union of India and Orsobserved that :

Democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country. In order to ensure the purity of the election process, it was thought by our Constitution-makers that the responsibility to hold free and fair election in the country should be entrusted to an independent body which would be insulated from political and/ or executive interference.

It is inherent in a democratic set up that the agency which is entrusted the task of holding elections to the legislatures should be fully insulated so that it can function as an independent agency free from external pressures from the party in power or executive of the day. This objective is achieved by the setting up of an Election Commission, a permanent body, under Art 324(1) of the constitution. The Constituent Assembly of Jammu and Kashmir also reposed faith in the Election Commission, created as aforesaid under Art 324 of the Constitution of India, and entrusted the task of holding elections to the State Legislature of Jammu and Kashmir to the same Commission, instead of creating a separate State commission which it could do under its own constitution.

Functions of the Election Commission:

The primary function of the Election Commission entrusted to it by the Constitution is the superintendence, direction and control of the preparation of the electoral tolls for, and conduct of elections, to Parliament and to the legislature of every State, and also of elections to the offices of the President and Vice-President of India [Art 324(1)].

Originally, the Constitution also vested in the Election Commission the responsibility of appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the legislatures of the States [Art 324(1), as originally enacted]. However, on the recommendation of the Election Commission in its Report on the third general elections held in 1962, the trial of election petitions was entrusted to the High court's and the institution of election tribunals was abolished, as the experience showed that the disposal of election petitions was getting inordinately delayed because even the interlocutory orders of the tribunals were subject to appeal to the High Courts. Accordingly, Art 324(1) was amended by the Constitution (Nineteenth Amendment) Act 1966, to relieve the Commission of the Function of appointing election tribunals.

Amplitude of Powers of Election Commission—Meaning of ' Superintendence, Direction and Control What is the amplitude of powers and width of functions of the Election Commission under Art 324 came to be considered by the Supreme Court in Mohinder Singh Gill and Anor v. Chief Election Commissioner and Ors. In this case, the Election Commission had declared the poll taken in Firozepur parliamentary constituency in the State of Punjab at the time of the 1977-general election to the House of the People as void, on the basis of certain complaints. The petitioners contended that the Election Commission under the enacted law could only direct fresh poll at the polling stations where the poll was allegedly vitiated, and not in the entire parliamentary constituency. The Supreme Court rejected the contention of the petitioners. A Constitution Bench of the Supreme Court held that art 324 is a plenary provision vesting the whole responsibility for national and State elections in the Election Commission and the words superintendence, direction and control' used in Art 324 are the broadest terms.

The responsibility of superintendence, direction and control of the conduct of elections may cover powers, duties and functions of many sorts, administrative or other depending upon the circumstances. Article 324, on the Face of it, vests vast functions in the Commission which may be powers or duties, essentially administrative, and marginally, even judicative or legislative.

Two limitations are at least are, however, laid on its plenary character in the exercise of its powers. Firstly, when parliament or any State legislature has made valid law relating to or in connection with relations, the commission shall act in conformity with, not in violation of, such law. But where such law is silent, Art 324 is a reservoir of power for the Commission to act for the avowed purpose of pushing forward, but not divorced from, a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fair play-in- action in a most important area of the constitutional order, namely; Elections. The Supreme Court also observed in that case that arts 327 and 328 which empower Parliament to make laws with regard to electoral matters are subject to the provisions' of the Constitution which include art 324. The Court observed that:

The framers of the Constitution took care to leaving scope for exercise of residuary power by the Election Commission in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen or anticipated with precision. That is why there is no hedging in Art 324. The Commission may be required to cope with some situation which may not be provided for in the enacted laws and the rules. Where the existing laws are absent and yet a situation has to be tackled, the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situation. He must lawfully exercise his power independently, in all matters relating to the conduct of elections, and see that the election process is completed properly in a free and fair manner.

The nature and scope of the powers and functions of the Election Commission also came to be considered by the Supreme Court in kanhiya Lal Omar V RK Trivedi and Ors. In that case, the validity of the Election Symbols (Reservation and Allotment) Order 1968, promulgated by the Election Commission providing for the recognition of political parties as national or State parties, determination of disputes between the splinter groups of such recognised political parties, allotment of symbols to candidates , etc was called in question. It was contended that the symbols order was legislative in character and could not have been promulgated by the Commission, as the Commission is not empowered by law to issue such a legislative order.

The Supreme Court rejected the above contention, holding that the power to issue the Symbols Order is comprehended in the powers of superintendence, direction and control of elections vested in the Commission under art 324. If any of the provisions in the Symbols Order could not be traced to the Representation of the People Act 1951, or the Conduct of Elections Rules 1961, it could easily be traced to the reservoir of power under art 324(1), which empowers the Commission to issue all directions necessary for the purpose of conducting smooth, fair and free elections.

In AC Jose v Sivan Pillai and Ors. the Supreme Court, however, held that when there is no parliamentary legislation or rule made under the said legislation, the Commission is free to pass any order in respect of the conduct of elections, but where there is an Act and express rules made there under, it is not open to the Commission to override the Act or the rules, and pass orders in direct disobedience to the mandate contained in the Act or rules.

The powers of the Commission are meant to supplement rather than supplant the law in the matter of superintendence, direction and control as provided by aft 324. Where a particular direction by the Commission is submitted to the government for approval as required by the rules, it is not open to the Commission to go ahead with implementation of it at its own sweet will even if the approval of the government is not given. In Common Cause v Union of India and Ors, the Supreme Court held that the expression 'conduct of election' in art 324 of the Constitution is wide enough to include in its sweep, the power of the Election Commission to issue——in the process of the conduct of elections—directions to the effect that the political parties shall submit to the Commission for its scrutiny, the details of the expenditure incurred or authorised by the political parties in connection with the election of their respective candidates.

Summing up the amplitude of powers of the Election Commission under Art 324, the Supreme Court held in Union of India v association for Democratic Reforms and Ors.

(1) The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.

(2) The limitation on plenary character of power is when the Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, art 324 is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy as every contingency could not be foreseen or anticipated by the enacted laws or the rules.

Budget & Expenditure

The Secretariat of the Commission has an independent budget, which is finalised directly in consultation between the Commission and the Finance Ministry of the Union Government. The latter generally accepts the recommendations of the Commission for its budgets. The major expenditure on actual conduct of elections is, however, reflected in the budgets of the concerned constituent units of the Union - States and Union Territories. If elections are being held only for the Parliament, the expenditure is borne entirely by the Union Government while for the elections being held only for the State Legislature, the expenditure is borne entirely by the concerned State. In case of simultaneous elections to the Parliament and State Legislature, the expenditure is shared equally between the Union and the State Governments. For Capital equipment, expenditure related to preparation for electoral rolls and the scheme for Electors' Identity Cards too, the expenditure is shared equally.

Executive Interference Barred

In the performance of its functions, Election Commission is insulated from executive interference. It is the Commission which decides the election schedules for the conduct of elections, whether general elections or bye-elections. Again, it is the Commission which decides on the location polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters.

Political Parties & the Commission

Political parties are registered with the Election Commission under the law. The Commission ensures inner party democracy in their functioning by insisting upon them to hold their organizational elections at periodic intervals. Political Parties so registered with it are granted recognition at the State and National

levels by the Election Commission on the basis of their poll performance at general elections according to criteria prescribed by it. The Commission, as a part of its quasi-judicial jurisdiction, also settles disputes between the splinter groups of such recognised parties.

Election Commission ensures a level playing field for the political parties in election fray, through strict observance by them of a Model Code of Conduct evolved with the consensus of political parties. The Commission holds periodical consultations with the political parties on matters connected with the conduct of elections; compliance of Model Code of Conduct and new measures proposed to be introduced by the Commission on election related matters.

Advisory Jurisdiction & Quasi-Judicial Functions

Under the Constitution, the Commission also has advisory jurisdiction in the matter of post election disqualification of sitting members of Parliament and State Legislatures. Further, the cases of persons found guilty of corrupt practices at elections which come before the Supreme Court and High Courts are also referred to the Commission for its opinion on the question as to whether such person shall be disqualified and, if so, for what period. The opinion of the Commission in all such matters is binding on the President or, as the case may be, the Governor to whom such opinion is tendered.

The Commission has the power to disqualify a candidate who has failed to lodge an account of his election expenses within the time and in the manner prescribed by law. The Commission has also the power for removing or reducing the period of such disqualification as also other disqualification under the law.

Judicial Review

The decisions of the Commission can be challenged in the High Court and the Supreme Court of the India by appropriate petitions. By long standing convention and several judicial pronouncements, once the actual process of elections has started, the judiciary does not intervene in the actual conduct of the polls. Once the polls are completed and result declared, the Commission cannot review any result on its own. This can only be reviewed through the process of an election petition, which can be filed before the High Court, in respect of elections to the Parliament and State Legislatures. In respect of elections for the offices of the President and Vice President, such petitions can only be filed before the Supreme Court.

Media Policy

The Commission has a comprehensive policy for the media. It holds regular briefings for the mass media- print and electronic, on a regular basis, at close intervals during the election period and on specific occasions as necessary on other occasions. The representatives of the media are also provided facilities to report on actual conduct of poll and counting. They are allowed entry into polling stations and counting centres on the basis of authority letters issued by the Commission. They include members of both international and national media. The Commission also publishes statistical reports and other documents which are available in the public domain. The library of the Commission is available for research and study to members of the academic fraternity; media representatives and anybody else interested.

The Commission has, in co-operation with the state owned media - Doordarshan and All India Radio, taken up a major campaign for awareness of voters. The Prasar Bharti Corporation which manages the national Radio and Television networks, has brought out several innovative and effective short clips for this purpose.

Voter Education

Voters' Participation in the democratic and electoral processes is integral to the successful running of any democracy and the very basis of wholesome democratic elections. Recognising this, Election Commission of India, in 2009, formally adopted Voter Education and Electoral participation as an integral part of its election management.

International Co-operation

India is a founding member of the International Institute for Democracy and Electoral Assistance (IDEA), Stockholm, Sweden. In the recent past, the Commission has expanded international contacts by way of sharing of experience and expertise in the areas of Electoral Management and Administration, Electoral Laws and Reforms. Election Officials from the national electoral bodies and other delegates from the several countries - Russia, Sri Lanka, Nepal, Indonesia, South Africa, Bangladesh, Thailand, Nigeria, Namibia, Bhutan, Australia, the United States and Afghanistan etc. have visited the Commission for a better understanding of the Indian Electoral Process. The Commission has also provided experts and observers for elections to other countries in co-operation with the United Nations and the Commonwealth Secretariat.

New Initiatives

The Commission has taken several new initiatives in the recent past. Notable among these are, a scheme for use of State owned Electronic Media for broadcast/telecast by Political parties, checking criminalisation of politics, computerisation of electoral rolls, providing electors with Identity Cards, simplifying the procedure for maintenance of accounts and filling of the same by candidates and a variety of measures for strict compliance of Model Code of Conduct, for providing a level playing field to contestants during the elections.

Services under the Union and the States

Art.309.Recruitment and conditions of service of persons serving the Union or a State:

Subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State: Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State orsuch person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

Art.310. Tenure of office of persons serving the Union or a State:

Except as expressly provided by the Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union

or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Art.311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate tothat by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges: Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and itshall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

Art.312. All-India services.

(1) Notwithstanding anything in Chapter VI of Part VI or Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all India services (including an allIndia judicial service) common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in article 236.

(4) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effectto the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Art.312A. Power of Parliament to vary or revoke conditions of service of officers of certain services.

(1) Parliament may by law—

(a) vary or revoke, whether prospectively or retrospectively, the conditions of services as respects remuneration, leave and pension and the rights as respects disciplinary matters of persons who, having been appointed by the Secretary of State orSecretary of State in Council to a civil service of the Crown in India before the commencement of this Constitution, continue on and after the commencement of the Constitution (Twenty-eighth Amendment) Act, 1972, to serve under the Government of India or of a State in any service or post;

(b) vary or revoke, whether prospectively or retrospectively, the conditions of service as respects pension of persons who, having been appointed by the Secretary of State orSecretary of State in Council to a civil service of the Crown in India before the commencement of this Constitution, retired or otherwise ceased to be in service at any time before the commencement of the Constitution (Twenty-eighth Amendment) Act, 1972: Provided that in the case of any such person who is holding or has held the office of the Chief Justice or other Judge of the Supreme Court or a High Court, the Comptroller and Auditor-General of India, the Chairman or other member of the Union or a State Public Service Commission or the Chief Election Commissioner, nothing in sub-clause (a) or sub-clause (b) shall be construed as empowering Parliament to vary or revoke, after his appointment to such post, the conditions of his service to his disadvantage except in so far as such conditions of service are applicable to him by reason of his being a person appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India.

(2) Except to the extent provided for by Parliament by law under this article, nothing in this article shall affect the power of any Legislature or other authority under any other provision of this Constitution to regulate the conditions of service of persons referred to in clause (1).

(3) Neither the Supreme Court nor any other court shall have jurisdiction in—

(a) any dispute arising out of any provision of, or any endorsement on, any covenant, agreement or other similar instrument which was entered into or executed by any person referred to in clause (1), or arising out of any letter issued to such person, in relation to his appointment to any civil service of the Crown in India or his continuance in service under the Government of the Dominion of India or a Province thereof;

(b) any dispute in respect of any right, liability or obligation under article 314 as originally enacted.

(4) The provisions of this article shall have effectnotwithstanding anything in article 314 asoriginally enacted or in any other provision of this Constitution.

Art 313. Transitional provisions

Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service orpost under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

Public Service Commissions

Art.315. Public Service Commissions for the Union and for the States:

(1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.

(4) The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.

Art.316. Appointment and term of office of members:

(1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State: Provided that as nearly as may be one-half of the members of every Public Service Commission shall be personswho at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

(1A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission,may appoint for the purpose.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty-two years, whichever is earlier: Provided that—

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office;

(b) amember of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 317.

(3) A person who holds office as a member of a Public Service Commission shall, on theexpiration of his term of office, be ineligible for reappointment to that office.

Art.317. Removal and suspension of a member of a Public Service Commission:

(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made toit by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or suchother member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,— (a) is adjudged an insolvent; or (b) engages during his term of office in any paid employment outside the duties of his office; or (c) is, in the opinion of the President, unfit to continue in office engages during his term of office in any paid employment outside the duties of his office; or (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates inany way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour.

Art.318.

Power to make regulations asto conditions of service of members and staff of the Commission:

In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State may by regulations— (a) determine the number of members of the Commission and their conditions of service; and (b) make provision with respect to the number of members of the staff of the Commission and their conditions of service: Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

Art.319. Prohibition as to the holding of offices by members of

Commission on ceasing to be such members:

On ceasing to hold office—

(a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or asthe Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

Art.320. Functions of Public Service Commissions:

(1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so todo, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person whileserving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them: Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.

(5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laidfor not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether byway of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

Art.321. Power to extend functions of Public Service Commissions:

An Act made by Parliament or, as the casemay be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

Art.322. Expenses of Public Service Commissions:

The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission,shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

Art.323. Reports of Public Service Commissions:

(1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining,as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present annually to the Governor of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor, shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons he reasons for such non acceptance to be laid before the Legislature of the State.

Local Self Government

The functioning of a Government can be categorized into National, State and Local. LocalSelf- Governments are those bodies that look after the administration of a area or smallcommunity such as village, town or a city. These bodies are appointed by the Governmentrepresenting the local inhabitants, which raises its revenue partially through local taxation andother means.

The Local Self- Government can be divided into various classes likeCorporations, Cities, Town Municipalities and Town Panchayats on the basis of population. The administration system has 3 levels: village, block and district. Panchayats operate at thevillage level. The Panchayats of India are the local bodies working for the welfare of thevillage. It constitutes of members ranging from 7 to 31. However, it can have members morethan 31 but not less than 7. Panchayat is a form of Indian political system which combinesfive neighboring villages known as panch.

The primary units of administration in Panchayatsare the gram panchayats.The members of the Panchayat are known as "panches", who take decisions regarding thedisputes among the villagers and villages. According to the Indian Constitution, Panchayatshave the authority to work as organizations of self-government. Panchayats play a vital role inthe administration of the rural areas of India.The Local Self Government is entitled to discharge certain compulsory functions like:

- Supplying safe and clean drinking water
- Imparting and maintaining proper drainage and sewage systems
- Providing public street lighting
- To keep up sanitation and hygiene of public places
- Building and maintenance of bus terminals, roads, culverts and bridges
- Preservation of public parks and gardens
- To make sure that the urban or rural growth is systematic and planned
- Preparing guidelines for building construction
- Issuing Licenses for Trade activities
- Issuing and maintaining Birth and Death records

Apart from these the Local Self Government can deliver some discretionary functionsincluding educational, health, community and recreational services etc.In order to deliver the above duties, the Local Self Government have been given certain powers to earn revenues by levying certain taxes and fees. In addition to it, the StateGovernment also transfers some of its general revenues to the Local Self Government. Their main sources of is from taxes on construction and lands, taxes levied on people for water supply, and fee from trade license.

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CONSTITUTIONAL LAW - II

MODEL QUESTION PAPER

PART – A (2 x 12 =24 marks)

Answer any TWO of the following:

1. Describe the composition and the sessions of Parliament under the Indian Constitution.
2. "The Constitution of India describes the three fold distribution of legislative relations between Centre and State" – Elucidate.
3. Constitution of India provides for collective responsibility of the council of the Council of Ministers to the Lower House. Examine how far collective responsibility is in actual practice in India.

PART – B (2 x 7 = 14 marks)

Answer any TWO of the following:

4. Explain the Legislative Powers of the President of India.
5. Examine the significance of the Original Jurisdiction of the Supreme Court of India with the help of decided cases.
6. Discuss the provisions relating to National Emergency under the Indian Constitution.

PART – C (5 x 4 = 20 marks)

7. Write short notes on any FIVE of the following:

   a. Money Bill.

   b. Court of Record.

   c. Doctrine of Colourable Legislation.

   d. Comptroller and Auditor General of India.

   e. Inter – State Council.

   f. Planning Commission.

   g. Election Commission.

PART – D (2 x 6 = 12 marks)

Answer any TWO of the following:

8. Mr. Akilan, a member of the Legislative Assembly was suspended and punished to undergo five days simple imprisonment by an order o0f the Speaker for breach of the privileges of the House. Mr. Akilan approaches the High Court to quash the order. Is his claim sustainable? Decide.
9. State legislature made a law for using and regulating amplifiers in public functions using entry 6 of List II. The Constitutional validity of the state law was challenged on the ground that the subject matter falls under entry 31 of List I – Decide.
10. 'X', a Professor of International Politics, was terminated from the services on the basis of the intelligence report that he had taken part in foreign students' regulation activities. 'X' filed a writ in the Supreme Court claiming safeguards under Art. 311 of the Constitution of India.Advise.

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Answer Key for Model Question Paper

This is only a key and not exhaustive answers for the questions. The students are required to give more explanations and decided case laws by referring the appropriate books and materials relating to the subject.

Answer to Question No. 1:

Composition of Parliament:

Parliament of India consists of three organs.

- The President
- Council of States (Rajya Sabha)
- House of the People (Lok Sabha)

Though the President is not a member of either House of Parliament yet, like the British Crown, he is an integral part of the Parliament and performs certain functions relating to its proceedings. The President summons the two Houses of Parliament dissolves the House of People and gives assent of Bills. It is to be noted that, though the India Constitution provides for the Parliamentary form of Govt. but unlike in Britain, the Parliament is not supreme under the India Constitution. In India, the Constitution is supreme. In England, laws passed by the Parliament cannot be declared unconstitutional while the Indian Constitution expressly vests this power in the courts. The Indian Parliament is the creature of the Constitution and derives all its powers from the Constitution. It is not a sovereign body.

Sessions of Parliament:

The President shall from time to time summon each House of the Parliament to meet at such time and place as he thinks fit. But this right is subject to the condition that six months should be intervene between its last sitting in one session and the date appointed for its sitting in the next session.Art.85(1). At the commencement of the first session after the general election to the Lok Sabha, the President shall address both Houses of Parliament assembled together and shall inform the causes of its summons.Art.87(1). The Presidential address is with regard to the general policies of the Government and indication of its future programmes to be taken by the Govt. it is not the private speech of the President and it is prepared by the Cabinet. The President is empowered to address either House or both the Houses assembled together at anytime and for that purpose require the attendance of members. Art 86(1). The President may send message to either House of Parliament whether with respect to a Bill pending in Parliament or otherwise.

Prorogation:

Prorogation merely ends a session. It does not end the life of the House. The House meets again after prorogation. The power to prorogue the house is vested in the President.Art.85(9). In England prorogation brings to an end all Bills or Business then pending before the House. But in India a pending Bill or business does not lapse on the prorogation of a session. It means the House ceases to do a business at a particular time. It takes up pending business for consideration when it meets after prorogation.

Dissolution:

A dissolution ends the very life of the House and general election then must be held to elect a new Lak Sabha. The Rajya Sabha is a permanent body and not subject to dissolution. A dissolution ends the very life of the House while a prorogation ends a session. The power to dissolve is vested in the President. [Art.85(5)]. On the advice of the Prime Minister. In England, it is a well settled convention that the sovereign can dissolve the House when advised by the Prime Minister.

Effect of dissolution on the business pending in the houses:

1) A bill pending in the Rajya Sabha but not passed by the Lok Sabha does not lapse;

2) A bill pending in the Lok Sabha lapses;

3) A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses unless it is saved by the president's intention to call a joint sitting of the two houses.

Answer to Question No.2:

Legislative Relations (Articles 245-255):

From point of view of the territory over which the legislation can have effect, the jurisdiction of a State Legislature is limited to the territory of that State. But in the case of Parliament, it has power to legislate for the whole or any part of the territory of India i.e.States, Union Territories or any other areas included for the time being in the territory of India. Parliament has the power of 'extraterritorial legislation' which means that laws made by the Union Parliament will govern not only persons and property within the territory of India, but also Indian subjects resident and their property situated anywhere in the world. Only some provisions for scheduled areas, to some extent, limit the territorial jurisdiction of Parliament.

Legislative Methods of the Union to Control over States:

(i) Previous sanction to introduce legislation in the State Legislature (Article 304).

(ii) Assent to specified legislation which must be reserved for consideration [Article 31 A (1)].

(iii) Instruction of President required for the Governor to make Ordinance relating to specified matters [Article 213(1)].

(iv) Veto power in respect of other State Bills reserved by the Governor (Article 200).

The Three Lists:

As for the subjects of legislation the Constitution has adopted, as if directly from the Government of India Act, 1935, a three-fold distribution of legislative powers between the Union and the States, a procedure which is not very common with federal constitutions elsewhere. The Constitutions of the United States and Australia provided a single enumeration of powers—power of the Federal Legislature— and placed the residuary powers in the hands of the States. Canada provides for a double enumeration, dividing the legislative powers between the Federal and State legislatures. The Indian Constitution introduces a scheme of three-fold enumeration, namely, Federal, State and Concurrent.

List I includes all those subjects which are in the exclusive jurisdiction of Parliament.

List II consist of all the subjects which are under exclusive jurisdiction of the State Legislature, and

List III which is called the Concurrent List, consists of subjects on which both Parliament and the State legislatures can pass laws.

(i) Union List:

List I, or the Union List, includes 99 items, including residuary powers, most of them related to matters which are exclusively within the jurisdiction of the Union. Subjects of national importance requiring uniform legislation for the country as a whole are inducted in the Union List. The more important examples are defence, armed forces, arms and ammunition, atomic energy, foreign affairs, coinage, banking and

insurance. Most of them are matters in which the State legislatures have no jurisdiction at all. But, there are also items dealing with inter-state matters like inter-state trade and commerce regulation and development of inter-state rivers and river valleys, and inter-state migration, which have been placed under the jurisdiction of the Union Parliament. Certain items in the Union List are of such a nature that they enable Parliament to assume a role in certain spheres in regard to subjects which are normally intended to be within the jurisdiction of the States; one such example is that of industries.

While assigned primarily to the State List; industries, the control of which by the Union is declared by a law of Parliament, to be expedient in the public interest' are to be dealt with by parliamentary legislation alone. Parliament, by a mere declaration, can take over as many industries as it thinks fit. It is under this provision that most of the big industries, like iron, steel and coal, have been taken over by Parliament under its jurisdiction. Similarly, while museums, public health, agriculture etc. come under State subject, certain institutions like the National Library and National Museum at New Delhi and the Victoria Memorial in Calcutta have been placed under the jurisdiction of Parliament on the basis of a plea that they are financed by the Government of India wholly or in part and declared by a law of Parliament to be institutions of national importance.

The university is a State subject but a number of universities have been declared as Central Universities and placed under the exclusive jurisdiction of Parliament. Elections and Audit, even at the State level, were considered matters of national importance. The Extensive nature of the Union List thus places enormous powers of legislation even over affairs exclusively under the control of the States in the hands of Parliament.

(ii) State List:

List II or the State List, comprises 61 items or entries over which the State Legislature has exclusive power of legislation. The subject of local importance, where variations in law in response to local situations may be necessary, has been included in the State List. Some subjects of vital importance in the list are State taxes and duties, police, administration of justice, local self-government, public health, agriculture, forests, fisheries, industries and minerals. But, in spite of the exclusive legislative jurisdiction over these items having been given to the States, the Constitution, through certain reservations made in the Union List has given power to Parliament to take some of these items under its control. Subject to these restrictions, one might sasay, the States have full jurisdiction over items included in the State list.

(iii) Concurrent List:

The inclusion of List III or the Concurrent List, in the Constitution gives a particular significance to the distribution of legislative power in the Indian federal scheme. The Concurrent List consists of 52 items, such as criminal law and procedure, civil procedure, mar-riage, contracts, port trusts, welfare of labour, economic and social planning. These subjects are obviously such as may at some time require legislations by Parliament and at other by a State Legislature. The provision of a Concurrent List has two distinct advantages.

In certain matters in which Parliament may not find it necessary or expedient to make laws, a Sate can take the initiative, and if other States follow and the matter assumes national importance, Parliament can intervene and bring about a uniform piece of legislation to cover the entire Union Territory. Simi-larly, if a State finds it necessary to amplify a law enacted by Parliament on an item included in the Concurrent List in order to make it of a greater use of its own people, it can do so by making supplementary laws.

The items included in the Concurrent List can be broadly divided into two groups-those dealing with general laws and legal procedure, like criminal law, criminal procedure, marriage, divorce, property law, contracts etc, and those dealing with social welfare such as trade unions, social security, vocational and

technical training of labour, legal, medical and other professions etc.; while the items coming under the first group are of primary importance to the Union Government, they have been left, by convention, to Parliament. In matters of social welfare, it is open to the State legislatures either to take the initiative in making laws or to enact laws which are supple-mentary to the Parliamentary laws.

Answer to Question No. 3:

Collective Responsibility

Our Constitution clearly says that "The Council of Ministers shall be collectively responsibleto 'House of the People'." It actually means that the Ministers are responsible to the LokSabha not as individuals alone, but collectively also. Collective responsibility has twoimplications. Firstly, it means that every member of the Council of ministers acceptsresponsibility for each and every decision of the Cabinet. Members of the Council ofMinisters swim and sink together. When a decision has been taken by the Cabinet, everyMinister has to stand by it without any hesitation. If a Minister does not agree with theCabinet decision, the only alternative left to him/her is to resign from the Council of Ministers. The essence of collective responsibility means that, 'the Minister must vote with thegovernment, speak in defence of it if the Prime Minister insists, and he/she cannot afterwards reject criticism of his act, either in Parliament or in the constituencies, on the ground that he/she did not agree with the decision.' Secondly, vote of no-confidence against the PrimeMinister is a vote against the whole Council of Ministers. Similarly, adverse vote in the LokSabha on any government bill or budget implies lack of confidence in the entire Council ofMinisters, not only the mover of the bill.

Individual Responsibility

Though the Ministers are collectively responsible to the Lok Sabha, they are also individuallyresponsible to the Lok Sabha. Individual responsibility is enforced when an action taken by a Minister without the concurrence of the Cabinet, or the Prime Minister, is criticized and not approved by the Parliament. Similarly if personal conduct of a Minister is questionableand unbecoming he may have to resign without affecting the fate of the Government. If aMinister becomes a liability or embarrassment to the Prime Minister, he may be asked toquit.

Answer to question No. 4:

Legislative Powers

The President being an integral part of Parliament enjoys many legislative powers. These powers are given below: The President summons, and prorogues the Houses of Parliament. He may summon the Parliament at least twice a year, and the gap between two sessions cannot be more than six months. The President has the power to dissolve the Lok Sabha even before the expiry of its term on the recommendation of the Prime Minister. In normal course he/she dissolvesLok Sabha after five years. The President nominates twelve members to Rajya Sabhafrom amongst persons having special knowledge in the field of literature, science, art andsocial service. The President may also nominate two members of Anglo-Indian communityto the Lok Sabha in case that community is not adequately represented in the House. ThePresident can call a joint sitting of the two Houses of Parliament in case of a disagreementbetween Lok Sabha and Rajya Sabha on a non-money bill. So far thrice such joint sittings have been summoned.

The President has the right to address andsend messages to Parliament. The President addresses both Houses of Parliament jointlyat the first session after every general election as well as commencement of the firstsession every year. These addresses contain policies of the government of the day.Every bill passed by Parliament is sent to the President for his/her assent. The Presidentmay give his/her assent, or return it

once for the reconsideration of the Parliament. Ifpassed again the President has to give her assent. Without his/her assent no bill can becomea law. The President may promulgate an ordinance when the Parliament is not in session.The ordinance so issued has the force of law. The ordinance so promulgated should be laidbefore both Houses of Parliament when they reassemble. If it is neither rejected by theParliament nor withdrawn by the President, it automatically lapses six weeks after thecommencement of the next session of Parliament. Generally a bill is moved by theGovernment to enact a law in place of the ordinance.

Answer to Question No. 5:

Original jurisdiction of the Supreme Court – Art.131

Subject to the provisions of the Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

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

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

(*c*) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

Explanations and case laws to be verified in the appropriate text books.

Answer to Question No. 6:

Emergency is a unique feature of Indian Constitution that allows the center to assume wide powers so as to handle special situations. In emergency, the center can take full legislative and executive control of any state. It also allows the center to curtail or suspend freedom of the citizens. Existence of emergency is a big reason why academicians are hesitant to call Indian constitution as fully federal. Emergency can be of three types - Due to war, external aggression or armed rebellion, failure of constitutional machinery in a state, or financial emergency.

Proclamation of Emergency:

Art 352 says that if the President is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened due to outside aggression or armed rebellion, he may make a proclamation to that effect regarding whole of India or a part thereof. However, sub clause 3 says that President can make such a proclamation only upon the written advice of the Union Cabinet. Such a proclamation must be placed before each house of the parliament and must be approved by each house within one month otherwise the proclamation will expire. An explanation to art 352 says that it is not necessary that external aggression or armed rebellion has actually happened to proclaim emergency. It can be proclaimed even if there is a possibility of such thing happening.

- In the case of Minerva Mills vs Union of India AIR 1980, the Supreme Court held that there is no bar to judicial review of the validity of the proclamation of emergency issued by the president under 352(1). However, court's power is limited only to examining whether the limitations conferred by the constitution have been observed or not. It can check if the satisfaction of the president is valid or not. If the satisfaction is based on mala fide or absurd or irrelevant grounds, it is no satisfaction at all.

- Prior to 44th amendment, duration of emergency was two months initially and then after approval by the houses, it would continue indefinitely until ended by another proclamation. However after 44th amendment, the period is reduced to 1 month and then 6 months after approval.

Explanations and case laws to be verified in the appropriate text books.

Answer to Question No.7:

a) Money Bill:

Art.110(1)a money bill is a bill which contains only provisions with request to all or any of the following matters:-

a) The imposition abortion remission alternation or regulation of any tax,

b) The regulating of the borrowing of money or the giving of any guarantee by the Government of India.

c) Thecustody of the consolidated fund, thepayment or the contingency fund the payment or withdrawal of the money from such fund,

d) Theappropriation of money out of the consolidated fund of India,

e) The declaring of any expenditure to be charged on the consolidated fund of India.

f) the receipt of money on account of the consolidated fund of India or the public account of India or the custody or issue of such money or the audit of the account of the union or of a state.

g) Any matter incidental to any of the matters specified in the sub-clause (a) to (f)

But a bill is not a money bill by reason only that it provides for:-

a) The composition of fines or other pecuniary penalties,or

b) The payment of fees for license or services rendered,

c) Imposition, abolition,remission, alteration or regulation of any tax by any local authority or body for local purpose. Art 113(2).

The question about whether the bill is money bill or not the decision of the speaker of Lok Sabha shall be final ,when a bill is sent to Rajya Sabha or presented to the president to assent, a certificate of the speaker shall be endorsed on that it is a money bill [Art110(4)].

A money bill can only be introduced in the Lok Sabha with the recommendation of the president. But such recommendation is not necessary for the moving of amendments making provisions for the reduction or abolition of any tax. Art 117(1) proviso. After a money bill has been passed by the Lok Sabha, it is sent to the Rajya Sabha for its recommendations. The Rajya Sabha must return it within 14 days from the receipt of the bill with its recommendations.

The Lok Sabha may either accept or reject all or any of the recommendations of the Rajya Sabha. If the Lok Sabha accepts any of the recommendations of the Rajya Sabha, the money bill shall be deemed to have been passed by both Houses with the amendments by the Rajya Sabha and accepts by the Lok Sabha. The money bill shall be deemed to have been passed by both the Houses even if: The bill is not returned to the Lok Sabha within 14 day. The Lok Sabha rejects all the recommendations of the Rajya Sabha

Then it will be presented to the president for his assent. A money bill introduced in the Lok Sabha only on the recommendations of the president.

b) Supreme Court to be a court of record - Art.129

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

c) Doctrine of Colourable Legislation

Like any other constitutional law doctrine is a tool devised and applied by the Supreme Court of India to interpret various Constitutional Provisions. It is a guiding principle of immense utility while construing provisions relating to legislative competence.Before knowing what this doctrine is and how it is applied in India, let us first understand the genesis of Doctrine of Colourable Legislation.

Doctrine of Colourable Legislation is built upon the founding stones of the Doctrine of Separation of Power. Separation of Power mandates that a balance of power is to be struck between the different components of the State i.e. between the Legislature, the Executive and the Judiciary. The Primary Function of the legislature is to make laws. Whenever, Legislature tries to shift this balance of power towards itself then the Doctrine of Colourable Legislation is attracted to take care of Legislative Accountability.

Definition

Black's Law Dictionary defines 'Colourable' as:

1. Appearing to be true, valid or right.
2. Intended to deceive; counterfeit.
3. 'Colour' has been defined to mean 'Appearance, guise or semblance'.

The literal meaning of colourable Legislation is that under the 'colour' or 'guise' of power conferred for one particular purpose, the legislature cannot seek to achieve some other purpose which it is otherwise not competent to legislate on.

This Doctrine also traces its origin to a Latin Maxim:

"Quandoaliquidprohibetur ex directo, prohibeturet per obliquum"

This maxim implies that "when anything is prohibited directly, it is also prohibited indirectly". In common parlance, it is meant to be understood as "Whatever legislature can't do directly, it can't do indirectly". In our Constitution, this doctrine is usually applied to Article 246 which has demarcated the Legislative Competence of the Parliament and the State Legislative Assemblies by outlining the different subjects under List I for the Union, List II for the States and List III for both, as mentioned in the Seventh Schedule.This doctrine comes into play when a Legislature does not possess the power to make law upon a particular subject but nonetheless indirectly makes one. By applying this principle the fate of the Impugned Legislation is decided.

d)The Comptroller and Auditor-General of India Arts. (148-151):

Duties and Powers:

He is to perform such duties and exercise such powers in relation to the accounts of the Union and of States as may be prescribed by or under any law made by Parliament. Until such law is passed, he shall perform such duties and exercise such powers as were exercisable by the Auditor-General of India immediately before the commencement of the Constitution.(Art.149).

He performs two duties and those are,

- as an accountant he controls all withdrawal of money disbursed by Central or State Governments.
- He shall keep the account of the Union and of the State in the manner prescribed by the President.(Art.150)

The report of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President who shall cause them to be laid before the Parliament. He shall submit the reports of accounts of State to the Governor of the State who may lay it before the Legislature.

e) Inter-state Council:

Article 263 says that the President is empowered to establish an inter-State Council. The Constitution assigned three fold duties to this body.

(a) To investigate and discuss subjects of common interest between the Union and the States or between two or more States;

(b) Research in such matters as agriculture, forestry, public health etc., and

(c) To make recommendations for co-ordination of policy and action relating to such subjects.

The Sarkaria Commission has recommended the Constitution of a permanent inter-State Council. Such a council, consisting of six Union Cabinet Ministers and the Chief Ministers of all the States, has been created in April 1990.

f)Planning Commission:

This extra-Constitutional and non-statutory body was set up by a reso-lution (1950) of the Union Cabinet and its main objective was to formulate an integrated Five Year Plan for economic and social development and to act as an advisory body to the Union Government.The institution which is sometimes held responsible for giving the maximum strength to the forces of centralization in the country and yet has continued to remain an extra-statutory and extra-constitutional body is the Planning Commission.

A Planning Commission was set up under Nehru's Chairmanship by the Indian National Congress more than ten years before the country became independent to draw up a national plan. It had produced some voluminous reports. A Planning and Development Department was set up and a Development Board was organized by the British Government during the Second World War but these were, comparatively, minor efforts. One might, therefore, say that real planning began with the setting up of the Planning Commission in 1950. No attempt was, however, made to take resort to legislation or to an amendment of the Constitution. It was set up by a simple resolution of the Union Cabinet put forward by Prime Minister Nehru with himself as its Chairman, to formulate an integrated five-year plan for the economic and social development of the country and to act as an advisory board to the Union Government in this sphere.But, even though the Planning Commission was set up without legislation or constitutional amendment, it has been growing in

strength from year to year. Consisting of the Prime Minister, some important Cabinet Ministers of the Union and some non-officials, it has grown over the years as a heavy bureaucratic organization.

The function of the Planning Commission, in theory, is to prepare a plan for the most effective and balanced utilization of the country's resources, with a view to initiate "a process of development which will raise living standards and open out to the people new opportunities for a richer and more varied life". Its function, in other words, is to formulate a plan. Development being related mostly to State subjects, the implementation of the plan rests with the States. The role that the Commission plays with regard to the States is merely advisory. Once the advice has been tendered by the Plan-ning Commission, it has no direct means of securing the implementation of the plan. The practice, however, is different.

The States have to depend on the Centre for financial assistance without which the plans cannot be implemented. Since the States cannot implement the plans without financial assistance from-the Centre, and the Union would like different States to follow a more or less uniform policy the Centre comes to exercise an immense control over the implementation part of the plans in the States.

g) Election Commission

India is a Socialist, Secular, Democratic Republic and the largest democracy in the World. The modern Indian nation state came into existence on 15th of August 1947. Since then free and fair elections have been held at regular intervals as per the principles enshrined in the Constitution, Electoral Laws and System. The Constitution of India has vested in the Election Commission of India the superintendence, direction and control of the entire process for conduct of elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.

Election Commission of India is a permanent Constitutional Body. The Election Commission was established in accordance with the Constitution on 25th January 1950. The Commission celebrated its Golden Jubilee in 2001.Originally the commission had only a Chief Election Commissioner. It currently consists of Chief Election Commissioner and two Election Commissioners.

For the first time two additional Commissioners were appointed on 16th October 1989 but they had a very short tenure till 1st January 1990. Later, on 1st October 1993 two additional Election Commissioners were appointed. The concept of multi-member Commission has been in operation since then, with decision making power by majority vote.

Appointment & Tenure of Commissioners

The President appoints Chief Election Commissioner and Election Commissioners. They have tenure of six years, or up to the age of 65 years, whichever is earlier. They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India. The Chief Election Commissioner can be removed from office only through impeachment by Parliament.

Transaction of Business

The Commission transacts its business by holding regular meetings and also by circulation of papers. All Election Commissioners have equal say in the decision making of the Commission. The Commission, from time to time, delegates some of its executive functions to its officers in its Secretariat.

The Setup

The Commission has a separate Secretariat at New Delhi, consisting of about 300 officials, in a hierarchical set up.

Two or three Deputy Election Commissioners and Director Generals who are the senior most officers in the Secretariat assist the Commission. They are generally appointed from the national civil service of the country and are selected and appointed by the Commission with tenure. Directors, Principal Secretaries, and Secretaries, Under Secretaries and Deputy Directors support the Deputy Election Commissioners and Director Generals in turn. There is functional and territorial distribution of work in the Commission. The work is organised in Divisions, Branches and sections; each of the last mentioned units is in charge of a Section Officer. The main functional divisions are Planning, Judicial, Administration, Systematic Voters' Education and Electoral Participation, SVEEP, Information Systems, Media and Secretariat Co-ordination. The territorial work is distributed among separate units responsible for different Zones into which the 35 constituent States and Union Territories of the country are grouped for convenience of management.

At the state level, the election work is supervised, subject to overall superintendence, direction and control of the Commission, by the Chief Electoral Officer of the State, who is appointed by the Commission from amongst senior civil servants proposed by the concerned state government. He is, in most of the States, a full time officer and has a small team of supporting staff.

At the district and constituency levels, the District Election Officers, Electoral Registration Officers and Returning Officers, who are assisted by a large number of junior functionaries, perform election work. They all perform their functions relating to elections in addition to their other responsibilities. During election time, however, they are available to the Commission, more or less, on a full time basis.

For Part – D questions the students shouldrefer the text books for explanation and the related case laws.

Answer to Question No. 8:

Refer the text books for explanation and the related case laws.

Answer to Question No. 9:

Refer the text books for explanation and the related case laws.

Answer to Question No.10:

Refer the text books for explanation and the related case laws.

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