



Department of Distance Education

Punjabi University, Patiala

Class : B.A. I (Public Administration)
Medium : English

Semester : 2
Unit : II

Lesson No.

- 2.1 : Governor And Chief Minister
- 2.2 : Chief Secretary
- 2.3 : State Legislature
- 2.4 : Supreme Court of India
- 2.5 : High Court

Department website : www.pbidde.org

Dear Student,

Administrative machinery at the State level has been discussed in this paper. In previous section, nominal and real chief executive of our country at the Central level i.e. President and Prime Minister were discussed. Similarly, at the State level, we have Governor as the Constitutional Head and Chief Minister as the real chief executive of the State. In Lesson No. 2.1, these two important functionaries will be discussed in detail. In Lesson No. 2.2, Chief Secretary who is the head of Civil servants at the state level will be discussed. Lesson No. 2.3 provides a detailed account of composition, powers and functions of State Legislature.

Another important topics have also been discussed in detail. Chapters 2.4 and 2.5 have focussed on Supreme Court and High Court - their composition and functions.

GOVERNOR AND CHIEF MINISTER OF A STATE

Structure :

- 6.0 Objectives**
- 6.1 Introduction**
- 6.2 Governor - Power and Position**
 - 6.2.1 Qualifications**
- 6.3 Emoluments and Allowances**
- 6.4 Powers and Functions**
 - 6.4.1 Executive Functions and Powers**
 - 6.4.2 Legislative Functions and Powers**
 - 6.4.3 Financial Powers**
 - 6.4.4 Judicial Powers**
 - 6.4.5 Discretionary Powers**
- 6.5 Relations with Council of Ministers headed by Chief Minister**
- 6.6 Governor's Position in the era of Coalition Government**
- 6.7 Chief Minister**
- 6.8 Appointment**
- 6.9 Powers and Functions**
- 6.10 Position of Chief Minister**
 - 6.10.1 When a single majority party is in power at the Centre**
 - 6.10.2 Chief Minister of a Coalition Government**
 - 6.10.3 Chief Minister of a Minority Government**
 - 6.10.4 When a single majority party but not in power at the Centre**
- 6.11 Conclusion**
- 6.12 Keywords**
- 6.13 Suggested Readings**
- 6.14 Answers to Self-Check Exercises**

6.0 Objectives :

After studying this lesson, you shall be able to :

- comprehend the powers and position of Governor as Constitutional Head of any State in India,
- analyse the appointment procedure of Chief Minister;
- describe the powers and position of Chief Minister in detail.

6.1 Introduction :

In the present lesson, Constitutional Head of Indian State i.e.

Governor's appointment, powers and position alongwith the powers and position of Chief Minister will be discussed in detail.

6.2 Governor - Powers and Functions :

Article 153 lays down that there shall be a Governor of each Indian state. He is appointed vide Article 155 by the President by warrant under his hand and seal. The Governor holds office during the pleasure of the President. In practice, 'however, the appointment of the Governor is made by the Prime Minister in consultation with the Home Minister. It was, however, desired that the appointment be made in consultation with the Chief Minister of the State concerned. But this practice is not adhered to in all cases and under all the circumstances. Thus, the practice of consulting State Chief Minister has just become a formality. He holds office for a term of five years but he continues to hold office even after the expiry of this term until his successor enters upon his office: He may submit his resignation before the expiry of his term.

6.2.1 Qualification: To be eligible for the office of Governor a person should be (a) a citizen of India, (b) should have completed the age of 35 years, (c) should not be a member of either House of Parliament or of the House of Legislature of any state, (d) should not hold any office of profit.

Besides these written qualifications another convention has been developed that the Governor must not belong to the State where he is appointed.

6.3 Emoluments and Allowances:

The Governor is entitled to official residence free of rent and is also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the second schedule.

Article 158 (1) : Article 158 (3A) lays down that where the same person is appointed as Governor of two or more states, the emoluments and allowances payable to the Governor are allocated among the states in such proportion as the President may by order determine. The emoluments and allowances of the Governor cannot be diminished during his tenure.

6.4 Powers and Functions

The powers and functions of the Governor can be discussed under the following five heads-Executive, Legislative, Financial, Judicial and Discretionary.

6.4.1 Executive Powers :

The expression 'Executive Power' is very wide. It includes acts necessary for the carrying on or supervision of the general administration of the state, including both deciding the course of action to be taken, and carrying out the decision.

- (i) The Governor is the Chief Executive, The Head of the State, having been vested with all the authority needed to act as

- such. All executive actions are taken in his name.
- (ii) He makes the appointment of the Chief Minister of the State and on his advice appoints other ministers of the Council of Ministers who hold office during the pleasure of the Governor.
 - (iii) Besides all other important and major appointments like those of the Advocate General, Chairman and members of the State Public Service Commissions are made by the Governor. The Advocate General holds the office during the pleasure of the Governor and receives such remuneration as the Governor may determine.
 - (iv) He acts as the Chancellor of the Universities in the State.
 - (v) Since he is the agent of the Centre and also the constitutional head of the state, he has to take into the efficient administration of the state, about which he keeps the President well informed. In his turn, he enjoys the right to be kept informed by the Chief Minister about the State administration and can ask for any information from the Chief Minister in this regard. As such as and when he finds that there is “breakdown of constitutional machinery” in the State he recommends to the Centre the imposition of State of Emergency and consequently becomes the real and virtual agent of the Union Government in his State.

6.4.2 Legislative Powers :

- (i) He summons the sessions of State legislature at such a time as he thinks fit and ensures that six months do not intervene between the last sitting and the date fixed for its next sitting.
- (ii) He can prorogue the sessions of the House of the Legislature and can also dissolve the Legislative Assembly as and when he deems fit.
- (iii) The legislative work of the Assembly starts with the address of the Governor and if there is Legislative Council also there can be joint sitting of both the Houses for the purpose.
- (iv) He can send message to the House/Houses with regard to bill and the House/Houses concerned are obliged to consider that message at the earliest convenience.
- (v) He can nominate one member of the Anglo-Indian community to the legislative Assembly if he feels that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein. He can also nominate some distinguished members to the Upper House.
- (vi) All bills passed by the State Legislature are subject to his assent. He may give his assent or Withhold it or return a bill

(except the money bill) to the Legislature for reconsideration or might reserve the bill for the consideration of the President.

- (vii) Article 192 stipulates that if at any time any question arises that a member of the Legislative Assembly did not satisfy the required qualification, the question should be referred to the Governor for decision. He shall, however, obtain the opinion of the Election Commission and is bound to take decision as recommended by the Election Commission.
- (viii) He can also promulgate an ordinance according to the urgency of the situation (in case legislature is not in session) in the State and such an ordinance can remain in force till six weeks after the reassembling of the State Legislature unless it is approved by the legislature. During the six week period, an Ordinance might be withdrawn by the Governor at any time.

6.4.3 Financial Powers

- (i) A money bill cannot be introduced in the State Legislature without his prior approval.
- (ii) The Contingency fund of the State is at his disposal which can be used by him to meet unforeseen and immediate expenditure pending its authorisation by the State Legislature.

6.4.4 Judicial Powers

- (i) The Governor has the power to grant pardon, reprieve or remission of punishment or suspend, remit or commute the sentence of any person convicted of an offence against law to which the executive power of the state extends.
- (ii) He makes the appointments of District judges, and decides matters relating to their appointments and also of other judicial officers.

6.4.5 Discretionary Powers

Some of the Governors, e.g., those of Assam and Nagaland enjoy some specific discretionary powers.

As for the Governor of the other states, their discretionary powers depend upon the nature of political circumstances prevailing in a particular state.

6.5 Relations with Council of Ministers headed by Chief Minister

The Constitution lays down that the executive power of the State is vested in the Governor and Article 163 provides that there shall be Council of Ministers with the Chief Minister as 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.

Article 164, further lays down that the Chief Minister shall be appointed by the Governor and other Ministers shall be appointed by him on the advice of the Chief Minister. The article makes it very clear that the appointment of Chief Minister lies in the hands of the Governor. Of course, the Governor keeps in view the conventional practices of the parliamentary form of government. But this action cannot be challenged in a court of law and wherever challenged (Bengal 1967 and U.P. 1970) was not accepted by the High Court or even by the Supreme Court. Thus, the Governor enjoys great power in the selection of the Chief Minister of his State; although it is limited if a single party in the Legislature of a State is in majority. Here it is important to note that the recent developments in U.P. after the Vidhan Sabha election in which no party got the requisite majority, though BJP emerged as the single largest party. Out of the three claimants, i.e., Mayawati (BSF) supported by Congress Kalyan Singh (BJP) and Mulayam Singh Yadav (SP) none could succeed in securing the support of the others. The Governor Romesh Bhandari did not invite the leader of the largest party and recommended extension of the President's rule, which has been approved by Parliament.

As in appointment so also in the removal and dismissal of a Chief Minister the Governor enjoys similar powers. A Chief Minister can be dismissed by the Governor. A Chief Minister can be dismissed by the Governor if the Chief Minister has lost his majority in the Vidhan Sabha, or does not accept his proposal to call a session of Vidhan Sabha or if the Governor is satisfied that the orders of the Council of Ministers are violative of the spirit of the Constitution or are repugnant to the directives of the Centre. Under Article 167, the Minister is required :

- (1) to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposal for legislation;
- (2) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor might call for; and
- (3) 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.

6.6 Governor's Position in the era of coalition Government :

It is clear that the Governor merely acts as a figure head in the selection of the Chief Minister and the Council of Ministers when the political situation is such in a State that the leader or a party enjoys complete confidence of the legislature and has clear majority with him.

This exactly was the situation in India till the Fifth General Election. But the political situation changed after that and the Congress Party lost majority support in seven states and opposition parties took control in several states. Political instability and defection became very common in some of these states. It was under these circumstances that the Governor who was an insignificant entity during the pre fourth general period rose into prominence and began to wield real power. He no longer was “a bird in golden cage” and the scope of his discretionary powers in the appointment of a Chief Minister was expanded.

The era of coalition politics brought to the surface two or three contenders who claimed the right to form the minister and in this situation, the Governor decided in his discretion as to whom to appoint the Chief Minister and invite to form the Government.

However, with the fifth general election political situation again changed in the States. The Congress Party again got hold in most of the states. Stable governments were installed once again and the Governors again became as powerless and insignificant in Indian politics as they were during the era of first general elections; But again after the sixth and seventh general elections, the dissolution of the state ministers through the Governor demonstrated that Governors being appointed on the recommendations of the Central Government, can use discretionary powers.

Till now thirteen Lok Sabha Elections have been held and last three general elections brought coalition governments or minority governments with outside support at the centre. In such situations the change in the government at the Centre saw the change in the Governors of the States. And the party at the Centre used the Governors to safeguard its interest at the state level. Thus, Governor is not an impartial observer of the Indian Politics. His situation largely depends upon the position of the party in power in the state and its equation with the party in power at the Centre.

Self-Check Exercise-I

Note : Compare your answers with the answers given at the end of this lesson.

1. Mention any two executive powers of the Governor.
2. What is Contingency fund of State?
3. Write the required qualifications to be appointed as Governor.

6.7 Chief Minister

The Constitution of India provides for the establishment of the Parliamentary form of Government at the state level also. The Governor is the constitutional head of the state, while the Council of Ministers with Chief Minister as its head is the real executive. Jammu and Kashmir is, of

course, an exception.. It has a separate constitution of its own. No other state of the Indian Union has this privilege. In the capacity of the real executive head, the Chief Minister exercises vast and real powers. As the leader of his State, the leader of the majority party, the head of the state Council of Ministers, the chief-advisor to the Governor and representative of the people of the state, the Chief Minister plays a leading and powerful role in the administration of the State. Article 163 of the Indian Constitution provides that there shall be a Council of Ministers, With the Chief Minister as its head, to aid and advise the Governor in the exercise of his functions except when he is required by the Constitution to act in his discretion. Thus, his position in the State political set-up is more or less similar to that of prime Minister of India.

6.8 Appointment of Chief Minister

Constitutionally and legally, the Chief Minister is appointed by the Governor. Article 164 of the Constitution states that the Chief Minister is to be appointed by the Governor and other ministers are to be appointed on the advice of the Chief Minister. The ministers including the Chief Minister hold office during the pleasure of the Governor. In accordance with the principle of parliamentary Government, the Chief Minister must be the leader of the party having majority in the Vidhan Sabha. In case a political party manages to secure clear majority in the Vidhan Sabha, its leader is invited by the Governor to form the Government. In case no party gets absolute majority in the Vidhan Sabha, then a coalition Government is formed. Two or more parties may form a coalition and then their chosen leader is invited by the Governor to form the Government. If no party gets clear majority and there is no change of formation of a coalition Government, the Governor may advise the President to impose President rule under Article 356. The Governor may dismiss a Chief Minister in case he forfeits the claim of being the leader of the party having majority in the ranks of the party having clear majority.

Our Constitution provides that if any minister or Chief Minister is not a member of the State legislative at the time of his appointment, he has to get himself elected to it within six months. The seemingly undemocratic provision was included in the Constitution by the founding fathers who said of entering the rough tumble of electoral politics. Almost during all the regimes, the Chief Ministerships were given to such persons who, at the time of their appointment, were not even the members of the Vidhan Parishads.

6.9 Powers and Functions of the Chief Minister

Constitutionally, the Chief Minister enjoys the following powers:

1. Formation of Council of Ministers :- The Chief Minister has the

power of forming a ministry of his choice. The Constitution gives him the legal right to select his ministers under Article 164(1).

The Chief Minister is free in the choice of his ministers, particularly in case of single party having majority in the Legislative Assembly. He can appoint any member or even a non-member as a minister and allocates him any portfolio.

However, there are some practical limitations. While selecting his minister there are various considerations which weigh with him. For example, he has to give a fair representation to the various religions or the districts of the state as well as to the various communities of the state. Similarly, one or two ministers have to be taken from the scheduled castes.

In case of coalition Government, the Chief Minister has to take ministers from the various constituent units. Mostly, the minister from the constituent units of the coalition are chosen by the respective parties and the Chief Minister simply takes them in the Ministry.

2. Distribution of Portfolios among the Ministers :- After the appointment of the ministers, the next important function of the Chief Minister is the distribution of departments among the colleagues. He decides who will be a Cabinet minister or a minister of state or a deputy minister. While doing so, he has to keep in mind the seniority and political status of his ministers. He has to select duly qualified persons for allocating such portfolios as Finance. Some of the portfolios are kept by him.

The Chief Minister has the privilege to reorganise the Council of Ministers whenever he desires. He has the right to change the members of his team in the interest of the smooth sailing of the state administration. He can call upon any minister to resign. He can get any minister dismissed by the Governor. The Chief Minister is the real maker, modifier and destroyer of the Council of Ministers.

3. Chairman of the Council of Ministers :- The Chief Minister prepares the agenda of the meeting of the Council of Minister, communicates it to the Ministers and then presides over the meeting of the Cabinet. He has the right to summon the meeting of the Cabinet at any time. Every decision of the State Cabinet bears the imprint of his ideas, views and perceptions. He can veto any decision by threatening to resign.

4. Link between the Governor and the Council of Ministers :- The CM is the link between the Governor and the Council of Ministers under Article 167 of the Constitution. It is his duty to communicate to the Governor all the decisions of the Council of Ministers, relating to the administration of the state and proposals for legislation. He is also required to submit for the consideration of the Council of Ministers, any matter on which an individual minister has taken a decision and the Governor wants it to be

placed before the entire Council of Ministers. Other ministers meet the Governor with the consent of the Chief Minister.

5. As Coordinator :- The Chief Minister has the responsibility of coordinating the work of various departments of the government. It is his duty to see that no department of the Government harms the functioning of the other departments. He has to ensure that all the departments of the government pull together as a team and lend helping hand to each other in the best interest of the State. He resolves the conflict or deadlock between the two or more departments. His decisions supersede the decisions of his ministers. In case a disagreement persists, the concerned minister has to quit the ministry.

6. Role as a Leader of the State Legislative Assembly :- The Chief Minister is the leader not only of his party but also of the Legislative Assembly. He acts as the spokesman of the government. It is his duty to support the members of his Cabinet on the floor of the House if they are being cornered by the opposition. He is the Chief defender of the policies of the Government.

7. Powers Regarding Appointments :- All the major appointments and promotions are made by the Governor on the advice of the Chief Minister. Other ministers have to depend upon the Chief Minister for the acceptance of their recommendation.

8. Power of Getting the State Legislature Dissolved :- The Chief Minister has the right to advise the Governor to dissolve the state legislative assembly, if he finds that the government cannot be carried on in accordance with the provisions of the Constitution or in case he is likely to lose the majority. Normally, such advice is given by the Chief Minister on the basis of political consideration. The advice is binding upon the Governor when the Chief Minister has a majority support. But in case of split in his party the Governor can try for alternative arrangement.

9. Role in Centre-State Relations :- As the real head of the state administration, it is chief responsibility of the Chief Minister to maintain good relations with the Centre. He has to use his position for securing central grants and help, considered vital for carrying out the development work in the State. A good equation with the Union Government, particularly with the Prime Minister, can be of great help for the state when he belongs to the same party which is in power at the Centre, he has to use his influence for securing the interest of the State. If he belongs to a party, which is not in power at the Centre, he has to act as good negotiator.

6.10 Position of the Chief Minister

The practical position of the Chief Minister depends upon the political

situation. Following are some situational factors which determine the actual position of the Chief Minister.

6.10.1 Chief Minister of the Single Majority Party in Power at the Centre

Chief Minister of the party in power at the Centre having comfortable majority behind him always remains in a very strong position as he finds his friends in Governor and Vidhan Sabha. He takes an oath of office as a result of the blessings of the High Command. Many times he is a man of the Prime Minister or some power Union-Minister. During these circumstances, the Chief Minister can exercise his power decisively and forcefully. The Governor is bound to accept his advice in almost all spheres. Partap Singh Kairon, Giani Zail Singh and Beant Singh, Ex-Chief Minister of Punjab may be mentioned in this category.

Moreover, if he is in good books of the Prime Minister then the latter plays very positive role in the selection of the Chief Minister as we find in the cases of Giani Zail Singh of Punjab and Mohan Lal Khadia of Rajasthan. In the Indian Political System, sometimes the Prime Minister deposes some of his or her trusted ministers to a state to work as the real head to the State Government as Mrs. Indira Gandhi did for S.S. Ray, P.C. Sethi and H.N. Bahuguna. Not only this, a Prime Minister like Mrs. Gandhi, while keeping in view the tugs and pulls of politics could ask her trusted lieutenants to quit and then clear the way for the coming of someone else. Even a non-Congressman, in case of Arjun Singh who was elected the leader of State Legislative of Madhya Pradesh. After his election he was installed as Governor of Punjab State, the office of Chief Minister was given to someone else. In case the Chief Minister is the head of his party then he will have a very strong hold in organisation. And he will be free in the formation of Council of Ministers as well as in the distribution of portfolios. Also, he will be influenced from any aspect regarding policy formulation. In such a situation, he may even show a very niggard behaviour towards the constitutional head of the State Government by disallowing him to hold even a very ordinary function like that of giving entertainment to the delegates of some academic conference. K.L. Rao has pointed out that there have been instances when the entertainment of the Raj Bhawans could be better only when the parties were arranged at the instance of the Chief Minister, but where the Governor did at his own, it was a poor show, the extreme depth being reached once when a Governor entertained the incumbents of an All India Body with only Potato Chips and a cup of tea, but probably that was solitary instance of the greatest niggardliness.¹ It is obvious that such a Chief Minister hardly bothers about the voice of the weak opposition that takes place in the chambers of Vidhan Sabha. He takes it for granted that the Assembly can not pass a vote of censure

against his government. The strict control of the whips is always there to throttle the voice of the party men having any degree of differences with official policy. Thus, it is neither the pleasure of the Governor nor that of the Assembly, but Prime Minister, who decides the fate of the Chief Minister. On account of this latent fact and state politics that the withdrawal of the pleasure of the Prime Minister amounts to the eventual exit of the Chief Minister. Partap Singh Kairon, a very strong Chief Minister of Punjab had to go in 1964 as Prime Minister Lal Bahadur Shastri took a very serious view of the structures passed against him by Das Commission.

6.10.2 Chief Minister of a Coalition Government.

The Chief Minister of a coalition Government is virtually a prisoner of the situation. He suffers of power weakness. The Chief Minister depends upon the pleasure support of various parties for the purpose of forming the ministry. So, he spends most of his time and energy in keeping the Front/coalition intact. Lack of political homogeneity in his Council of Ministers can be a source of weakness. Thus, the Chief Minister has nothing else more urgent than to see that there develop no cracks that eventually destroys his government. The Chief Minister of a coalition government has his natural opponents on all fronts, i.e., in the Governor, in the Council of Ministers, in the State legislature, and, above all, in the Union Government. The Government takes advantages of the fluid situation to make use of his discretionary powers. For example, while announcing his resignation the Punjab Chief Minister of coalition government, Gurnam Singh (1967) demanded the dissolution of the Assembly for seeking a fresh mandate. But the Governor, D.C. Pavate turned down the request of the outgoing Chief Minister to dissolve the assembly and reiterated his right to form an alternative government. It is clear from the above discussion that the Chief Minister of coalition Government is not free in the formation of the distribution of portfolios. Also, he is not free from influence in policy formation because he cannot ignore the common minimum programme.

6.10.3 Chief Minister of a Minority Government

The Chief Minister enjoys a very weak position as the head of a minority Government. Normally, the Chief Minister of Minority Government has to depend upon the external support of other party/parties. As head of the minority government, he will not be free in the formation of Council of Ministers and distribution of portfolios, because he cannot ignore that very party which supports it from outside. The Chief Minister functions

1. K.V. Rao, The Governor at Work, "The Journal of the Society for the Study of Government, Varanasi, Vol. I, No.3, p. 93.

according to the dictates of the party which is supporting him from outside. The power of the Chief Minister regarding policy formulation depends upon the direction of the supporting party. The minority Government of Lachman Singh Gill in Punjab was formed on Nov. 25, 1968 with the support of Congress High Command. This ministry collapsed due to the mistrust that had developed between the leaders of the Congress Legislature Party (Gian Singh Rarewala and the Chief Minister, Lachman Singh Gill) Mr. Gill tendered his resignation immediately when the Parliamentary Board of the Congress Party decided to withdraw its support to the Gill Ministry.

6.10.4 The Chief Minister of a Single Majority Party Not in Power at the Centre

In case another political party other than one to which the Chief Minister belongs is in power at the Centre, the position of the Chief Minister will not be so strong. He will find himself working under direct or indirect control pressure through the Governor of the state by virtue of latter's being nominee of the Centre. He gets his office by virtue of being the leader of the majority that leaves no other option in the hands of the Governor than to pick up him for the important post. He may, however, face the critical role of the Governor now and then and tackle it carefully to avoid the use of his discretionary power as the Governor, in most of the cases, must be expected to do anything great at the invisible behest of the masters sitting in New Delhi. The Chief Minister, however, has nothing to fear from the side of the Vidhan Sabha unless there are forceful dissident elements in his party to create problems for him. Such a situation may be studied in the case of the Akali Chief Minister, Parkash Singh Badal failed to do the same owing to the over riding control of Sant Fateh Singh in 1969-70 and inner dissension. encouraged by the group of a man like Tarlochan Singh Riasti. Again, Barnala Ministry (formed under the leadership of Surjit Singh Barnala in 1985) also victimized the inner dissension on the issue of police entry in Harmandir Sahib (Amritsar) on April 30, 1986. There after, Barnala ministry worked under the instructions of the Congress (ruling party at the Centre). The Congress party was supporting this ministry from outside.

Self-Check Exercise-II

Note : Match your answers with the answers given under No. 6.14 at the end of this lesson.

1. How a Chief Minister is appointed?
2. Is Chief Minister a nominal or Constitutional Head of the State?
3. Mention any four powers of the Chief Minister.

6.11 Conclusion

We can conclude that our country has adopted parliamentary form of Government. Under this system the CM of the State is a very important functionary. No other office in the State can match with this office. But in reality, the position of the Chief Minister depends upon the political situation. In coalition era of governance, situations may arise where Governor can act on his own. But normally, it is the Chief Minister who is the real chief executive and exercises all the powers given to the Governor by the Indian Constitution.

6.12 Keywords

Coalition	-	a method of forming government when no single political party gets clear cut majority then few parties get together on certain minimum acceptable agenda and form a government.
Prorogue	-	postponing or suspending the meeting of Legislative Assembly for some time.
Consolidated Fund of State	-	all revenues received for the State government are credited to a single fund known as consolidated fund of State, all the payments of the State government are made out of it but with the sanction of the State Legislature.
Contingency Fund of State	-	it is given to Governor who can make advances from it to the government to meet unforeseen expenditure.

6.13 Suggested Readings

Sharma M.P.	-	Theory and Practice of Public Administration
Maheshwari S.R.	-	State Government in India
Mahajan Chander Mohan	-	Elements of Public Administration
Puri K.K.	-	Indian Administration

6.14 Answers to Self-Check Exercises :

Exercise No. I

- 1) Executive powers of the Governor are mentioned at No. 6.4.1 - Executive functions and powers.
- 2) In your lesson at No. 6.4.3 - Financial Powers, point(ii), this term has been described. It is also described in the keywords (6.12)
- 3) A list of required qualifications for appointment as a Governor of any

Indian State have been at No. 6.2.1 of this chapter. Read it and then write your answer.

Exercise No. II

- 1) Procedure for the appointment of Chief Minister has been discussed at 6.8 in the present lesson. He is the leader of the majority party in the Assembly and is appointed by the Governor.
- 2) He is not a nominal or Constitutional Head but real chief executive of the State as all the powers are exercised by him with the help of his Council of Ministers.
- 3) The powers and functions of the Chief Minister have been discussed in detail in the lesson at under the same heading bearing No. 6.9. Read all these powers and functions carefully and describe any four of these in your own words.

CHIEF SECRETARY**Structure :**

- 7.0 Objectives**
- 7.1 Introduction**
- 7.2 Brief profile of organisation of a Department**
- 7.3 Organisation of Secretariat**
- 7.4 Chief Secretary**
- 7.5 Appointment of Chief Secretary**
- 7.6 Powers and Functions**
 - 7.6.1 Functions relating to General Administration**
 - 7.6.2 Functions relating to Personnel Administration**
 - 7.6.3 Functions relating to Co-ordination**
 - 7.6.4 Role as a Secretary to Cabinet**
 - 7.6.5 Functions regarding Development Planning**
- 7.7 Position in the State Administration Setup**
- 7.8 Conclusion**
- 7.9 Keywords**
- 7.10 Suggested Readings**
- 7.11 Answers to Self-Check Exercises**

7.0 Objectives

Thorough study of this lesson will enable you :

- to understand the organisation and functions of secretariat;
- to comprehend the procedure of appointment of chief Secretary;
- to describe the powers and functions of Chief Secretary.

7.1 Introduction

India being a 'Union of States' follows the uniform system of government both at the Centre and in the States. As the President is the Constitutional head at the Centre, so is the Governor at the State level. Though the entire administration is run in the name of the Governor, yet the Council of Ministers headed by the Chief Minister enjoys the real powers. The unique feature of Indian administration is that parliamentary form of government has been adopted both at the Centre and in the States. Under this system the Council of Ministers of both Centre and the States

are collectively responsible to their respective legislatures. At the State level, the Cabinet exercises control over the entire administration and its directives are put into operation. In order to run the administration efficiently, the activities of all the departments is the responsibility of the Cabinet or the Chief Minister.

Council of Ministers is a comprehensive body consisting of four categories of ministers viz., Cabinet Ministers, Ministers of State and the Deputy Minister and Parliamentary Secretaries. The Governor in consultation with the Chief Minister distributes portfolios among the ministers. Cabinet Minister heads one or more departments independently and is assisted by, Minister of State and Deputy Minister. Sometimes the Minister of State is also made independent incharge of any department. The political head of each department is the Minister whereas the permanent head is the secretary. The collective name given to the department is Secretariat. Since the Ministers are politicians hence have no technical knowledge about the department under them. So Secretaries are their Chief Advisor and have the responsibility to implement the policies and decisions of the government. These secretaries are not specialist but-generation belonging to I.A.S. cadre. Besides Secretary, there are other high level personnel like Deputy Secretary, Under Secretary, Asstt. Secretary. The low-level employees, include Section Officer Assistant, U.D.C., L.D.C., Stenographers and typists *etc.*

7.2 Brief Profile of Organisation of a Department

The number of Secretariat departments is not the same in all the States. It varies from 11 to 34. Most States have the following departments: (i) General Administration. (ii) Home (iii) Finance (iv) Revenue (v) Cooperation (vi) Education (vii) Excise and Taxation (viii) Food ,and Supplies (ix) Planning (x) Panchayati Raj (xi) Irrigation and Power (xii) Industries (xiii) Transport (xiv) Law (xv) Jails (xvi) Local Government (xvii) Public Works (Xviii) Health (xix) Personnel Administrative Reforms (xx) Public Relations.

The organisation of a department is alike at the Centre and the State level. The organization of a state level department can be discussed as follows:

(i) Political Head :- Each department is headed by a political head known as Minister. In bigger departments the Cabinet Minister is assisted by a Minister of State and Deputy Minister. Ministers are in no way the permanent political heads of their respective departments because they can be shifted to other departments also. The tenure of the ministers are uncertain as they continue-in office so long as they have the confidence of the house. The minister of each department has dual responsibility to perform, e.g., political and administrative. The political responsibilities of

the ministers are as follows:

- (i) to assist the Cabinet to determine policies;
- (ii) to determine the policies of the department in consultation with the permanent staff;
- (iii) to seek legislative approval for governmental policies and spending money;
- (iv) accountability to Legislative Assembly;
- (v) securing cooperation of administration to fulfil public needs; and
- (vi) to know public opinion regarding governmental policies.

The administrative responsibilities of the ministers are:

- (i) to ensure the proper implementation of governmental policies;
- (ii) keeping constant watch over the implementation of programmes and policies;
- (iii) helping to resolve difficulties, if any, in carrying out programmes and policies;
- (iv) to take necessary steps for clean and efficient administration in the ministry.

Normally, the Ministers do not perform these responsibilities with honesty. Thus, in the greater interest of the State, the Chief Minister should, induct such persons in his Council of Ministers who are fully competent to perform these responsibilities.

7.3 Organisation of Secretariat

In the organisation of each ministry, the secretariat occupies the important place. The Secretarial functions of different ministers or the administrative departments are discussed below:.

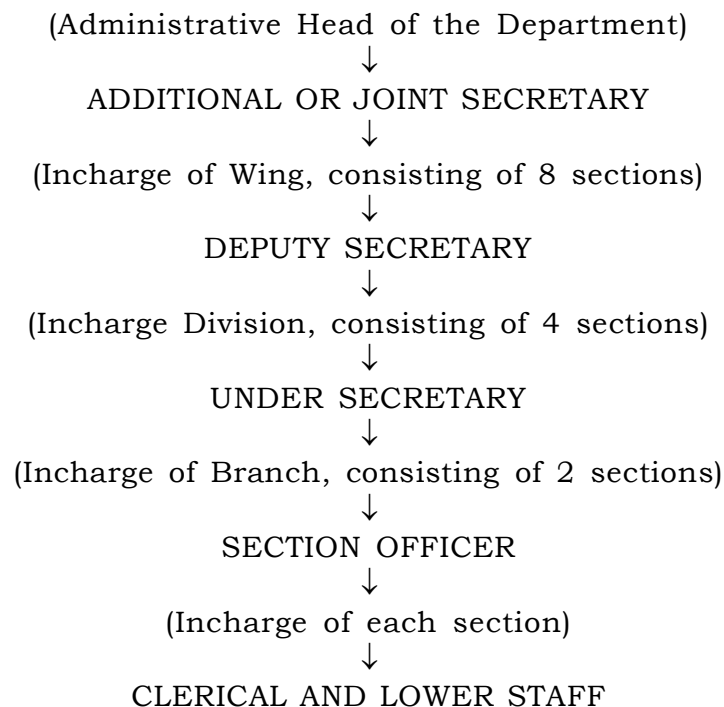
- (i) From time to time, to assist the minister in policy making and in modification, if need be.
- (ii) Framing rules and regulations.
- (iii) Budgeting and control of expenditure relating to the activities of the ministry or department.
- (iv) Securing administrative and financial approval for operational programmes and plans.
- (v) To supervise and control the execution of programmes and policies by the executive departments or semi-autonomous field establishments and to evaluate their results.
- (vi) To coordinate and interpret the policies of the government and to assist its other branches and to maintain contact with the administration.
- (vii) to initiate measures to develop more organisational and

personnel competence in the ministry or department and in executive agencies.

- (viii) To assist the minister in exercise of his legislative responsibilities.

The Secretariat organisation is composed of two categories of personnel Officer category and Subordinate category. In the former category comes the Secretary, the Deputy Secretary and the Under Secretary. In big departments, there are additional and Joint Secretaries also.

SECRETARY



As is evident from the above chart that the Secretary is at the top who provides leadership to the department and as such only important matters should be left for him. Ashok Chanda observed that a secretary has three fold function: he is the principal advisor of the minister in matters of policy and administration; he is responsible for the efficient and economic administration of his department and the attached office and other organisations which he controls and he represents his department before the Parliamentary Committee on Public Accounts to give an account of its financial administration.

The office of the Secretary is usually manned by the officers belonging to I.A.S. Cadre. The Secretary is responsible for the proper functioning of

the department under him and most of the files dealt with by the subordinate officials will pass through him to the minister. He supervises the work of officials in his department and can seek any information from them.

In big departments where the secretary becomes over burdened the post of Additional Secretary is created. In some departments he is placed incharge of a wing and as such performs the functions of a Joint Secretary. This is how the Additional Secretary reduces the burden of the Secretary, who in turn, can devote his time on important matters of the department.

Joint Secretary is the head of the wing of a department who performs many functions on behalf of the Secretary. However, the Secretary owns the responsibility of the whole department. The head of the division is known as Deputy Secretary, who works in relation to the work of the division. However, he works under the overall charge of the Secretary.

Secretariat division is further divided into branches and each branch is put under the Under Secretary, who is responsible for the dispatch of business and maintenance of the minor cases are dealt with by him.

After officer level personnel in a department, there are subordinate personnel in which section officer/superintendent, heads a section and occupies an important place. Below him there are assistants, clerks, stenographers, typists etc. It is the place where the action is initiated and sent to the higher officers for necessary action.

These officers are generally Class II Officers belonging to State Secretariat Service. Branch is under the charge of Superintendent who is responsible for its overall efficiency. He has to maintain discipline in his branch and ensure that employees are performing their job well. He is to see that all records are maintained properly and no work is lying pending. Secretariat organisation and its working have been subjected to much criticism. It is responsible for the delay in the work. The personnel of secretariat consider themselves to be superior to personnel working in the executive branches. So there is need to bring reforms in its organisation.

It is to be remembered that Secretariat departments differ from executive departments. In the words of Simon, "The Executive Department is an administrative unit, separate from the Secretariat, which reaches its apex usually in a single officer like the Inspector General of Police, Chief Conservator of Forests, outside the secretariat altogether. Such a head of department will usually be concerned principally with Single Secretary to Government and as Single Minister for his order and the funds which he has to spend." It is worth mentioning that all executive departments are not attached with the Secretariat departments. There are many Secretariat departments, which perform advisory and supervisory

work and as such no executive department sends its report to it. Finance and Law departments are some of the examples of such departments.

The executive department is headed by an expert in his field, whereas the secretary who controls his activities, is a generalist, who usually belongs to I.A.S. cadre. Normally, both these officers disagree on certain matters, and they try to encroach upon the field of others. There is no doubt that they have their definite jurisdictions, e.g., the function of the ministry is confined to policy making, whereas the department is responsible for its implementation. But still the minister interferes in the implementation process, which results into strained relations between the two, leading to inefficiency in the administration. Following are some of the principles, which help in their smooth relations.

Policy formation should be the responsibility of the Secretariat whereas the responsibility to implement the policies should vest in the department.

The head of the department should be fully empowered to supervise the activities of the staff under him.

On the basis of these principles, the main responsibilities of the Secretariat are as follows:

- (i) to formulate the general programmes of the Government;
- (ii) to prepare budget in consultation with the Finance Department;
- (iii) to supervise the appropriations to be included in the budget;
- (iv) to control the progress of programmes implemented by the government;
- (v) to make arrangement of the posting, salary and leave of personal heading department;
- (vi) to give final shape to all proposed legislative works;
- (vii) to nominate officers for their participation in the meeting convened by the Central or other State government.

Likewise the head of the department has the following responsibilities:

- (i) to prepare the initial draft of budget of his department;
- (ii) to work as technical expert on behalf of his department;
- (iii) to continue research and experience relating to his department and to bring reforms in its technical work;
- (iv) to impart education to the officers of the department relating to latest techniques of the administration;
- (v) to inspect the programmes of his department at the district level;
- (vi) to distribute funds to different branches of the department;
- (vii) to take disciplinary action against the subordinate staff of his department;
- (viii) to advise the minister regarding nominations in the outside agencies by the government.

The volume of work of the Secretariat is increasing day by day especially in a parliamentary form of government where the minister is responsible to Legislative Assembly for the efficient working of his department. The members of legislature have the right to ask questions to the minister relating to his department. The minister is under an obligation to answer the question to the satisfaction of the members. The centralization of work in the Secretariat has also led for the increase of its functions.

Self-Check Exercise-I

Note : Compare your answers with those given at the end of this lesson.

- 1) Who is the political head of the department?
- 2) Who is the administrative head of the department?
- 3) What do you mean by Cabinet?

7.4 Chief Secretary

Unlike the central government, the administration at the state level is carried out by the departments. Each department is headed by a political head known as minister, who is accountable to the state legislature for the working of his department. Likewise the permanent head of the administrative department is the secretary, who is invariably a senior officer of I.A.S. cadre. There are many departments in the state secretariat. Though each department is responsible for its efficient working yet to achieve this task is impossible without the coordinating effort by an officer known as Chief Secretary. In every state, the permanent administrative head of general administration is the Chief Secretary where as its political head is the Chief Minister. He being the head of all Secretaries is the pivot of the Secretariat. He is the Kingpin of the state administrative system.

Administrative Reforms Committee of Andhra Pradesh (1964-65) in its reports state: He is the Chief of the Civil Services and all government servants look to him to deal with all and every problem concerning their conditions of service and work. He serves as a link between ministers and the secretaries. He is the first civil servant of the state and serves as a bridge among administrative heads. He is also a channel of communication between the centre and the states. The office of the Chief Secretary is of such immense importance that it has been kept out of the purview of tenure system.

7.5 Appointment of Chief Secretary

In every state there is a Chief Secretary who is 'appointed by the Governor from among the I.A.S. officers. Normally, this post is held by the senior member of this cadre. Supporting this principle of seniority, the ARC recommended, "The Chief Secretary should ordinarily be the senior most person, due regard should be given to merit." This is true that in

most of the states the principle of seniority is followed, but sometimes this principle is violated. Until 1970s the incumbent was not necessarily the senior most civil servant in all the states. In U.P. and Punjab, Junior officers were made the Chief Secretaries in their respective states. It was in 1973 that the post of the Chief Secretary was equated with that of Secretary to the Government of India. Besides seniority, the overall service record, performance, and merit of the person is taken into account while appointing the Chief Secretary. Above all, the will of the Chief Minister of the State has the final say in the selection of the Chief Secretary. Thus, we can say that seniority, merit and previous record must be taken into account while making an appointment to this high office.

7.6 Powers and Functions

At the state level, the Chief Secretary has very wide powers. In fact, he performs all those functions which are performed by the Cabinet Secretary at the central level. Rajasthan Administrative Reforms Committee in 1968 observed, "By virtue of his unique position as head of the official machinery and advisor to the Council of Ministers, the Chief Secretary has an extremely important role to play in State Administration. Apart from attending to the works of the departments which are directly under him, he should be in a position to effectively coordinate the work of different secretariat departments and ensure that there is a certain degree of uniformity of policies adopted by the state government with respect to different departments." S.R. -Maheshwari enlists the following functions of the Chief Secretary :

- (i) He is the Principal Advisor to the Chief Minister.
- (ii) He is the Secretary to the Cabinet and as such prepares the agenda for the cabinet meetings and maintains the records and proceedings.
- (iii) He exercises general superintendence and control over the entire secretariat.
- (iv) He being the head of civil services has the authority to make postings, transfer etc.
- (v) He has control over the Central Record Branch, the Secretariat Library and the conservancy and watch and ward staff which serve all the departments of the secretariat.
- (vi) He looks after all other matters not falling within the responsibilities of other secretaries.
- (vii) During emergency he has a special role to play as coordinator.
- (viii) He has control over the staff attached to the ministers.
- (ix) As a head of all the Secretaries, he presides over different committees.

In the field of general administration, personnel administration, administrative reforms, coordination, planning etc., the Chief Secretary plays a significant role. The role of Chief Secretary is discussed below:

7.6.1 Functions relating to General Administration.

In almost all the states of the Indian Union, the chief secretary is the head of general administration department. The political head of this department is the Chief Minister. While the Chief Secretary is the head of the secretariat organisation of this department. He is further assisted by a number of senior officers viz. joint secretary, special secretary, deputy secretary and so on. This department looks after the following matters.

- (i) Establishment matters of all the secretarial department.
- (ii) Formulating rules of business of the government and office procedure to be followed by the government departments.
- (iii) Matters relating to state festivals.
- (iv) Matters relating to visit of dignitaries.
- (v) Honours and distinction of state officials.
- (vi) Death of high personages and condolence messages to be sent by the state government.
- (vii) Inter-state boundary disputes.
- (viii) Matters relating to pensions to freedom fighters and their dependents.
- (ix) Declaration of the state holidays.
- (x) Internal matters of the department such as financial, legislative and personnel matters.

The matters discussed above clearly reveal that this department is solely concerned with the entire administrative machinery of the state. It is true that the day to day functions of this department are performed by junior officers under the overall supervision of the Chief Secretary.

7.6.2 Functions relating to the Personnel Administration

In many states; the Chief Secretary also looks after the personnel department. With the dawn of a welfare state, its activities have not only increased but also have become complicated. In every state the Personnel department under the Chief Secretary is constituted. This department is responsible for matters relating to gazetted posts in the state. While dealing with the number of vacancies in All India Services and the State legal administrative Services, Chief Secretary plays a significant role. He also deals with matter concerning postings, transfers and promotions of certain level of posts relating to all India and State services. The Chief Secretary is also vested with the power to deal with matters to premature retirement of officers of certain level.

In certain areas of relationship between the state government and

State. Public Service Commission, the Chief Secretary has to play an important role.

- (i) There is no doubt that the chairman and members of State Public Service Commission are appointed by the Governor in consultation with the Chief Minister and his Cabinet, yet the proposal of these appointments is initially submitted by the Chief Secretary to the Chief Minister.
- (ii) The cases which do not require to be submitted to the commission, but if ever to be submitted that is to be routed by the Chief Secretary.
- (iii) Any other reference to be made to the Commission is done through the Chief Minister obtained through the Chief Secretary.
- (iv) In case of disagreement between the department and the commission, matter is placed before the Chief Minister through the Chief Secretary. Similarly, most of the correspondence between the departments and the Commission is routed through the Chief Secretary.

The Chief Secretary is also concerned with the conduct of rules and disciplinary matters: Such matters pertaining to All India Services and heads of departments are decided by the Chief Secretary. The disciplinary actions against the All India Services are routed through the Chief Secretary. Besides this, the Chief Secretary has the responsibility to write and or review the Annual confidential. Reports (ACR's) and performance appraisal of officers of All India. Services. Being the head of the personnel department the Chief Secretary has to ensure that all civil servants have fairly been given the chance of promotion.

7.6.3 Functions Relating to Coordination

Many departments have come into existence with the emergence of a . welfare state. The Chief Secretary has the sole responsibility to efficiently run the entire administration of the State. For this purpose he secures coordination of different departments. Similarly, he coordinates the administrative machinery with political executive. in the formulation of policy and its implementation. Chief Secretaries Conference is very useful because Chief Secretaries of different states exchange their views and discuss issues having common importance for various states. The Chief Secretary of each state is a member of any one of the five zonal councils, which are set up to promote inter-state cooperation and coordination. If ever there are inter-state disputes relating to state boundaries, water, irrigation, power etc., these are in the first instance settled at the Chief Secretary's level.

In every state, the secretariat has many administrative departments

and each department is responsible for the implementation of state policy. There is a need of coordination among different departments to pursue this objective. So, the Chief Secretary plays the role of Chief Coordinator. He works as Captain of the team of various administrative secretaries. He has control over the entire secretariat administration and is empowered to take necessary steps for the efficient working of the secretariat.

7.6.4 Role as a Secretary to Cabinet

The Chief Secretary also happens to be the Secretary to the Cabinet. In this respect, the Chief Secretary equates with the Cabinet Secretary at the union level. In the capacity of Cabinet Secretary, the Chief Secretary discharges the duties pertaining to Cabinet meeting. Being the ex-official Secretary to the Cabinet, he attends all meetings of the Cabinet and its sub committees. He records the proceedings of the meetings and the decisions of the Cabinet and forwards a copy of such record to the Chief Minister, each minister and the Governor also.

In the Cabinet meetings, the Chief Secretary takes active part in the policy making process. He also furnishes necessary information regarding state administration to the ministers. He plays a significant role in the formulation of various policies followed by its successful implementation. It is rightly said that the Chief Secretary is the ears and eyes 'of the Cabinet: .

7.6.5 Functions Regarding Development Planning

The socio-economic development in a developing country like India is not possible without the well designed plans. In India, Planning Commission acts as the nerve centre of national planning. The Planning Machinery at the state level is responsible for compiling the data and facts on the basis of which national plans are formulated and also prepares detailed proposals for the state plan for approval of Planning Commission and after its approval watches the implementation of plans through its administrative machinery.

In many states, the Chief Secretary also looks after the planning department. In some other cases, though this department is placed under a Secretary, yet the Chief Secretary plays a significant role in the working of the planning machinery especially being the secretary to the Cabinet. He is directly concerned with formulation of five year plans and annual plans, He has the sole responsibility for determination of plan strategy approval of plan document by the Cabinet; planning and development coordination committees; approval of preliminary memorandum of the five year plan by the Cabinet; discussions with the Planning Commission; preparation of the final annual plan of the state; and finally to ensure that the executive departments are fully equipped with men and material to

implement the plan effectively. Thus, a Chief Secretary is a person who leads the development activities of the state and thus helps in bringing about desired socio-economic change for the better.

Self-Check Exercise-II

Note: Answers for self-evaluation are given at No. 8.11.

- 1) Write any two functions of Chief Secretary.
- 2) Who is the principal advisor of Chief Minister?
- 3) Who is the secretary to the Cabinet at the State level governmental machinery?

7.7 Position of Chief Secretary in the State Administration

Chief Secretary occupies an important place in the state administration. He is the pivot of the permanent executive around which the administrative heads revolve. He is Chief formulator of government policies and the principle advisor to the Cabinet and especially the Chief Minister. He leads the state administration. When the State comes under President's rule, the Chief Secretary assumes the significant position. and he becomes the Principal Secretary to the Governor. The other officers of the state carry out the administration in consultation with the Chief Secretary. In fact, the real position of the Chief Secretary mainly depends on his individual personality. Person with the qualities of competence, honesty and dedication can enhance the importance of this office but the incompetent and irresponsible person can adversely affect the prestige of this office. To make the office of Chief Secretary more effective, the ARC. (Administrative Reforms Commission) in its final report recommended:

“The Chief Secretary should ordinarily be the senior-most person, due regard being paid to merit. He should have a minimum tenure of 3 to 4 years. He should be relieved of routine and non-essential work and here necessary be given appropriate staff assistance to enable him to ensure quick implementation of the Cabinet decisions and effective coordination in the policies and programmes of the state government.”

7.8 Conclusion

The foregoing discussion clearly reveals that under the organisation of a department, the secretary is the head of the Secretariat organisation and executive department is attached with him. Secretary is a person who is a general administrator, whereas the executive head is the specialist of his field. For the efficient working of the administration, both officers should work in coordination in their respective jurisdiction. But in practice the secretary always tries to establish his dominance over his counterpart, which is harmful for the department as well as the entire administrative set up. The Head of all civil servants at the State Secretariat is Chief

Secretary. He is normally the senior most among all the civil servants at the State level. He is responsible for general and personnel administration. Alongwith these charges, he also acts as principal advisor to Chief Minister.

7.9 Keywords

- | | | |
|---------------------|---|--|
| Political Head | - | Any department has two heads - political as well as administrative. Political Head is the Minister, who is elected directly by the people. |
| Administrative Head | - | Civil servant is the administrative head of the department. He is permanent and professional in his approach. He may be Deputy Secretary or Secretary etc. |
| Cabinet | - | It is a wheel within the Council of Ministers. Council of Ministers consist of four types of Ministers. Out of these four types - the senior most i.e. Cabinet Rank Ministers and Prime Minister form the Cabinet. |

7.10 Suggested Readings

- | | | |
|-----------------------------|---|--|
| Awasthi, Maheshari | : | <i>Indian Administration</i> |
| M.P. Sharma | : | <i>Theory and Practice of Public Administration</i> |
| Sahib Singh & Swinder Singh | : | <i>Theory and Practice of Public Administration.</i> |

7.11 Answers to Self-Check Exercises

Exercise No. I

- 1) Minister is the political head. For more details read study material given at 7.2.
- 2) Secretary is the administrative head of a department.
- 3) Answer in detail has been described at No. 7.9 - Keywords. Read it carefully and then write your answer.

Exercise-II

- 1) Various functions of Chief Secretary have been discussed at No. 7.6 (7.6.1 to 7.6.5).
- 2) Chief Secretary is the principal advisor of Chief Minister.
- 3) Chief Secretary acts as Secretary to the State Cabinet.

**STATE LEGISLATIVE ASSEMBLY :
COMPOSITION, POWERS AND POSITION**

Structure :

- 8.0 Objectives**
- 8.1 Introduction**
- 8.2 Legislative Council**
 - 8.2.1 Composition**
 - 8.2.2 Allocation of Seats**
 - 8.2.3 Qualifications and Term**
- 8.3 Functions and Powers**
- 8.4 Position of Legislative Council**
- 8.5 Utility of Legislative Council**
- 8.6 Vidhan Sabha or Legislative Assembly**
 - 8.6.1 Composition**
 - 8.6.2 Allocation of Seats**
 - 8.6.3 Qualifications and Term**
- 8.7 Functions and Powers**
- 8.8 Conclusion**
- 8.9 Keywords**
- 8.10 Suggested Readings**
- 8.11 Answers to Self-Check Exercises**

8.0 Objectives

The study of this lesson will enable you :

- to define the composition, powers and functions of Legislative Council;
- to analyse the position as well as utility of Legislative Council;
- to describe the composition, powers and functions of Vidhan Sabha.

8.1 Introduction

The Indian Constitution establishes a federal system with parliamentary form of government at the Union and State levels. As a result, the structure of the State Government is very much like that of the government at the centre. As we have the president in Parliament at the Centre, so we have the Governor in-legislature at the State level. In this direction an important point of difference should, however, be discovered is the fact that the State-Legislatures are weak as compared

Author : Dr. J.C. Johari

to the position of the Union Parliament and that they are bicameral in some and unicameral in some other states of the Indian Union. Every State has a Legislature Assembly called the Vidhan Sabha, While only five states (J & K, BIHAR, KARNATKA, MAHARASHTRA and UTTAR PRADESH) have the upper chamber as well. which is called the Legislative Council (Vidhan Parishad). Two important points should be mentioned at this stage. First the State Legislature means for all practical purposes the Legislative Assembly is the powerful chamber while the Legislative Council is just like an ornamental chamber with hardly any meaningful authority Second the state legislatures have a highly circumscribed area of independent authority that makes the subordinate to the over riding control of the Union Parliament.

8.2 Legislative Council or Vidhan Parishad

As pointed out above only five states of the Indian Union have upper chambers in their legislatures. It is provided that the total strength of the Vidhan Parishad must not be less than 40 and more than 1/3 of the total strength of the Vidhan-Sabha of the State. It lies within the legislative powers of the Parliament to create a Legislative Council or abolish it after a resolution to this effect is passed by the Vidhan Sabha of that state with an absolute majority as well as 2/3 majority of the members present and voting. It is obvious that the life of a Vidhan Parishad depends upon the will of the Vidhan Sabha having its concurrence with the will of the Parliament.

8.2.1 Composition :- The composition of the Vidhan Parishad is determined by the following formula that shows indirect election (leaving the case of some nominations made by the Governor) by means of proportional representation with a single transferable vote system in the following manner:

1. About 1/3 members are elected by the Vidhan Sabha from amongst persons who are not its members.
2. About 1/3 members are elected by the local bodies of the state like municipalities, District Boards, or any other authority specified by a law of Parliament.
3. About 1/12 members are elected by the persons of at least three years standing as teachers of educational institutions not lower in standard than that of a secondary school.
4. About 1/12 members are elected by the University Graduates of at least three years standing in the state.
5. About 1/6 members are nominated by the Governor from amongst persons, possessing special knowledge and experience in the fields of art, literature, science, co-operative movement, etc.

8.2.2 ALLOCATION OF SEATS IN LEGISLATIVE COUNCIL

STATE	Total	Election Nomination				
	By Leg. Seats Assembly	By Local. Bodies	Graduates	By Teachers	By Governor	
1. Andhra Pradesh	98	31	31	8	8	12
2. Bihar	96	34	34	8	6	12
3. Karnatka	63	21	21	6	6	9
4. Maharashtra	78	31	21	7	7	12
5. Uttar Pradesh	108	39	39	9	9	12

A look at the composition of the State legislature Council shows that their strength varies from State to State. Some important points should be borne in mind in this connection. First, the formula as given above applied in rough proportion to the allocation of seats in various categories. Thus, for example, the Legislative Assembly of U.p.. elects 39 out of its 108 member (that is 1/9 of its total membership. Similarly in Maharashtra, while the number of the members..elected by the Legislative Assembly is 31 (in a house of 78), it is 21 in the case of seats allotted to the Local Bodies. Second, the number of nominations to be made by the Governor should not exceed 12 in view of President's authority to make similar nominations to the Rajya Sabha that becomes equal to this figure. Last the nominations to the Legislative Council are made by the Governor on the advice of the Chief Minister.

8.2.3 Qualifications and Term :- According to the constitution, a member of the Vidhan Parishad must have three qualifications. First he must be a citizen of India, Second, he must be above 30 years of age. Last, he must have all other qualifications as laid down by a law of the Parliament. No person can be a member of two or more State Legislatures at the same time nor a member of two or more Legislatures including the Parliament at the same time. The term of a member is 6 years. That is its a continuing chamber and its 1/3 members retire every second year. They may, however, be re-elected.

8.3 Functions and Powers

The Legislative Council has not effective powers at all. It is all in theory that it looks like having some powers normally vested in an upper chamber of democratic Legislature. It has no power in regard to money matters. It is required that a money bill passed by the Vidhan Sabha must be adopted by it within a period for 14 days given to it. Thus, a money bill is referred to it just for the sake of apprising it of its provisions.

Though a non money bill can originate in either house of the State

Legislature, it is provided that a bill first passed by the Vidhan Sabha can be rejected by the Vidhan Parishad only once. In case (a) Vidhan Parishad returns the bill to the Vidhan Sabha with its recommendations (b) rejects the bill (c) more than three months pass it from the date it is laid before the Parishad and the Vidhan Sabha it passes it again with or without accommodating any of the recommendations of the Vidhan Parishad, it shall be taken, as passed by the State Legislature and sent to the Governor. Moreover, it is provided that the Vidhan Sabha for second time within a period of one month only in case the same bill is re-adopted by the lower chamber with or without its recommendations.

The Vidhan Parishad has no real control over the Ministry. The Council of Ministers head by the Chief Minister is collectively responsible to the Vidhan Sabha. The members of Vidhan Parishad may hardly do anything more than asking questions from the ministers or criticising them for certain acts of commission or omission. The constitution is not clear on this point whether a bill of constitutional amendment referred to the state for ratification by their legislatures shall include the Vidhan Parishad or not. In practice, it may be understood that the will of Vidhan Sabha has to prevail. In case, the Vidhan Parishad concurs with the view of the Vidhan Sabha, it is all right, in case it differs, the Sabha may pass it again and thereby ignore the voice of the Vidhan Parishad as it can do in case of non-money bill.

It is clear that the position of the Vidhan Parishad is pitifully powerless. Even in theory, it is no match to Rajya Sabha, that despite being the upper chamber to the union Legislature, has some effective powers. As a matter of fact the Vidhan Parishad is weaker even than the British House of Lords, in view of the following facts:

1. It cannot do anything else than making a delay of 14 days in case of money bill and of three months in case of non-money bill or of one month only in case of non-money bill is readopted by the Vidhan Sabha after its being returned to it with its recommendations.
2. The Constitution makes no arrangements for the holding of joint session of the State Legislature. Thus, while the Vidhan Sabha may over-ride the will of the Vidhan Parishad, the reverse is impossible. In other words, non money bill passed by the Vidhan Parishad may be rejected by the Vidhan Sabha.
3. The members of the Vidhan Parishad take no part in the election of the President, nor is it required that they should have a meaningful say in the ratification of a bill on constitutional amendment. It is, therefore, quite obvious that the Vidhan Parishad is devoid of any real power. There is not even pretence of equality

between the powers of the Council and Assembly, as there is between the Council of States and the House of the People.

8.4 Position

A pertinent question may be asked as to what after all, is the necessity of having an upper chamber in the state Legislature. Its answer may be found in the world of politics. So far the existence of the Vidhan Parishad has served the purpose of accommodating some ambitious political persons somehow in a dignified manner. The 'dark horses' or the powerful leaders manage to have their berth in the upper chambers. Thus instead of serving any useful purpose of bi-cameralism, as hopefully visualised by the Founding Fathers, it has served the unfortunate purpose of being a back door for the powerful men of the party in power. Even the creation or abolition of a second chamber has so far been a political decision. For example, the second chamber has not been created in the State of Madhya Pradesh in spite of the fact that it has been provided in the Seventeenth Constitutional Amendment Act of 1956. Likewise the Centre did not act upon the resolution passed by the Vidhan Sabha of erstwhile Bombay State now Maharashtra as early as in 1955 requesting for the abolition of the Vidhan Parishad, while it did the same in cases of resolutions passed by Vidhan Sabhas of West Bengal and Punjab in 1967. To take another leading example, we may say that the Union Government delayed the matter of passing a bill in regard to the abolition of the second chambers in the State of Bihar and Uttar Pradesh in spite of the fact that such a resolution has been passed by their Vidhan Sabhas till they are revoked by the popular chambers under the changed political circumstances.

As a matter of fact, the Vidhan Parishads have served the purpose of providing a ready made berth to an ambitious even though unpopular leader in the legislature of the States and thereby enabling him to hold the office of the Minister or Chief Minister. Men like C. Rajagopalachari in Madras, Morarji Desai in Bombay, G.B. Gupta in U.P. Giani Gurmukh Singh Musaffir in Punjab and B.P. Mandal in Bihar assumed office of the Chief Ministers by virtue of being a member of the Vidhan Parishad. What is really deplorable in this regard is that men like Desai managed to grab the post of Chief Minister after having been gracelessly defeated at the polls. As the upper chambers have been the favourites of the Congress Party, naturally they become hostile to non-Congress governments formed after the fourth general election of 1967 and it was for this sake that resolutions were passed by some of the Vidhan Sabhas for their abolition.

8.5 Utility of Legislative Council

A study of the Vidhan Parishad in theoretical as well as practical

perspective leaves an important impression on our mind. First, the fears of most of the members of the Constituent Assembly have proved true that these might only aid party bases to distribute more patronage, or be used as “a sort of an old pension device for the politicians”. It was frankly asserted that “those which find a place in these bodies and as such find an occasion rather, defend own special, sectarian or class interests than to help the popular cause. The controversy could come to an end only when Dr. B.R. Ambedkar, Chairman of the Drafting Committee, pleaded “All that we are doing by this Constitution is to introduce the Second Chamber purely as an experimental measure.”

Second, the issue relating to the abolition or creation of the Legislative Council in a state “is not left in the hands of that very state.” The matter is referred to the Parliament for a final action. It may be expected that the Parliament will generally act in accordance with the wishes expressed by the people of the state through proper constitutional channel; but it is not bound to be concerned. The courts have no power to issue a directive to the Parliament asking for the performance of this constitutional duty. The result of all this has been that the Vidhan Parishads have become ornamental chamber of the State Legislature. “Should they prove inoffensive, they might be retained. If not they can be abolished without much trouble.”

Self-Check Exercise-I

Note : Compare your answers with those given at the end of this lesson.

- 1) Write the required qualifications to be elected to Vidhan Parishad.
- 2) Punjab has two chambers. Yes / No
- 3) Write a note on the utility of having Legislative Council.

8.6 Vidhan Sabha

8.6.1 Composition :- Every state has a Legislative Assembly called the Vidhan Sabha consisting of not less than 60 and not more than 500 members directly elected by the voters of the State. It is required that seats are reserved for the Scheduled Castes and Scheduled Tribes except in the State of Assam, where special arrangements have been made. The Governor has been given the power to nominate some members of the Anglo-Indian community in case he finds that they are not adequately represented in the House. After each census, the total number of seats in each state and the division of the seats into territorial constituencies is readjusted by the prescribed manner. It is essential that the ratio between the population of each constituency and number of seats allotted to it must far as practicable, be the same throughout the state. The total number of seats in the Legislative Assemblies are determined by an act of the parliament.

8.6.2 ALLOCATIONS OF SEATS IN THE LEGISLATIVE ASSEMBLIES

	States	Seats	Nominations
1.	Andhra Pradesh	287	1
2.	Assam	114	- -
3.	Bihar	324	- -
4.	Gujarat	182	- -
5.	Haryana	90	- -
6.	Himachal Pradesh	68	- -
7.	Jammu Kashmir	76	- -
8.	Karnataka	216	2
9.	Kerala	133	1
10.	Madhya Pradesh	320	1
II.	Maharashtra	270	1
12.	Manipur	60	- -
13.	Meghalaya	60	- -
14.	Orissa	147	- -
15.	Punjab	117	- -
16.	Rajasthan	200	- -
17.	Sikkim	30	- -
18.	Tamil Nadu	234	- -
19.	Tripura .	60	- -
20.	Uttar Pradesh	425	- -
21-	West Bengal	294	2
22.	Goa	40	- -
23.	Arunachal Pradesh	70	- -
24.	Delhi	70	- -
25	Mizoram	70	- -

8.6.3 Qualifications and Term :- It is required that a member of the Vidhan Sabha must be a citizen of India; he must be above 25 years of age, and that he must fulfil every other qualification as laid down by Act of .Parliament. No person can be a member .of both the Houses of State Legislature, nor can he be a member of two State Legislatures, including the Parliament at one and the same time. The normal term of the Vidhan Sabha is five years. It may be dissolved by the Governor at any time. It stand suspended or dissolved at the text of the Presidential order promulgated under Art. 356 provides in the event of national emergency, the life of the Vidhan Sabha can be extended by an Act of the Parliament for any length of time, though it cannot exceed the duration of one year in

one instance. Fresh elections must take place at the most within six months of the termination of emergency.

8.7 Function and Powers

In a real sense, the legislative of a state means its Legislative Assembly that has the following important functions or powers:

1. It can make law on any subject provided in the State list, it can also make law on a subject of concurrent List in case it does not conflict with a law already made by the Parliament. .
2. It has control over the Council of Ministers. Its members may ask questions from the ministers, introduce resolution or motions and may pass a vote of no confidence to dismiss the government. The ministry is collectively responsible to the Vidhan Sabha. The defeat of the ministry in the Vidhan Sabha amounts to the passing of the vote of no-confidence against it.
3. It controls the finances of the state. A money bill can originate in the Vidhan Sabha and it is taken as passed by the Vidhan Parishad after a lapse of 14 days when a reference is made to it by the Assembly. It may pass or reject the demands or reduce their amount implying adoption or rejection of the budget and thereby victory or defeat of the government. Thus, no tax can be imposed or withdrawn or changed without the approval constitutional of the Vidhan Sabha.
4. It has constituent powers., vide Art 368 of the constitution. a bill of constitutional amendment, after it is passed by the parliament, shall be referred to the State for ratification. It is here that the Vidhan Sabha has its role to play. It has to give its verdict by passing a resolution by its simple majority showing approval of the Vidhan Sabha of the concerned State a bill desiring alteration in its boundary lines or reorganization in a way so as to increase or decrease its territory for eliciting its views in this regard before it recommends that such a bill be introduced in the Parliament.
5. The Vidhan Sabha has some other powers also that may be put as under:
 - (a) It elects its own Speaker and Deputy Speaker and may remove them by a vote of no-confidence.
 - (b) It takes part in the election of President of India.
 - (c) It considers reports submitted by various independent agencies like the State Public Service Commission, Auditor General and others.

Self-Check Exercise-II

Note : Compare your answers with the answers given at No. 8.11.

- 1) Mention the composition of Vidhan Sabha.
- 2) Write the powers of Vidhan Sabha.
- 3) Vidhan Sabha or Vidhan Parishad - which of the two is most powerful at the State level governmental machinery?

8.8 Conclusion

It is therefore, clear that Vidhan Sabha is the popular and powerful chamber of the State Legislature and it performs duties within its sphere. It looks more or less analogous to the Lok Sabha at least on a theoretical plan. Vidhan Parishad has less powers.

8.9 Keywords

Legislative Council	-	is also known as Vidhan Parishad or upper chamber at the State level. Punjab has no upper chamber. There is indirect election method to this chamber.
Legislative Assembly	-	It is also known as Vidhan Sabha. It is the lower chamber and most popular and powerful. There is direct election to this chamber i.e. members are elected by the people of the State through secret ballot.

8.10 Suggested Readings :

Basu Rumki	-	Introduction to Public Administration
Maheshwari S.R.	-	State Government in India
Gupta D.C.	-	Indian Government and Politics
Puri K.K.	-	Indian Administration
Jain R.B.	-	Public Administration in India
Pandey Jawahar	-	Constitution of India
Basu D.D.	-	Constitution of India

8.11 Answers to Self-Check Exercises :**Exercise No. I**

1. The answer to this question is given at No. 8.2.3 of the lesson.
2. No, Punjab has only one chamber i.e. Legislative Assembly. It does not have Legislative Council.
3. Read 8.5 given in the lesson very carefully and then write answer to this question.

Exercise-II

1. Study-material provided at 8.6.1 of this lesson will help you to write the answer to this question.
2. Similarly, 8.7 No. provides detailed account of powers and functions of Vidhan Sabha.
3. Vidhan Sabha is the most powerful chamber. For more details, read the material given at No. 8.7 in the lesson.

Supreme Court of India-Organisation, Powers and Position

- Structure**
- 9.0 Objectives**
- 9.1 Introduction**
- 9.2 Composition**
- 9.3 Procedure of appointment of Judges**
- 9.4 Qualifications**
- 9.5 Tenure of Office and Salaries**
 - 9.5.1 Tenure**
 - 9.5.2 Salaries**
 - 9.5.3 Ban on Practice after retirement**
- 9.6 Separate Establishment**
- 9.7 Powers of the Supreme Court**
 - 9.7.1 Original Powers**
 - 9.7.2 Appellate Powers**
 - 9.7.3 Advisory Jurisdiction**
 - 9.7.4 Power to Review its own decisions**
 - 9.7.5 Powers Regarding transference of Cases**
- 9.8 Court of Record**
- 9.9 Rules regarding decisions of Supreme Court**
- 9.10 Summary**
- 9.11 Key Words**
- 9.12 Suggested Readings**
- 9.13 Answers to the Self-Check Exercises**

9.0 Objectives

Thorough study of this lesson will enable you to :

- comprehend the composition of the Supreme Court;
- define the procedure of the appointment of the Judges and their qualifications and tenure of Office;
- describe its various powers.

9.1 Introduction

The renowned American Scholar, Rawle has observed, "It is indispensable that there should be a Judicial Department to ascertain and decide rights, to punish criminals, to administer justice and to protect the innocent from injury and usurpation of the Constitution, "Mr. Rawle's observation is very true because without an efficient judicial department, no Government can succeed in achieving its objectives and very truly in the absence of an organised judicial system despotism and not democratic order shall reign supreme, Lord Bryce has correctly said, "there is no better test of excellence of a Government than the efficiency of its judicial system. "That is why an organised judicial system has come to be regarded as one of the main pillars of a political system. In a federal setup, the need for the organisation of the judiciary is all the more essential.

According to Prof. Dicey, the three leading characteristics of a federal constitution are (i) the supremacy of the constitution, (ii) the distribution among bodies, with limited and co-ordinate authority, of the different powers of the Government and (iii) the authority of the courts to act as interpreter of constitution. The very fact of distribution of powers requires an independent agent to preserve that distribution and to adjudicate with regard to it. Such function can be entrusted only to a judicial body.

The Constitution of the United States has established two types of courts-namely the State courts and Federal courts. The federal judiciary consists of a hierarchy of three kinds of courts:- the District Courts at the bottom, the Circuit Courts of Appeals above them and the Supreme Courts at the top. But the constitution of India has not provided for a double system of courts as in the case of United States. Under the Indian Constitution there is a single integrated system of court for the Union and the States and the courts administer both Union and State laws. Article 124 of the constitution provides for a Supreme Court, there are High courts of various states and beneath them there is a hierarchy of Subordinate Courts. The Supreme Court is the highest court of India. After the enactment of the Abolition of Privy Council Jurisdiction Act, 1949, the Judicial Committee of the Privy Council ceased to have jurisdiction over the Indian courts. Under the Government of India Act, 1935, a Federal court was established in India. Before the inauguration of the India Republic on 26th January, 1950 and immediately after the abolition of the Jurisdiction of Privy Council, the Supreme Judicial Power in India was vested in Federal Court of the land finally gave place to the Supreme court constitution under the Constitution of free India and established on inauguration of the Indian Republic on 26th January 1950.

9.2 Composition of Supreme Court: Before the commencement of Indian Constitution, the Federal court, established under the Act. of 1935; had been working in India. Under the new Constitution it was laid down that the “Judges of the Federal Court holding office immediately before the commencement of this constitution shall, unless they have been elected otherwise become on such commencement the judges of the Supreme Court, “Art. 374 (I) Thus the Supreme Court was first constituted of a Chief Justice and seven Puisne Judges. Later through parliamentary legislation in 1956 the number of Puisne Judges was increased from seven to ten, again in 1960 from ten to thirteen and again in Dec. 17 to eighteen. and April 1986 the number of Judges was increased to 25. The most important feature of this increase was that for the first time a lady appointed as Judge of the Supreme Court. She was Meera Sabiba Fatima Beebi. Besides the Chief Justice of India, he has power, with previous approval of the President of India, to request a retired Judge of the Supreme Court to work for a temporary period. Similarly, the Chief Justice, with the previous consent of the President, may request High Court Judges otherwise qualified for Judgeship of Supreme Court, to act as adhoc judges. Although the minimum number of the judges of Supreme Court has not been prescribed in the Constitution yet the clear implication of Article 144 is that the court must consist of at least five judges while interpreting any constitutional matter.

9.3 Procedure of Appointment of the Judges :

With regard to the appointment of the Judges of the Supreme Court, it has been laid down in Article 124 (2) that “every judge of the Supreme court shall be appointed by the President by the warrant under his hand and seal after consultation with such Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose.” It means that the Chief Justice of India is appointed by the President after consultation with such Judges of the Supreme Court and of the High

Court in the state as the President may deem necessary for the purpose. But while appointing a Judge of the Supreme Court, the President is bound to consult the Chief Justice of India because it is very explicitly provided in Article 124 (2) "that in the case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted. In regard to the Chief Justice and the judges, there is one glaring lacuna in the constitution. Though it has been laid down that while appointing the Chief Justice the judges of the Supreme Court and High Court of States, the Chief Justice of India shall always be consulted, but nowhere it has been laid down whether the advice tendered by the Chief Justice of India or the Justice is binding on the President or not. The literal interpretation of Article 124 (2) gives an impression that the matter relating to the appointment of the judge of the Supreme Court relates to the discretionary authority of the President and the provision that he must consult such judges of the Supreme Court and the High Court in the State as he may deem necessary in the event of the selection for the post of the Chief Justice of India is of a recommendatory and not a mandatory character.

It may be noted here that while interpreting the provision regarding the advice of the Chief Justice in the appointment of judges, the Supreme Court gave its verdict on Oct. 6, 1993, in which the advice of the Chief Justice was declared to be primary.

Till 2nd of April, 1973, in regard to the appointment of the Chief Justice, the practice had been that the next senior most judge used to be appointed the next Chief Justice. But this practice was abandoned when Justice A.N. Ray was appointed the Chief Justice of India in supersession of three judges—Justices, Shelat, Hedge and Grover. This appointment raised a public discussion and some public leaders and lawyers charged the government with the infringement and violation of the independence of Judiciary in India. But the Government justified its action on the plea that Law Commission had recommended "the appointment to the office of the Chief Justice rests on special consideration, and does not as a matter of course go to the senior most judge. "On January 28th, 1977 Mr. Justice Mirza Hamidulla Beg was again appointed Chief Justice of India in supersession of Mr. Justice H.R. Khanna who was senior to Justice Beg. H.R. Gokhale, the then Union Law Minister said in a statement made on 28th January 1977 that the appointment of Mr. Justice Beg as Chief Justice of India was in keeping with the declared policy of the Government and was no reflection on Mr. Justice H.R. Khanna. Shri Gokhale said that Mr. Justice Khanna would have had only a short tenure of about five months as Chief Justice whereas Mr. Justice Beg would have a long period of about thirteen months. Mr. Gokhale further said that it was the Government's view that appointment to the high office of Chief Justice should not be made for such a short duration. As reported in the Tribune 29th January, 1977, Mr. Khanna submitted his resignation from Judgeship to the Supreme Court and that too without mentioning any reason for it.

9.4 Qualifications :

Under the U.S. Constitution, the President of United States can appoint any person as the Judge of Supreme Court if appointment is not objected to by the Senate. But our constitution has not left the power of appointment of the judges at the sole discretion of the Executive. Rather by prescribing the requisite qualification for a person to be appointed as a judge, it has, though to a limited extent, guarded against the predominance of political consideration in the matter of appointment of the judge of the Supreme Court. It has been laid down in Article 124 (3) that "a person shall not be qualified for appointment as a judge of the Supreme Court unless he is a citizen of India and (a) has been for at least five years a judge of high Court or of two or more such courts in succession or (b) has

been for at least ten years an advocate of a High Court or two or more such courts in succession, or (c) in the opinion of the President, a distinguished jurist.”

9.5 Tenure of the office and Salaries:

9.5.1 Tenure

No minimum age is prescribed for appointment as a judge of the Supreme Court, but in Article 124, it has been laid down that every judge shall hold office, until he attains the age of sixty five years. Before the attainment of the said age, a judge at his own accord may resign his office. Besides this, a judge can be removed from his office by an order of the President provided an address seeking the removal passed by both the Houses of Parliament, is presented to the President. Such an address should be supported by a majority of the total membership of each House and by majority of not less than two third of the members present and voting. The two Houses are required to pass such an address separately in the same session of Parliament. Hence, it may be pointed out that the judge of supreme Court of India hold their office during good behaviour and not during pleasure of the President as is the case with the members of civil and military services in India. It is clearly laid down in Article 124 (4) that the judge can be removed on the ground of proved misbehaviour or incapacity. This strict prescribed procedure for removal requiring parliamentary intervention ensures non-interference in the working of the court and assures to judges the security of their tenure. Here it may be added that the impeachment case against a judge of Supreme Court was introduced and discussed only once in the total history of Supreme Court in India. This was against Justice Rameswamy, who before becoming a judge of Supreme Court in 1989 was Chief Justice of Punjab and Haryana High Court. The impeachment case was discussed and debated on May 10 and 11, 1993 in Lok Sabha but it fell because of lack of required majority.

9.5.2 Salaries of Judges : The salaries of the judges in the Supreme Court are fixed by Constitution. In Article 125 (1), It is laid down that there shall be paid to Judges of the Supreme Court such salaries as are specified in the second schedule. Previously, the Chief Justice of India was paid a salary of Rs. 5000/- per month and each of other judges Rs. 4000/- per mensem. Besides this “every judge was entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time determined by law or made by Parliament,” Recently, the wages of judge have been increased by the Cabinet on July 31, 1986. At present, the Chief Justice of India is paid a salary of Rs. 10,000/- per mensem and each of the Judges Rs. 9000/- per mensem. Additionally after retirement, the Judges of supreme Court will now get pension Rs. 54,000 instead of Rs. 28000 per annum.

9.5.3 Ban on Practice after Retirement : Clause 7 of Article 124 clearly lays down that “no person who has held office as a judge of Supreme Court shall plead or act in any court or before any authority within the territory of India. “This provision goes a long way in ensuring the independence of the judiciary and maintaining the dignity of the judges of the highest court in India. But it may be pointed out that a retired judge of the Supreme Court may be appointed as chairman of some Commission. There is no constitutional bar to such appointment. For instance, Justice Shah, a former judge of the supreme court was appointed as one man Commission to look into excess committed during emergency. So many other similar commissions headed by the retired Judges of Supreme Court were appointed by the later governments.

9.6 Separate Establishment : The Supreme Court of India has got its own establishment. The officers and officials of the Court are appointed by the chief Justice in consultation with the Union Public Service Commission. The conditions of service of

its officers can be prescribed by the Parliament through enactment of law, and by rules which may be made by the Chief justice of India. The administrative expenses of the court including the salaries, allowances, and pensions of its officers are charged on the Consolidated Fund of India and thus, they are not votable in the Parliament. The Supreme Court sits in New Delhi in Supreme Court building. It can sit at any other place in the Country, fixed the Chief Justice of India with the prior approval to President.

Self-Check Exercise-I

Note: Compare your answers with the answers given at the end of this lesson.

1. Write the composition of the Supreme Court.

2. Mention the required qualifications to be appointed as Judge of the Supreme Court.

9.7 Powers of the Supreme Court : The jurisdiction of the Supreme Court is of three kinds (i) Original (ii) Appellate and (ii) Advisory.

10.7.1 Original Jurisdiction :of the Supreme Court is dealt in Article 131 of the Constitution. The functions of the Supreme Court under article 131 are purely of federal character and are confined to disputes between the Government of India and any of the State of Union, the Government of India & any state on one side any state of states on the other side, or between two or more states. In other words, we can say that the original jurisdiction of the Supreme Court extends to the disputes between different units of the Indian federation.

The original jurisdiction of the Supreme Court is exclusive which means that no other court in India has the power to entertain any dispute. It may be mentioned here that original jurisdiction of the Supreme Court in the aforementioned case is subject to the following qualifications and limitations:

- (i) The dispute must be one which involves any question on which the existence or extent of legal right depends. In simple words, the dispute should be legal in character and a political one.
- (ii) The original jurisdiction of the Supreme Court does not extend to a dispute arising out of any treaty agreement covenant, engagement or other similar instrument, which having been entered into or executed before the commencement of Constitution continue to be in operation after such commencement or which provides that said jurisdiction shall not extend to such a dispute.
- (iii) Article 262 the Constitution provides that the Parliament may by law exclude the jurisdiction of Supreme Court in disputes or complaints with respect to the use, distribution or control of the waters of any inter state river valley.

- (iv) According to provisions of Article 280 matters referred to the Finance Commission will be outside the jurisdiction of the Supreme Court.

Article 32 of the Constitution has guaranteed the right to move Supreme Court by appropriate proceeding for the enforcement of the rights conferred by Part III of the Constitution. It has been laid down that Supreme Court shall power to issue directions or writs for enforcement of any of the rights conferred by Part three of the Constitutional. The jurisdiction for the Supreme Court to entertain an application under Article 32 for the issue of a constitution writ for the enforcement of the fundamental rights, is sometimes viewed by the jurist as original Jurisdiction of Supreme Court. Undoubtedly the said jurisdiction may be original in the sense that the aggrieved party has to directly move the Supreme Court by presenting a petition instead of coming through a High Court by way of appeal. But this Jurisdiction has no analogy with the Jurisdiction laid under Article 131 because the disputes under Article 32 are not between the units of the Union but an aggrieved individual and the Government or any of its agencies. It may be recalled that 42nd constitution Amendment had ousted the jurisdiction of the supreme court to consider the constitutional validity of any State Law unless validity of any Central law was involved. It means that the state law contravening the fundamental rights of the Indian citizens could not be challenged directly in the Supreme court. By 43rd constitutional amendment, it has been deleted and thus once again the status quo has been restored. It menas that the Supreme court can now judge the constitutional validity of state laws too.

9.7.2 Appellate Jurisdiction :

The appellated jurisdiction of the supreme court cover the following four categories:

- (i) Cases involving a substantial question of law as to interpretation of the constitution (Art. 132)
- (ii) Civil Cases (Article 133).
- (iii) Criminal Cases (Article 134).
- (iv) Appellate jurisdiction by special leave of the Supreme Court against judgement, order etc of any court or tribunal in India (Act. 136).

i) **Appeals in Constitutional Matters :** The Supreme Court has appellate jurisdiction in all cases civil, criminal or others in which any matter in involving any question of interpretation of any provision of constitution arises. An appeal comes before the court either by virtue of a certificate given by the High Court stating that a question of law as to the interpretation of the constitution is involved, or on basis of any special leave of appeal granted by Supreme Court, in a case, where the High court refuses to give such a certificate. A High Supreme Court, before it grants a certificate, should be satisfied that the case involves a substantial question of law, raised in the case, relates to the interpretation of the constitution.

ii) **Appeal in Civil Cases :** A civil case relates to private rights connection with the enforcement of property interest, contractual obligation etc. With in the meaning of section 8 of the Code of Civil Procedure a Civil dispute involves a question of right to property, or an office. Appeals in civil cases lie to the Supreme Court from the judgement, decrees of final order of the various High Court. Prior to the adoption of 30 the constitutional amendment in 1972, the provision in Article 133 was that an appeal lay from any judgement, decree of finalorder of a bench if a High Court granted a certificate stating that (a) the valuation of the subject matter in disparte both in the court of first instance and in the appellate court was Rs. 20,000 or above (b) or the judgement, decree or final order of the court affected a claim in respect of a property of the value of Rs. 20,000 or more. In any case of lesser valuation an appeal lay only if the High Court concerned

granted certificate of fitness, that is a certificate stating that the case was a fit one for appeal in the Supreme Court. But those provision now stand amended by virtue of the constitution (Thirtieth Amendment) Act, 1972. The said amendment has substituted a new clause (I) of Article 133. The amended clause provides that a civil appeal should lie to the Supreme Court if the appropriate High Court certifies that it involves (i) a question of law of general importance and (ii) in its opinion the question needs to be decided by the Supreme Court. The 30th amendment has, thus given recognition to the importance of the those cases which involve substantial question of law and the amendment has, thus disregarded the valuation test for an appeal. It is correct also because valuation cannot prove to be the only responsible and logical yard-stick for a right to make appeal. Important question of law can arise even in suits of small value and to deny them the access to the highest court of land because of the meagre amount involved in them is to deny justice. In civil proceedings, appeals can also be filed in the supreme court under Article 136 by special leave of the court.

iii) **Appeal in Criminal Cases :** Prior to the commencement of present Constitution, there was no court of criminal appeal over the High Courts. it was only in a limited sphere that Privy Council used to entertain appeals in criminal cases, that too by special leave. article 134 of constitution has, for the first time, provided for an appeal to the Supreme Court for any judgement, or final order of sentence in a criminal proceeding of a High Court in two specified categories of case namely (a) where the High Court had reversed by an appeal the order of acquittal passed by the lower court and passed a sentence of death on the accused (b) where the High Court having with drawn a case form any subordinate court for its consideration has passed a death sentence upon the accused.

In these two categories of cases relating to a sentence of death by High Court, appeal lies to the Supreme Court as a matter of right. Besides these two categories, an appeal may lie to the Supreme Court in any criminal case if the High Court certifies that the case is a fit one for appeal to the Supreme court. Besides inthe cases of criminal appeal, the Parliament is empowered to make any law conferring on the Supreme Court further powers to bear appeal from criminal matters. As a consequence of fit in 1970 the Parliament passed the Supreme Court (enlargement of criminal appellate jurisdiction) Act. The said Act has enlarged the criminal appellate jurisdiction of the Supreme court and now appeal also lies in a case where High Court sets aside an order of acquittal of an accused person and sentences him to imprisonment for not less than ten years. The same holds goods even though a court has passed similar sentence in a case with drawn from the lower court for trial before itself.

iv) **Special Leave for Appeal :** Article 136 confers very wide discretionary powers on the Supreme Court in matter of granting special leave to appeal from any judgement. decree, determination, sentence or order in any case or matter passed or made by any court or tribunal in the territory of India. The only exception to these powers in regarding the judgement of any court of Tribunal constituted by or under any law relating to the Armed Forces. The powers given by Article 136 of the Constitution are in the nature of special or residuary powers which are exercisable outside the purview of ordinary law in cases where requirements of justice demand interference by the Supreme Court. However, the Supreme Court does not grant special leave to appeal unless there are some special reasons and circumstances warranting the exercise of an over-riding supervisory jurisdiction but it. Article 136 confers no right of appeal on any one, it provides merely for a discretionary power of the Supreme Court to grant special leave in grave cases of miscarriage of justice. Miscariage of justice might also be caused from failure to

adopt the procedure established by law. Besides appeals in civil, criminal and other matters against the judgements, decrees, determinations or sentence so the High Courts and other courts of law, Appeals by the special leave of the Supreme Court also lie against the decisions and awards of various administrative tribunals such as industrial and compensation tribunals etc.

9.7.3 Advisory Jurisdiction : Article 143 lays down that “if at any time it appears to the President that question of law fact has arisen or likely to arise which is of such nature and of such public importance that it is expedient to seek an opinion of the Supreme Court upon it, he may refer the question to court for consideration and the Court, may, after such hearing as it thinks fit, report to the President its opinion thereon.” It means that unlike the Supreme Court of the U.S.A, the British House of Lords and the Australian High Court our Supreme Court possesses an advisory jurisdiction. It may be mentioned here that certain State courts in the U.S.A. and the Canadian Supreme Court also possess advisory jurisdiction. Advisory jurisdiction means that any question of law can be referred to the Supreme Court of its opinion if the President considers that the question is of such a nature and of such public importance that it is expedient to obtain the opinion of Supreme Court. It differs from a regular adjudication before the Supreme Court in the sense that there is no litigation between two parties in such a case and the opinion given by the Supreme Court on such a reference is not binding upon the court itself and further that the opinion is not executable as a judgement of the Supreme Court. In other words, the authority conferred on the court in this regard is not the authority to hear any case of complaint referred to the Supreme Court in the formal manner, but the discretionary power of the Supreme Court to give its opinion on any question of public importance that may be referred to it by the President. Since the opinion given by the Supreme Court is not a judicial pronouncement, it is evident that the opinion is not binding upon the courts in India under Article 141 which says that the “law declared by the Supreme Court shall be binding on all the courts within the territory of India.” The opinion rendered by the Supreme Court is advisory and the Government may take it into consideration while taking any action in the matter but it is not bound to act in conformity with the opinion of the Supreme court.

9.7.4 Power to Review its own decisions : Article 137 of Indian Constitution lays down that subject to the provisions of any law made by Parliament, the Supreme Court shall have the power to review and revise the judgements pronounced or orders made by it. In *Bengal Immunity Co. Ltd. Vs. State of Bihar*, the Supreme Court observed “there is nothing in the Indian constitution which prevents the Supreme Court from departing from its previous decision, if it is convinced of its error and its baneful effect on the general interest of the public.” In the case of *West Bengal Vs Corporation of Calcutta* the Supreme Court observed that, “In constitutional matters which affect evolution of country’s policy it must readily correct itself than in the other branches of law as perpetration of mistake will be harmful to public interest. While continuity and consistency are conducive to smooth evolution of rule of law, hesitancy to set right deviations will retard its growth” It is thus evident that Article 141, which lays down that the law declared by the Supreme Court shall be binding on all courts within the territory of India, very obviously refers to the courts other than the Supreme Court.

9.7.5 Powers regarding transference of Cases : The 42nd Constitutional Amendment incorporated a New Article, 129-A, in the Constitution. The new article provides, “if, on an application made by the Attorney General of India, the Supreme Court is satisfied that case involving the same or substantially the same questions of law pending before it

and one or more High Courts and that such questions are substantial questions of general importance, the Supreme Court may withdraw the case pending before the High Court or the High Courts and dispose of all the cases itself.' The Supreme Court may, if it deems it expedient to do so for the ends of justice, transfer any case, appeal or other proceeding before any High Court to any other High courts. This power of transference of certain cases vested in the Supreme Court has enhanced its prestige and influence.

9.8 Court of Record : Article 29 of constitution says that "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." It means that it is a court which has power to fine and imprison a person for its contempt and its acts and proceeding are enrolled for perpetual memory and testimony. The records of such a court are preserved have evidentiary value and are conclusive evidence of that which is recorded in them.

9.9 Rules regarding decisions of the Supreme Court

Under Article 145 the Supreme Court has the power to make rules to regulate its own procedure. There is conflict between the legislative power of Parliament and the rules making power of the Supreme Court because any rule made by the Supreme Court would be put into operation only subject to the laws made by Parliament. As per rules laid down after hearing a case, the court pronounces the judgement in open court at once or on some further date fixed judgement after due notice to the parties. A judgement is arrived at by the majority of either the judges of the court and can be read by any of these judges. A judge disagreeing with the majority opinion can give his dissenting judgement.

Self -check ExerciseII

1. Write any two powers of Supreme Court.

9.10 Summary:

The Supreme Court of India is the guardian of Constitution because it is the final interpreter of it. Thus Court ensures that ordinary people are not deprived of their basic rights by onslaughts of executive or legislative despotism.

9.11 Key Words

Appeal-in law, an application for a rehearing of all or part of an issue that has already been dealt with by a lower court or tribunal. The outcome can be a new decision on all or part of the points raised or the previous decision may be upheld.

Advisory Jurisdiction-the authority to give advice. Transference-Moving a case from lower court to higher court.

9.12 SUGGESTED BOOKS

1. Constitution of India : Dr. M. J. Kagzi
2. Constitution of India : Dr. V. N. Shukla
3. Commentary on the Constitution of India Vol. I II III : D.D. Basu.
4. Constitution of India : Dr. A. C., Kapoor

9.13 Answers to self check exercises:

Exercise no. I

1. Answer to this question is given at no.10.2 of the lesson.
2. In this lesson study the point no. 10.4 thoroughly and then write your answer.

Exercise no. II

1. Various powers of the Supreme Court are given at number 9.7-9.7.1 upto 9.7.5 in the lesson .

HIGH COURT-ORGANISATION, POWERS AND POSITION**Structure**

- 10.0 Objectives**
- 10.1 Introduction**
- 10.2 High Court**
 - 10.2.1 Composition**
 - 10.2.2 Qualifications**
 - 10.2.3 Salaries and Allowances**
- 10.3 Powers and Jurisdiction of the High Court**
 - 10.3.1 Original Jurisdiction**
 - 10.3.2 Appellate Jurisdiction**
 - 10.3.3 Administrative Powers**
 - 10.3.4 Power of Appointment**
 - 10.3.5 Court of Record**
- 10.4 High Court's Judgements**
- 10.5 Subordinate Courts**
- 10.6 Criminal Courts**
- 10.7 Civil Courts**
- 10.8 Revenue Courts**
- 10.9 Independence of State Judiciary**
- 10.10 Suggestions for improvement**
- 10.11 Summary**
- 10.12 Key Words**
- 10.13 Suggested Readings**
- 10.14 Answers to self check exercises**

10.0 Objectives

After studying this lesson you will be able to :

- describe the composition of the High Court;
- analyse the qualifications of the Judges;
- comprehend the powers and jurisdiction of the High Court.

10.1 Introduction

Although the Indian Constitution set up a federal polity in India, yet it provides for the single unified and integrated Judicial system in country. We do not have a double set of courts, one for the centre and another for the units (states). There is only one system of Fundamental law and Justice in the whole country with the Union Supreme Courts at the apex of the judicial Organisation and the State High Courts just below it. The High Courts in the states are the third organ of the State Governments but in the Union Government, there is a good deal of uniformity and centralization. Granville Austin has observed, "The centralization of the judicial system is made clear not only by the single hierarchy of courts, there are no autonomous state courts in the American sense but the uniformity of law provided for by the legislative lists criminal laws and procedure law dealing with marriage divorce, succession and the transfer of property (other than

agricultural law), concurrent legislative list and therefore, subject legislation either by parliament or by state legislatures.”

Under the Indian constitution the organisation and the jurisdiction of the State High Court is a union subject. The judges of the High Court are appointed and can be transferred from one High Court to another throughout India by the President of India by the warrants under his seal. Of course, the chief Justice and the Governor or the concerned state advise the President in the appointment of judges. Again it is President alone who can dismiss a judge of High Court provided a special address of impeachment of passed by the Union Parliament. The Parliament alone can enlarge the Jurisdiction of the High Court Judges. The Supreme Court also possesses the power to hear appeal from High Court and the former has the final word in such cases of appeal. The ruling of the Supreme Court lay precedents which the High Courts and the other subordinate courts must follow.

The Supreme Court can also grant a special leave of appeal against a Judgement of the High Court, except Court Martial.

In having a unified system of Judiciary, Indian has followed the example of Canada, and to certain approximation, Australia. In Australia the High Court is at apex and it entertains appeals from the state courts. In Canada, there is the Supreme Court at the centre, with provincial court in the units. An advantage of the single Unified judicial system is that it is a simplified judicial system, and its working is not so complicated as that of dual system of courts like in U.S.A.

10.2 High Court

The Constitution of India provides for a High Court in each state. Vide the 7th Constitutional Amendment Act of 1956, the Parliament has been empowered to establish a common High Court for two or more states as well as for the Union Territory. At present the State of Punjab and Haryana have common High Court. Thus, the parliament can extend the jurisdictional area of High Court or exclude it from a Union Territory.

10.2.1 COMPOSITION OF THE HIGH COURT

Regarding the number of judges in a High Court no definite number is fixed. Article 216 (which does not apply to Jammu and Kashmir state) states, “Every High Court shall consist of a Chief Justice and such other judges as the President from time may deem it necessary to appoint. In order to meet temporary increase in the work load of the High Court on account of huge arrears, the President can also appoint qualified persons as additional judges for a period not exceeding two years, subject to maximum of 62 years of age, at which every judge of the High Court, including the Chief Justice, retires. The President may also appoint temporary Judge to fill vacancies caused by reason of absence of any other factor in the category of Parliament Judges. As the number of judges in High Court is not uniform. It varies from one High Court to another, i.e. the Assam High Court has 19 Judges, whereas the Allahabad High Court has 33 judges which is the largest High Court. The Strength of the Punjab and Haryana High Court is 17 permanent and 6 additional judges.

Article 217 (not applicable to J & K) deals with the appointment, retirement and removal of High Court Judges. A High Court Judge is appointed by the President of India by warrants under his hand and seal in consultation with the Chief Justice of India, the Chief Justice of the High Court concerned and the Governor (s) of the State (s) concerned. In doing so, we have followed the British pattern, as there the judge of the High Court are appointed by the Lord Chancellor who is a member of the cabinet. A High Court Judge may continue to be in office up to the age 62. The age of retirement was raised from 60 years to 62 on the

recommendation of the Law commission 1958, although it has recommended 65 to be age of retirement as in case of Supreme Court. This disparity in the age of retirement of the judges of Supreme Court in India is really not understandable while both the Categories of judges are found to be doing practically the same type of work.

10.2.2 Qualifications

Clause 2 of article 217 lays down the qualification of the person who can be deemed to be appointed as High Court Judges. As such a High Court Judge must be a (i) citizen of India, (ii) must have held a judicial office in the territory of India for ten years or have been advocate in a High Court or two more High Courts for the same period in succession.

As an explanation of this, is the rule that in counting the period during which a person has been an advocate, of a High Court, that, shall be included which he has held judicial office, after he become an an advocate.

10.2.3 Salaries and Allowances

Article 221 fixes, the salaries and allowances of high Court Judges, which they get from the consolidated fund of the state, the same can not be reduced to the disadvantage of incumbents. After the 54th amendment the salaries of the High Court Judges have been increased. Now the Chief Justice of a High Court gets Rs. 9,000/- P.M. Whereas other judges get Rs. 8,000/- per month. In case of Financial Emergency under Article 360, however, their salaries and allowances could be cut. A High Court Judge could be transferred from one High Court to another by the President in consultation with the Chief Justice of India. Under article 233, the President could also appoint a judge of High Court as an acting Chief Justice by reason of absence or inability of an exiting incumbent to perform the duties connected with the office. Article 224 provides for the appointment of additional and acting Judge in a High Court. Similarly under the same article (224) retired Judges could be appointed on the sitting bench of a High Court.

It may be pointed out here that article 223 and 224 do not apply to the state of Jammu and Kashmir.

Self-check Exercise-I

Note : Compare your answers with the answers given at the end of this lesson.

1. What is the composition of the High Court?

2. Write the qualifications for appointment as judges of the High Court.

10.3 JURISDICTION, POWER AND FUNCTIONS OF HIGH COURT

A High Court is the Highest court in the state. The Jurisdiction competence of the High Court remains the same as before the commencement of the present constitution. Actually the High Court had been functioning for nearly nine decades before 1950 and the founding fathers must have thought it superfluous to give details of the

same. As such article 223 keeps intact all the old powers and jurisdiction of the High Courts as before the commencement the constitution. We may deal with the power and functions of the High Court under the following heading :-

- (i) Original Jurisdiction
- (ii) Appellate Jurisdiction
- (iii) Power of superintendence of or Administrative powers.
- (iv) Power of appointment
- (v) Court of Record

We take up a brief discussion of the same, one by one.

10.3.1 Original Jurisdiction

(A) Writ Issuing power :

A High Court enjoys a concurrent Jurisdiction with the Supreme Court to issue five types of writs e.g. the writs of Habeas corpus, quo-warranto, Mandamus, Prohibition and Certiorari warranty. The writ area of the High Court Jurisdiction was redefined under 42nd Amendment of the Constitution by inserting clause 38 for Article 226. Clause 38 read as under, notwithstanding in article 31 but subject to provision of article 13 and article 226 every High Court shall have powers, throughout the territory in relations to which it exercise Jurisdiction, to issue any persons or authority including inappropriate places, any government within those territories, directions, orders or writs including writs in the Nature of Habeas corpus, Mandamus, Prohibition, quowarranto or certiorari or any or them : (a) for the enforcement of any the rights conferred or (b) for the redress of any of injury of a substantial nature by reason of the contravention or any enactment or ordinance or any order, rule regulation, by law or other instrument made there under or (c) for the redress of any other injury by reason of any illegality or any proceeding by or before any authority under any provision referred to sub clause (b) where such illegality has resulted in substantial failure of Justice.

Now with the passing of the 44 th constitution Amendment Bill by the Parliament in December 1977, this part of 42th amendment has been deleted and the status quo has been restored. Now again the High courts possess the power to issue all the five, types of writs as before

Earlier a High Court issue only within the areas of its own territorial jurisdiction and it was further maintained that the cause of action shall arise within the same area of jurisdiction. But 15th Amendment act, 1963 had widened the area of jurisdiction of the High Courts to issue even outside the area of its jurisdiction, including the Government of India, L.I.C. the custodian General of evacuee property, and the Election Commissioner central board for Revenue and Income Tax investigators Commission.

But the wide power of issuing writs is to be exercised in accordance with well established judicial principles when other normal remedies are not available. So the Court is executed not to interfere in the normal course of administration through units. This is to be used only when the High Court is convinced that no other remedy for enforcing Fundamental Rights and Justice was available to an applicant. invocation of writ is not a matter of right nor can be issued against a private person.

(b) High Courts Power to withdraw case to itself

Under Article 228 the High court also possess the original power to withdraw case to itself from a subordinate court if the case that is being tried in it involves a substantial question of law. In such a case the High Court may either decide the case itself or

determine the question of law in that case and then return it to the subordinate court with a copy, of its judgement. This give to High Court an exclusive power to interpret the constitution. No subordinate court or tribunal can do so. This ansures uniformity in matter of interpretation of the Constitution in case of Article 228, either a subordinate court or an individual can move the High Court.

(c) Trying Revenue Cases

Before the present constitution commenced the provincial High Court had no power to entertain and try revenue cases.

But under article 226 of present constitution, this restriction on the High Courts was removed and the High Courts were given the power to try Revenue cases. Under clause 37 of 42th amendment, it was provided that any restriction to which the exercise of original jurisdiction by High Court in Revenue matters was subjected immediately before the commencement of Constitution, shall no longer apply to the exercise of such jurisdiction. The 44th Amendment Bill removed this restriction and gave back to the High Court the power to hear revenue cases.

The High Courts have also a limited original jurisdiction in cases dealing with adultry, will, divorce and marriage laws, company laws and contempt against itself.

10.3.2 Appellate Jurisdiction

State High Court enjoy appellate jurisdiction in certain Civil Criminal cases. In Civil cases an appeal from a subordinate court can be taken to the the High Court, provided the value of the suit is Rs. 5000/- or more. In Criminal cases an appeal to the High Court againse a decision of the Session Court be made provided the subordinate court has sentenced an accused to 4 years, or more of punishment or sentenced his to death. In revenue cases an appeal lie before the High Courts against the decision to the Revenue Board. Similarly High Court can also hear appeals in case involving insolvency, succession patent, and design.

10.3.3 Power of Superintendence or Administrative Powers of High Court :

The High Court of a State enjoys the Power of superintendence over all courts and tribunal in the state. The High Court may (a) call for returns for such courts, (b) make and issue general rules and prescribe forms for regulating the practice and proceeding of courts (c) prescribe forms in which book entries and accounts shall be kept by such courts. The High Courts also have the power to settle the table of fees to be allowed to the Sheriff and all clerks and officers of such courts, and to attorneys advocates and pleaders precticising therein.

Under Article 227, the State High Courts also exercises power of judicial revision i.e. it has the power to see that subordinate courts had worked within the limits of their jurisdiction and acted in a legal manner. The power of the High Court to act in the matter is discritionary i.e. the High Court can interfere if an inferior court or tribunal acts beyond the limits of its jurisdiction, or if it has no jurisdiction at all and if it has encroached upon fundamental, rights, The High Court also exercise administrative control over the Transport Authorities under Moter Vehicle Act of 1930, Rent the Controller under the Rent control Acts and the Custodian of Evacuee property under the evacuee Property Act of the 1950, the High Court can issue a writ of certiorari, or otherwise question the order of these tribunals or bodies possessing semijudicial power, but it must be pointed out that this power of the High Courts under article 227 is supposed to be

used only in exceptional cases of flagrant abuse of elementary principles of justice and patent errors of law.

10.3.4 High Court's Power of Appointment

Article 229 (which does not apply to the state of J&K) dealing with High Court's power of appointing officers and servants of High Court lays down that appointment shall be made by the Chief Justice of the High Court or by such other officers or a judge of the court as he may deem fit provided that no such officers shall be appointed, except after consultation with the State Public Service Commission. Further it is laid down, that subject to the provision of any law made by the state legislature, conditions of service of officers and servants of the courts shall be such as may be prescribed by rules made by the chief justice of the High Court. It is further provided that the rules made under this clause relating to salaries, allowance, leave or pension, shall require the approval of the state governor. In article 229, clause (i) this power of appointment also includes the power to suspend and dismiss court officers and servants.

10.3.5 High Court as a Court of Record

The High Court is a Court of Record. Its judgements are considered to be case laws. Article 215 (which shall not apply to J&K) lays down, that every High Court shall be a court of record and shall have all the power of such a court including the power to punish for contempt of itself. But, if a High Court judge presides over an Industrial Tribunal, he shall not exercise such a power of contempt of court as the Tribunal does to constitute a High Court.

Contempt of Court is committed when (1) the court is scandalised (2) the parties concerned in a case are scandalised, abused, or (3) When any act is done or anything is published to bring the court or judge of a court into contempt or to lower its authority. Contempt of court may be committed by a lawyer, a witness, a party, a journalist or a Judge. When a litigant goes on committing contempt, may prejudice parties, litigants or their witnesses, besides lowering the prestige of the court in public.

In dealing with a case of contempt, the High Court lays down its own procedure. A person committing contempt outside the area of jurisdiction of a High Court can be punished by it provided he happens to be within its jurisdiction. A High Court has no power to arrest a person who is outside the area of its jurisdiction.

10.4 High Court's Judgements :

High Courts give their judgements openly, and these are binding. But the judgement of a single High Court Judge does not bind Division Courts. It is binding only on every other judge. In case of a disagreement between two division Courts of equal strength the question of law is referred to a fuller division Bench. The division of the fuller Division Bench is binding on all courts. When the former gives a decision it cannot entertain an appeal from another Division Court. The Supreme Court of India is the only court which can reverse or overrule the decision of High Court or Division Bench.

10.5 Subordinate-Courts

Articles 223 to 237 in Part VI of the constitution deal with subordinate Courts, which work under the State High Court. Majority of cases are actually decided by the subordinate courts. The appointment of the judges in these courts, their promotion, transfer and posting is done by the State Government in consultation with the state High

Court. Recruitment to the position of a district judge is made either promotion from judicial services of the State, or there may be direct recruitment from amongst the advocates and pleaders of not less than seven year standing on the recommendations of High Court. The appointment of judicial officers (other than the District judge), namely the Additional joint a Assistant Distract Judge) is made by the Governor according to rules made by him in consultation with the Public Service Commission and High Court of State.

The following three types of courts exist at the district level (I) Criminal court (II) civil courts and the (III) Revenue Courts.

10.6 Criminal courts : In every district there are Courts of Magistrate Class II and Class I Chief Judicial Magistrate. Magistrate II Class can award punishment up to one year imprisonment and fine for Rs. 1,000/- Magistrate Class I can sentence an accused upto 3 years, imprisonment and fine Rs. 5,000/- Chief Judicial Magistrate can award punishment upto seven years. Before 1973, there used to be court of Magistrate class III but by an amendment in the Code of Criminal Procedure in 1973 this court was abolished.

Session Court is the highest criminal court in district. Session judges hear a case involving murder or dacoity etc. He can also hear appeals against decisions of Magistrate class I and Judicial Magistrates. Session judges can also award death sentence, but this has got to be approved by the High court of the State.

10.7 Civil courts : Minor civil disputes are heard by the village panchayats. In cities there are small cases courts to hear minor civil disputes, involving a sum of Rs. 200/-. In addition there are class III, II and I Sub-judges at the district level who can hear cases of the value of Rs. 5,000/- Rs. 10,000/- and more than Rs. 10,000/- respectively. There is also a Senior sub-judge, who can hear appeals against the decision of subordinate civil courts. Then over and above them all is the District Judge. Normally, the District Judge, and the Sessions Judge is one and the same person. when he hears civil cases, he is known as the District Judge, and when he hears criminal cases he is called the Session Judge. He also hear appeals against judgement of the subordinate Judges. He also possess original jurisdiction in cases of divorce, insolvency, words etc.

10.8 Revenue Courts : The lowest court to hear Revenue cases is that of Tehsildar, the Revenue Assistant, then above him the Deputy Commissioner hears appeal in Revenue cases. Against his decisions the appeals lie with the Financial Commissioner, and then to Board of Revenue. The State High Court is the final authority in a State and hears appeals in revenue cases.

Self check Exercise No. II

1. Mention any four powers of the High Court

10.9 Independence of State-Judiciary

An independent judiciary is the corner- stone of the Rule of law and of a democratic system. This requires that the judges must be free, fearless and they must possess courage of giving independent judgement without favor or frown, being faithful to the oath that they on assuming office as judge.

A theoretical study of our Constitution reveals that adequate arrangements have been made to make the appointment on merit; he enjoys security to tenure; and as a judge cannot be removed unless a resolution to that effect is passed by the Parliament by special 2/3 majority. The salaries and allowances of the State Judges are charged on the Consolidated Funds of the State. They are not subject to vote in the State Legislature. Actions and decisions of the judges are immune from criticism. Even the parliament cannot discuss the conduct of the judges, unless a substantive motion of impeachment is moved in the House. The High Court has its own staff with its rules and regulations. A judge of court is barred from practising after retirement in the same. However, he can plead or practice in any other High Court or Supreme court.

But the study of the Indian constitution between the lines reveals that there are several loopholes, which tell upon the independence of state judiciary, and the efficiency of the whole judicial system. In reality, Chief Minister of the state is the real appointing authority to appoint a Chief Justice in a State High court. These appointment have in fact become political in nature. The Law Commission in its XIV Report of 1958 pointed out "Communalism, Regionalism and political patronage, in considerable measure, influenced appointment to the High Court judiciary. This is very well illustrated by the cases of suppression of the judges here and there. Similarly, the provision for the appointment of an Acting Chief Justice is too imischievous. In this case an ambitious person having the requisite qualifications may manage to be appointed as Acting Chief Justice and get his appointment relgularised, Morover, there is nothing in the constitution which may prevent a retired High Court Judge from taking job after laying down his office as a judge. the only bar is that a High Court Judge after retirement cannot plead before a court lower than the High Court. The provision is very unfortunate. So many High Court Judges have been appointed as governors, ministers, ambassadors, or chairman of some commission etc. after retirement. All this is the patronage which is their real function. Then we find that the salaries and allowances of High Court Judges were too considered inadequate to give them better economic security. Beforr 1947, the Chief Justice of Calcutta High Court got Rs. 6000 P.M. While the Chief Justice of Madras, Bombay, Patna, Lahore High Court got Rs. 5000 P.M. till as late as 1986 the Judges were paid only Rs. 5000/ and 4000/- (Chief Justice and other judges respectively). However, present salary of Justice of the High Court is Rs. nine thousand p.m. and that of other Judges is Rs. 8,000 P.M. This distracted men of eminence to take to Judgeship. Then they great faced great economic insecurity, after retirement. But at least this is not valid now. The judges also do not follow the good principle of isolation from public and political life even when they sit on the bench. Some time, the executive is found to indulge in overriding the verdict of a High Court by use of some discretionary power (as in the Nunavati case) or by bringing constitutional amendment (as in case of 25th amendment). The Executive is also some times found to be criticising the decisions of the court openly. This has a great impact on independence of judiciary. The political leader have also come out with a theory of a committed judiciary, meaning that the judges ought to be committed to the social and political philosophy of the party in power. The is very unfortunate and tells upon the indendence of Judiciary.

10.10 Suggestions to make the State Judiciary Truly Independent :

The following are suggestions the made out to make the State Judiciary truly independent:

- (a) A panel of distinguished jurists and legal experts be constituted, out of

- which the President should make the appointment.
- (b) Provision for appointment of Acting Chief justice or adhoc Judge should be abolished.
 - (c) Age of retirement of judges should be raised to 70 years.
 - (d) No further appointment of retired judges should be made.
 - (e) The Judges should be barred from practising before any court after retirement.
 - (f) Seniority rule in appointment and promotion of judges should be strictly followed.
 - (g) The judges must have enough moral force to discard material temptation and benefits.
 - (h) The judges must remain aloof from public or political contacts.
 - (i) Judges should be paid suitable pension after retirement so that they have sense of economic security.

If these suggestions are adopted, it is hoped that these would go a long way in preserving the independence of judiciary in our country.

10.11 Summary

In the present lesson we have discussed in detail the composition , powers and jurisdiction of the High Courts in India . We have adopted a single Constitution and single judicial system for the whole country i.e. Supreme Court at the top and so on. The courts play an important role in ensuring just and orderly functioning of the administrative and political machinery of the nation.

10.12 Key Words

Appeal-in law, an application for a rehearing of all or part of an issue that has already been dealt with by a lower court or tribunal.

Writ-in law, a document issued by a court requiring performance of certain actions.

10.13 Suggested Readings

1. The Constitution of India, Ministry of Law, Justice and Company affairs.
2. Gledhill Allon : The Republic of India
3. Gokhale, B. K. : The Constitution of India and its working
4. Johri, J. C. : Indian Government and politics.
5. Rao K. V. : The Parliament Democracy in India.
6. Gupta, D. C. : The Indian Government and Politics.
7. Jain, M. P. : The Indian Constitution of Law.
8. Bakshish Singh : Supreme Court of India as an Instrument of Social Justice.
9. Rajive Dhanan : Supreme Court and Sovereignty of the Parliament.
10. Kagzi, M. C. J. : The Constitution of India.
11. Seervai, H. M. : The Position of the Judiciary under the Constitution of India.
12. Sharam, M. P. : The Government of India Republic.

10.14 Answers to the self check exercises**Exercise No. I**

1. This is given in the Constitution under article 216 and in this lesson, it is discussed in detail in the section 10.2.1
2. The qualifications are discussed in the lesson in the section 10.2.2 and are in the constitution 's article no.217.

Exercise No. II

1. Various powers have been discussed in the lesson in the section no. 10.3--10.3.1 upto 10.3.5 and are also contained in the Constitution under the article 223.

Type Setting :

Department of Distance Education, Punjabi University, Patiala.
