



**B. A. PART - II
(Semester-III)**

POLITICAL SCIENCE

Indian Polity

UNIT NO. 2

**Department of Distance Education
Punjabi University, Patiala**

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LESSON No.

- 2.1 : Directive Principles of State Policy
- 2.2 : The Union Executive : The President
(Election, Powers and Position)
- 2.3 : Indian Parliament : Composition & Powers
- 2.4 : Union Council of Ministers
- 2.5 : Prime Minister
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DIRECTIVE PRINCIPLES OF STATE POLICY

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2.1.1 Aim of the lesson

The aim of the lesson is to tell the students about the purpose and sanctions of Directive Principles, their ideological classification, importance and critical evaluation, difference between Directive Principles and Fundamental Rights, and their implementation.

2.1.2 Introduction

The Directive Principles of State Policy are a unique feature of the Indian Constitution. These have been borrowed from the Irish Constitution. These principles are in the nature of directions, instructions or recommendations to the executive and legislative authorities in India. They are like moral precepts which the authorities in India are expected to observe. If the authorities do not observe these principles, the opposition in the legislature and the people outside would be doing something laudable by criticising the government for their non-observance. It is expected that the Supreme Court will keep these principles in view when interpreting the Constitution.

The Directive Principles are like a political manifesto for the guidance of all governments in India. They tell us of the hopes which the makers of the Indian Constitu-

tion have about the future of India.

2.1.3 Analysis of Directive Principles

The Directive Principles of State Policy covering from Articles 36 to 51 of Part-IV of the Constitution underline the philosophy of democratic socialism. They are as follows:

1. Art 38 says that State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may be possible “a social order in which justice, social, economic and political areas shall prevail in all the institutions of national life.

The 44th Constitution Amendment Act has inserted a new Directive Principle. The State shall strive to minimize the inequalities in the income and will endeavour to eliminate inequalities in facilities and opportunities not only amongst individuals but also amongst groups of People in different areas or engaged in different vocations.

2. The philosophy of democratic socialism as conceived by Nehru is contained in Art. 39. It say that the State shall in particular direct its policy towards securing

- (a) Adequate means of livelihood of all citizens.
- (b) Ownership and control of the Material resources of the community to be distributed as best to subserve the common good.
- (c) Operation of the economic system not resulting in the concentration of wealth and means of production to the common detriment.
- (d) Equal pay for work for men and women.
- (e) Health and strength of workers both men and women, and the tender age of children not be abused and citizens not forced by economic necessity to enter vocations unsuited to their age and strength.
- (f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and against moral and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Art. 39-A says that the State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or scheme or any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

3. Art 40 says that the State shall take steps to organise village panchayts and endow them with such powers and authority as may be necessary to enable

them to function as units of self government.

4. Art 41 says that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and public assistance in case of unemployment, old age, sickness and disablement, and in other cases of unreserved want.

5. Art 42 says that the State shall, make provisions for securing just and humane conditions of work and for maternity relief.

6. Art 43 says that the State shall, endeavour to secure to all workers a living wage, conditions of works ensuring standard of life and full enjoyment of leisure and social and culture opportunities and in particular, the State shall endeavour to promote cottage industries on individual or co-operative lines in rural areas.

Art 43-A says that the State shall take steps by suitable legislation or in any other way to secure the participation of workers in establishments or other organisations engaged in industry.

7. Art 44 says that the State shall, endeavour to secure for the citizens uniform civil code throughout the territory of India.

8. Art 45 says that within a period of ten years form the commencement of the Constitution the State shall endeavour to provide for free and compulsory education for all children upto the 14 years.

9. Art 46 says that the State shall, promote with special care the educational and economic interest of the weaker sections of the people and, in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

10. Art 47 says that the State shall, regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall strive to bring about prohibition of consumption, except for medicinal purpose, of intoxicating drinks and of drinks and of drugs which are injurious to health.

11. Art 48 says that the State shall, endeavour to organise agriculture and animal husbandry on modern scientific lines and shall in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and others milch and draught cattle.

Art 48-A says that the State shall, endeavour to protect and improve the environment and to safeguard the forest and wild life of the country, (added by the 42nd Amendment).

12. Art 49 says that it shall be the obligation of the State to protect every monument or place of artistic or historic interest form exploitation, disfigurement,

destruction, removal, disposal or export.

13. Art 50 says that the State shall, takes steps to separate judiciary from the executive in public services of the State.

14. Lastly, Art. 51 says that the State shall, endeavour to (a) promote international peace and security, (b) maintain just and honourable relations between nations, (c) foster respect for international law and treaty obligations in the dealings of organised people with one another, and (d) encourage settlement of international disputes by arbitration.

2.1.4 Ideological Classification of Directive Principles

The Constitution framers have not classified the Directive Principles on any ground. The principles of various shades of opinion are enumerated in the Articles dealing with these Directives. These directives, in fact, represent various ideologies. For the sake of convenience the principles may be ideologically classified into four different categories:

(i) Socialistic (ii) Gandhian (iii) Liberal (iv) Internationalistic.

(i) Socialistic Principles:

In the first place we may have the following principles that look like laying down the framework of the Socialist state:

- (1) Securing a social order for the promotion of welfare of the people [Article 38(1)].
- (2) Minimization of inequalities in income and the elimination of inequalities in status, facilities and opportunities amongst individuals and also amongst groups of people. [Article 38(2)].
- (3) Equal right to an adequate means of livelihood to all the citizens [Article 39(a)].
- (4) Ownership and control of material resources of the community and their distribution subserve the common good [Article 39 (b)].
- (5) Prevention of concentration of wealth and means of production to the common detriment [Article 39(c)].
- (6) Equal pay for equal work for men and women [Article 39(d)].
- (7) Protection of health and strength of workers from abuse forced by economic necessity [Article 39(e)]
- (8) Ensuring the development of children in a healthy manner and in conditions of freedom and dignity [Article 39(1)].
- (9) Protection of childhood .and youth against exploitation and against moral and material abandonment [Article 39(f)].
- (10) Provision of free legal aid to ensure that opportunities for securing justice are not denied to any citizen or other by reason of economic or other disabilities [Article 39a].

(11) Right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement [Article 41].

(12) Provision for just and humane conditions of work and maternity relief [Article 42],

(13) Securing a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure, social and cultural opportunities of workers [Article 43].

(14) Participation of workers in management of industrial undertakings and establishments [Article 43 A].

(15) Protection of the weaker sections of the people from social injustice and all forms of exploitation [Article 46].

(16) Prescribing of a primary duty of the state to raise the level of nutrition and the standard of living and to improve public health [Article 47].

(ii) Gandhian Principles:

(1) Organisation of village panchayats to function as units of self government [Article 40].

(2) Prohibition of the consumption of intoxicating drinks and of drugs which are injurious to health [Article 47].”

(3) Promotion of cottage industries on an individual or co-operative basis in rural areas [Article 43]

(4) Promotion of the educational and economic interests of the weaker section of the people including the scheduled castes and scheduled tribes [Article 56].

(5) Prohibition of slaughter of cows and calves and other milch cattle [Article 48].

(iii) Liberal Principles:

(1) Securing a uniform civil code for the citizens of India [Article 48].

(2) Provision for free and compulsory education for children until they complete the age of fourteen years [Article 45].

(3) Organisation of agriculture and animal husbandry on modern and scientific lines [Article 49].

(4) Protection of monuments and places and objects of artistic or historic interest [Article 49]

(5) Separation of executive from judiciary [Article 50].

(6) Protection and improvement of environment and safeguarding of forests and wild life [Article 48A].

(iv) Internationalistic Principles:

Promotion of international peace and security, maintaining just and honourable relations between nations, fostering respect for international law and treaty obligations and encour-

aging settlement of international disputes by arbitration [Article 51].

2.1.5 Criticism

The directive principles have been criticised on the grounds:

(1) *They are mere sops thrown to conciliate critics.* The Directive Principles of State Policy are not justiciable. This makes them useless to a great extent. The critics hold that the omission of these principles from other Constitution would have done no harm. The wisdom of some of these principles is open to serious doubt. It should be remembered that Directive Principles are not eternal and that they change from time to time. It is, therefore, not wise to include them in a Constitution. Their inclusion in our Constitution is meant to deceive the credulous masses. Most of these principles are neither practicable nor sound. For instance the Directive Principle which recommends introduction of prohibition is not an unmixed blessing. Introduction of prohibition will result in a great loss of revenue which we could usefully spend on works of public utility such as education. Prohibition, wherever introduced in India has proved a failure besides causing great loss of revenue. It has encouraged illicit distillation, corruption of officials concerned with its enforcement, and illegal trade. Addicts have taken to the use of more harmful drinks and drugs.

(2) *Self-imposed directions are meaningless.* They are meaningless as directions are given only to inferiors. In the second place it looks funny and meaningless that a sovereign nation should issue directions to itself. It would be understandable, if such

instructions are issued by a superior government to an inferior government, There is no certainty that these principles will be adhered to when times and conditions' have changed. The Directive Principles are more in the nature of political philosophy than practical politics. They are a more parade of high-sounding sentiments couched in vainglorious verbiage. They cannot give any real satisfaction to the people.

2.1.6 Utility

No matter what the critics say the Directive Principles are not altogether without utility.

(1) *They are fundamental in the governance of the country.* They are fundamental in the governance of the country; and it shall be the duty of the state to apply these principles in the making of laws. If the government makes a deliberate attempt to violate or even ignore them, the people are sure to resent it. If the legislators elected by the people do nothing to implement these directions, they can not expect the people to re-elect them as their representatives. A government which

closes its eyes towards these principles will do so at peril to itself. A responsible government surely cannot ignore them. Directive Principles create no legal rights and obligations but are mere pious declarations with no legal behind them, but no government can ignore them as they are fundamental in the governance of the country and the government have to answer for their disregard or violation before the electorate when the next general election comes.

(2) *They commit India to the principles of economic democracy.* The real reason and justification for the inclusion of the Directive Principles is that our Constitution-makers fore-saw the changing fortunes of party governments. They feared that a government might come in power in India or in any State which might feel tempted to impose its own economic views which might run counter to the principles of economic democracy to which India stands committed and on which the Indian Constitution is based and founded. Whichever party comes in power it has to show regard and consideration to these principles.

(3) *These are general instructions for the guidance of all state authorities.* The Directive Principles are in the nature of general instructions or recommendations addressed to all authorities of the Union and they seek to remind them of the basic principles of the 'new social and economic order which the new Constitution of India aims at building. These axioms of state policy have served as beacon-lights to our courts. For instance, restrictions imposed by law on the freedom of citizens are considered reasonable by the courts only if they are imposed in accordance with the Directive Principles. Thus, the Directive Principles not only influence all state authorities in the legislative and executive spheres but they also serve as a guide to the courts.

(4) *They amplify the Preamble of the Constitution.* The Directive Principles serve another purpose also. They are an amplification of the Preamble of the Indian Constitution which basis the authority of the Constitution of India on the solemn resolve of the people of India to secure to all the citizens justice in social, economic and political fields, liberty in all spheres equality of status and opportunity, and the promotion amongst them all of fraternity assuring the dignity of the individual and the unity of the nation.

(5) *They are as useful as were the Instruments of Instructions under the Act of 1935.* These Directive Principles are not something very new to India. Under the Act of 1935, the Crown used to issue Instruments of Instructions to the Governor-General and the provincial Governors which they were expected to follow when working the Act of 1935. These instructions had no legal force but they were generally followed. They proved quite useful. In a like manner the 'Directive Principles' con-

tained in the Indian Constitution have a value of their own. It is not just to sneer at them.

2.1.7 Implementation of Directive Principles

The Directive Principles are thus not to remain in the Constitution as mere platitudes but have to be implemented to create a new Social Order or the Socialistic Pattern of Society in accordance with these principles. It will be amply clear from the following paragraphs, to what extent have these been implemented. Thus, they are not just pious wishes.

(1) *Emergence of the Public Sector:* There has taken place a considerable increase in the Public Sector. The State has been vested with the ownership and control of the material resources of the community. The great multi-purpose river valley projects such as the Bhakra- Nangal, Damodar Valley and Hirakund, Iron and Steel producing concerns such as Bhilai, Rourkela and Durgapur Ship-building centres like Vizag and other concerns such as Sindri Fertilisers, Hindustan Machine Tools, Chittarajan Locomotives, Hindustan Aircrafts which have greatly contributed to the economic development of India are owned and managed by the state.

(2) *Agrarian Reforms:* India is an agrarian country. Ever since the introduction of the Permanent Settlement, land mostly belonged to a few zamindars while the actual tillers of the soil remained poor and miserable as they had to pay high rents. They were also exploited by the intermediaries in other ways. These intermediaries have been abolished and the tillers have now to do directly with the State. In many states steps have also been taken to improve the conditions of the cultivator with regards to security of tenure, fair rents, etc. With a view to prevent concentration of land-holdings in the hands of the actual tillers even ceiling has been fixed as a result of which the maximum area of land which an individual owner may hold has been fixed. The agrarian reforms have been introduced to ensure that the ownership and control of the material resources, of the community are so distributed as best to subserve the common good. The Government has abolished the old institution of Zamindari.

(3) *Promotion of Cottage Industries.* Cottage Industries are a State-subject. The Union Government has, however, set up a number of Boards to assist the States in the matter of finance and marketing, etc. The more important of these boards are All-India Khadi and Village Industries Board; All India Handicrafts Boards; All-India Handloom Board; Small Scale Industries Board; and Silk Board. The National Small Industries Corporation and Khadi and Village Industries Commission have been set up and are doing useful work.

(4) *Organisation of Village Panchayats.* Village Panchayats have been organised in

all the states and endowed with powers of self-government, on a uniform pattern under the 73rd Amendment Act. These bodies deal with such matters as medical relief, maintenance of village roads, streets, tanks and wells and provision of primary education, sanitation and the like. They also exercise judicial functions both civil and criminal. They can try cases of the value of rupees 200 or less and try minor offences punishable with small fines.

By now practically all the five lac villages have their own panchayats which form the primary units of administration.

(5) *Raising of Standard of Living of people.* In order to raise the standard of living particularly of the rural population, the Union Government launched the Community Development Programme in 1952. The actual responsibility for the execution of this programme is on the shoulders of the State Governments. This programme seeks to transform rural economy particularly by the re-organisation of agriculture and animal husbandry on scientific lines. It also aims at providing better communications, better housing, improved sanitation and wider education, both general and technical.

(6) Many states have also passed laws to prohibit slaughter of cows, calves and other milch and draught-cattle.

(7) *Prohibition of intoxicating Drinks and Drugs.* Shortly after the adoption of the new Constitution a vigorous policy of prohibition was launched and by now a number of states have gone completely dry and the other states are also taking steps in the same direction. It is calculated that by 1957 the area under prohibition was over 32 % of the total area of the country. The Prohibition Enquiry Committee set up by the Planning Commission has drawn up a comprehensive Scheme to carry out the work of prohibition

more effectively, and severe restrictions have been imposed on the production and consumption of intoxicating goods.

(8) *Separation of the Executive from the Judiciary.* A Directive recommends the separation of the executive from the judiciary. The Criminal Procedure Amendment Act of 1973 has gone a long way in realising the aim of separating judiciary from the executive.

(9) *Free and Compulsory Primary Education.* The different states have taken big steps in the direction of free and compulsory Primary Education. The Directive had laid down that the goal was to be reached within 10 years. This has not been possible as the period was too short for such a gigantic task. It may take another decade to implement the Directive fully. Now Art. 21A has been inserted by the 86th Amendment Act of 2002, that the State shall provide free and compulsory education

to all children from 6 to 14 years of age in such a manner as determined by law.” Thus, it has been made a Fundamental Right.

(10) *Promotion of economic and educational interests or backward people.* The state has taken a number of steps to advance the educational and economic interests of the weaker sections of society especially the Scheduled Castes and Tribes. More and more cottage and small-scale industries have been set up to improve the economic conditions of these people. They are given liberal aid to enable them to rise higher and become economically secure.

(11) *Uniform Civil Code.* To introduce a uniform civil code in India is a very uphill task as the followers of the different faiths have their own separate laws. The enactment of the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956 are steps leading to adoption of a uniform civil code for the entire country.

(12) *Promotion of International understanding.* India has made sustained efforts towards the promotion of international understanding and peace and her contribution in this direction is recognised and praised by almost all nations. India has refrained from war in spite of provocation from Pakistan. She desires a peaceful settlement of the Indo-China border dispute.

Besides the Directive Principles contained in part IV of the Constitution there are a few others which are also to be implemented. These are: (1) Every State and every local authority within it are enjoined by Article 350 A to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. (2) Article 351 enjoins the Union to promote the spread of Hindi Language and so to develop it that it can serve as a medium of expression of all the elements of the composite culture of India (3) Article 335 enjoins that the claims of the members of the Scheduled Castes and Tribes are taken into consideration consistent with the maintenance of efficiency of administration in the making of appointments to services and posts under the Union and State Governments.

2.1.8 Directive Principles and Fundamental Rights Distinguished:

(1) The Directive Principles of State Policy given in the Indian Constitution are of wider significance than the Fundamental Rights. The Fundamental Rights in reality seek to place some restrictions on state authority and instruct it to refrain from doing certain things. The Directive Principles are positive directions to the government to do certain things.

(2) The Directive Principles are non-justiciable but the fundamental rights are justiciable. The fundamental rights can be enforced by the courts. The Directive Principles contain only directions and were purposely excluded from the purview of

the courts. If the governmental authorities at any level do not take any or sufficient interest in promoting or realising these principles the courts of law are not competent to take any action for their enforcement.

(3) The courts can not declare any law void on the ground that it contravenes some Directive Principles of State Policy if the law is otherwise valid. But if there is a conflict between a Fundamental Rights and a Directive Principles, the fundamental right shall prevail in the courts. The Directive Principles of State Policy have to conform to Fundamental Rights. The state can, however act in accordance with the Directive Principles, provided they do not come in conflict with Fundamental Rights.

(4) The Directive Principles are like the Instruments of Instructions which were issued to the Governor-General and to the Governors of the Provinces in British India by the British Government under the Government of India Act, 1935. What are called Directive Principles is merely another name for Instruments of Instructions. The only difference is that they are instructions to the legislature and the executive. Whenever there is a grant of powers in general terms for peace, order and government, it is necessary that it should be accompanied by instructions regulating its exercise.

2.1.9 Conclusion:

There is no doubt that the Directives contained in Article 36 to 51 of Indian Constitution are of perennial value and because of it they will never go out of date. But it is very much certain that so long as they remain non-justiciable and lack legal sanction behind them they shall not serve the desired purpose. During the period of last fifty five years some of the Directives have not only been implemented but also they have been evidently violated. It will continue to be so, until they are made justiciable and they are armed with legal sanction. If it is not done, the relevance of the Directive Principles shall not bear any useful practical fruit. In that case it will not be surprising if the nonjusticiable Directive Principles are considered not only useless but also irrelevant.

As a matter of principle, the relevance of the Directive Principles cannot be doubted since the provisions contained in these Directives are very much in the interest of Indian people. The Directive Principles provide a blueprint of welfare state and thus their relevance and utility cannot be questioned. But if they are not to be implemented and if they are to serve only as “decorative pieces” of the Indian Constitution, they will not remain relevant any longer. Their contents are very much relevant because they are of ever-lasting value, but their non justiciable character and lack of legal sanction make them even irrelevant. In order to make them practically relevant, imparting to them the justiciable character and coercive legal sanction is very essential.

2.1.10 Self Check Exercise

- (1) Directive Principles of State Policy are contained in Part.....of the Constitution and consists of.....Articles from Article.....to.....
- (2) These are.....to the legislature and the executive.
- (3) They are not.....,there is no.....behind them.
- (4) They are mere.....and.....sanctions.
- (5)Constitution of.....was the source of inspiration.
- (6)said, "these are like a cheque payable by bank, at its convenience.
- (7) Panchayati Raj has been established under Article..... in Directive Principles

Answers: (1) IV, 16,36,51, (2) instructions (3) justiciable, legal sanction (4) moral, political (5) Irish, 1937 (6) KT Shah:(7) 40

Suggested Questions

1. Describe the various Directive Principles of State Policy enumerated in the Constitution of India.
2. Examine briefly the importance of Directive Principles of State Policy. What steps have been taken for their implementation.

Short answer questions

1. Name two Directive Principles which are related to the welfare of the children.
2. Name two Directive Principles related to the welfare of women?
3. Are the Directive Principles justiciable?
4. What is the meaning of Directive Principles of State Policy?
5. What is the sanction behind Directive Principles?

Self-Exercise Questions**Descriptive Questions**

1. Write briefly fundamental right in Indian Constitution.
2. Write a note on causes for the rise of Human Rights Groups in India and the role of those groups in the protection of human rights.
3. What is the Punjab State Human Rights Commission. Discuss its main functions.

Short questions

1. What is meant by human rights ?
2. Under which act the NHRC is constituted.
3. Describe any two restrictions imposed on fundamental rights.
4. Write five fundamental duties.
5. When was the Punjab State Human Rights Commission was established and composition of the Board.

THE UNION EXECUTIVE : THE PRESIDENT
(Election, Powers and Position)

- 2.2.1 Objective of the lesson.*
- 2.2.2 Introduction*
- 2.2.3 Election of President–Qualification, Procedure of Election.*
- 2.2.4 Powers of the President.*
 - 2.2.4.1. Executive Powers*
 - 2.2.4.2. Legislature Powers*
 - 2.2.4.3. Financial Powers*
 - 2.2.4.4. Judicial Powers*
 - 2.2.4.5. Miscellaneous Powers*
- 2.2.5 Emergency Powers*
- 2.2.6 Evaluation of Powers Emergency*
- 2.2.7 Conclusion*
- 2.2.8 Self Check Exercise*

2.2.1 OBJECTIVE OF THE LESSON

The objective of this lesson is to describe the election process of the President and to explain main drawbacks in it. Apart from that the purpose is to describe the various powers of the President further to make it clear that the President is a nominal executive Head and he exercises all his powers with the advice of the Council of Ministers. There are also significant checks on his powers. In recent circumstances President is to perform significant role in the constitutional system of India.

2.2.2 INTRODUCTION

The Indian Constitution establishes a Parliamentary form of Government. The essence of the parliamentary type of government is that the Head of the State is the constitutional Head and the real executive powers are exercised by the Council of Ministers, In India, the Council of Ministers with the Prime Ministers at its head is the real executive, while the President is the nominal or constitutional Head of the State.

Provisions of the Office of President : Article 52 of the Constitution provides

for the office of President of India. The President is the head of the Indian Union and occupies the highest office in the country. All executive authority of the Union is formally vested in him. The supreme command of the defence forces of the Union is also vested in the President and the exercise thereof is regulated by law.

2.2.3 ELECTION OF THE PRESIDENT

Qualifications for Election as President : Article 58 prescribes the qualifications for election to the office of the President. It lays down that no person shall be eligible for election as President unless he :

- i) is a citizen of India.
- ii) must be above 35 years of age.
- iii) is qualified for election as a member of the House of the People.
- iv) A person is not eligible for election as President if he holds any office of profit under Government of India, or the Government of any state. It may be added that for this purpose the office of the President, Vice President, Governor and Union or State Ministers are not considered offices of profit.
- v) The Constitution also lays down that the President shall not be a member of either House of Parliament or of a House of the Legislature of any state. If a member of either House of Parliament or of a House of the Legislature of any state is elected as President, he shall be deemed to have vacated his seat in the House on the date on which he enters upon his office as President.
- vi) A person desirous of contesting presidential election must fulfil the following conditions :
 - i) Every candidate shall deposit a sum of Rs. 15000/- Only. The security deposit will be forfeited if the candidate is not elected and the number of valid votes polled by him does not exceed one-sixth of the number of votes necessary to secure the return of a candidate at such elections. In other cases, the deposit is returned to the candidate.
 - ii) A nomination paper should be completed in the prescribed form subscribed by the candidate as assenting to the nomination and also by at least fifty electors as proposers and at least fifty electors as seconders. No elector shall subscribe,

whether as proposer or as seconder, more than one nomination paper at the same election.

Term of office : The term of the Indian President is five years. The President occupies office for a period of five years from the date on which he enters upon his office. Notwithstanding the expiration of his term, He shall continue to hold office until his successor enters upon his office.

Resignation : The President may resign at any time by writing under his hand. The President shall address his letter of resignation to the Vice-President of India. The Vice-President shall forthwith communicate to the Speaker of Lok Sabha.

Re-election: There is no constitutional bar for re-election of the present incumbent in the office of the President. Article 57 lays down that a person who hold office or who has held office as President shall be eligible for re-election to that office.

Removal : The President may be removed from office for violation of the Constitution by a special trial conducted by the Parliament. The special trial is known as impeachment. The charge for the violation of the Constitution can be preferred by either House of Parliament at a notice of fourteen days. The notice must be signed by at least one-fourth of the total number of members of that House. A resolution containing the charge shall have to be passed by a majority of not less than two-thirds of the total membership of that House. In case, a charge has been so preferred by either House, the other House shall investigate the charge. If the investigating chamber upholds the charge by a majority of not less than two-thirds (2/3rd) of its members, the President stands removed from his office from the date on which the resolution is so passed. Except the impeachment of the President no other punishment can be given to him for the proved violation of the Constitution.

Salary and Allowances : The President is entitled to such emoluments, allowances and privileges as may be determined by Parliament by law. The emoluments and allowances of the President cannot be diminished during his term of office. At present the President gets Rs. 1.5 Lakh as monthly salary and other amenities After retirement a sum of Rs. 3 lacks are paid as pension to the Ex-President.

Besides these emoluments and allowances, the President is also entitled without payment of rent to the use of his official residence, popularly

known as Rashtrapati Bhawan.

Vacancy in the Office : A vacancy in the office of the President may be caused in any of the following ways

- 1) On the expiry of his term of five years.
- 2) On his death or resignation.
- 3) On his removal by impeachment.
- 4) On the setting aside of his election as President.

In case of a vacancy arising by reason of any causes other than the expiry of the term of the incumbent in office, an election to fill the vacancy must be held within a period of six months from the date of occurrence of the vacancy. The person elected to fill the vacancy shall fill office for the full term of five years. Immediately after such vacancy arises it is the Vice-President who acts as President of India. In such case. He cannot act as President for more than a period of six months. But if the President is temporarily unable to discharge his functions, owing to his absence from India, illness or any other causes, the Vice-President shall discharge his function until the date on which the President resumes his duties.

In case the offices of both the President and Vice-President fall vacant : In the event of occurrence of vacancies in the offices of the President and the Vice-President, the Chief Justice of India shall discharge the function of the President until a new elected President enters upon his office. In the absence of the Chief Justice of India, the senior most Judge of the Supreme Court available shall perform the functions of the President until a new elected President assumes the charge of his office. The person discharging the functions of the President shall have all the powers of the President during the period while he is so discharging the said functions.

Special Privileges of the President : The office of the President of Indian Republic carries with it great dignity and legal privileges. For instance :

- 1) He is not answerable to any court for the exercise and performance of powers and duties of his office.
- 2) No criminal proceedings can be launched against him nor can he be arrested or imprisoned during his tenure of office.
- 3) No civil proceedings can be launched against him during his tenure of office without two months written notice regarding the relief claimed.

Method of the Election of President

Election by an Electoral College : The Constitution provides that the President of India is elected by the members of an Electoral College. Electoral College consists of the elected members of both the Houses of Parliament, the elected members of the Legislative Assemblies of the States and the elected members of the Legislative Assemblies for the Union territory of Pondicherry and National Capital Territory (Delhi).

Uniforming between the states as a whole and the Union : The constitution-framers desired that as far as practicable there should be uniformity in the scale of representation of the different states in the election of the President. They also desired that there should be parity in the scale of representation between the states as a whole on one hand and the Union on the other hand in the Presidential election. In order to ensure uniformity among the states as well as parity between the states as a whole and the Union, two specific methods have been provided in the Constitution. The methods are meant to determine the number of votes which each elected member of Parliament and of the Legislative Assembly of the State is entitled to cast at such election.

Value of the votes of the members of states Legislative : The Constitution provides that every elected member of the Legislative Assembly of a State shall have as many votes as the are multiples of one-thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly. This can be best explained thus :

$$\frac{\text{Population of the State}}{\text{Total Number of the Elected Members of the State Legislative Assembly}} \div 1000$$

The Constitution also provides, If, after taking the said multiple of one thousand, the remainder is not less than five hundred, than the vote of each member shall be further increased by It means fraction of more than five hundred is ignored.

To quote an example :

- 1) The population of a State is : 73, 746, 401
- 2) Number of elected members of the Legislative Assembly of that State: 425
- 3) Number of votes to which each elected M.L.A. would be entitled :

$$\frac{73746401}{425} + 1000 = 173 \quad \frac{522}{1000}$$

The fraction is of more than five hundred, so it would be counted as one vote. Thus, the number of votes of each elected M.L.A. will be 174, or the value of a vote of an M.L.A. shall be equal to 174.

Value of votes of an elected members of Parliament : For this purpose the Constitution provides that each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States by the total number of the elected members of both Houses of Parliament. Fraction exceeding one half (1/2) shall be counted as one and other fractions disregarded. An illustration relating the Presidential election held on July 14, 1997 will clear the point.

- 1) The total elected members of the two houses of parliament (543+233) = 776.
- 2) The total number of votes of all the elected members of legislative assemblies : 5,49,511
- 3) Number of votes of each Elected Member of Parliament :

$$\frac{549511}{776} = 708 \quad \frac{103}{776}$$

The fraction of 103 does not exceed one-half of the dividend, so it was disregarded. Thus, the number of votes, to which each elected Member of Parliament was entitled, was 708.

The dates are so appointed that the election is completed at such time as would enable the President, thereby, elected to enter upon his office on the day following the expiration of term of the office of the outgoing President.

Different Stages of the Election Procedure of President :

1) Notification of the Election of the President : The elections to the office of the President is held under the supervision and control of an Election Commission. The Election Commission issues the notification regarding the process of the election of the President.

2) Nomisnativency Returning Officers : To the conduct the election to the office of the President the Election Commission makes the appointment of the Returning officers and his subordinates in the states to assist and help him.

3) Filing of Nomination Paper : A person desirous of contesting

Presidential election must full fill the conditions laid down by the Constitution of India Article 58.

4) Place of Polling for MPs : Parliament House will be the place of polling for the members of Parliament. However, for members of Parliament who on account of their absence from New Delhi on the Date of Polling may not be able to vote in the Parliament House, The Election Commission may make provision for their voting at any of the polling places at the State Capitals, According to their choice.

5) Places of Polling for MLAs : The Member of State Legislative 'Assembly can vote only at the place of polling provided in the concerned Sate Capital and not at nay other place. On obtaining a special permission form the Election Commission, however, a Member of the Legislative Assembly of a State may vote at the place of polling in New Delhi when for unavoidable reasons he wishes to do so.

Procedure of voting : Under the Constitution, the election of President is held in accordance with the system of proportional representation by means of the single transferable vote system. Under this system every elector shall have as many preference as there are candidates.

An elector in giving his vote :

- 1) shall place on his ballot paper the figure 1 in the space opposite the name of the candidate whom he chooses for his first preference; and
- 2) may, in addition, mark as many subsequent as he wishes by placing on his ballot paper the figures 2,3,4 and so on, in the spaces opposite the names of other candidates, in order of preference.

Voting by Illiterate or Disabled Elector : If an elector is unable to read the ballot paper or record his vote there on in accordance with the prescribed manner by reason of :

- 1) illiteracy or blindness; or
- 2) not being conversant with the language in which the ballot papers are printed; or
- 3) any physical or other disability.

The Presiding Officer shall record the vote on the ballot paper in accordance with the wishes of the elector.

v) Counting of Votes : The counting of votes shall take place at the

office of the Returning Office in New Delhi on the date and at the time appointed by the Election Commission for the purpose. The Election Commission shall give notice to all the candidates of the date and time so appointed.

vi) Determination of Quota : Under the system of Presidential election the quota of votes is fixed to win the election of President. Quota for a winning candidate is fixed by dividing the total number of Valid Votes by two and then adding one to the quotient disregarding any remainder.

$$\text{Quota : } \frac{\text{Total Number of valid Votes}}{\text{seats to be fulfilled} + 1} + 1$$

Determination of Result : After all the ballot boxes and sealed covers have been opened and the ballot papers have been scrutinised and arranged, the Returning Office shall proceed to determine the quota for the winner of the presidential election. Only the first preferences of votes are to be counted and the total of first preferences shall be divided by two and one to be added to the quotient and the resultant figure shall be the quota. Whosoever secures the fixed quota shall be declared the winner in the election.

Illustration : Supposing the total number of valid votes is 10,000 and there are four candidates, A,B,C and D, Let us assume they have polled as follows :

A	3,500
B	3,200
C	1,800
D	1,500

$$\text{The quota in the given case will be } \frac{10,000}{1+1} + 1 = 5,001.$$

Hence no candidate who has failed to secure 5,001 votes can be elected under system of proportional representation. If any candidate has got 5,001 votes or more according to the first preference, is at once elected and it is not necessary to count the subsequent preference. But, if no candidate has secured this quota, the subsequent preferences will have to be counted. For this, a candidate having minimum number of votes shall be eliminated and his votes are transferred to those in whose favour the electors have recorded their second preference.

In the instant case second count has to be taken since none of the candidates has secured the fixed quota of first preferences. In the second count, therefore, D who has received the lowest number of first preference votes will be eliminated, and electors' second preference votes will be distributed according to the names, if any, marked 2 on them. The papers on which no second preference is marked will be regarded as exhausted.

The process will be repeated as often as unnecessary until a candidate with a quota is found out or there is only one continuing candidate.

vii) Declaration of Result : When the counting is complete and result of the voting has been determined, the Returning Officer shall forthwith :

- i) announce the result to those present,
- ii) report the result to the Central Government and the Election Commission.

viii) Disputes of Election of President : All doubts and disputes arising in connection with election of the President can be insured into and decided only by the Supreme Court of India whose decision shall be final.

ix) Swearing in Ceremony : Under the Constitution of India, before the President-elect enters upon his office, a swearing in ceremony of the President elect is performed in the Central Hall of Parliament House at New Delhi with great solemnity and dignity. The auspicious occasion is graced by all the big dignitaries of the country. They all come in their formal prescribed dresses. The Chief Justice of India leads the ceremony and administers the oath of office. In his absence, the same work is performed by the senior most available judge of the Supreme Court.

After the swearing in ceremony is over, he is offered a salute of 31 guns. The President makes a proclamation, which is published in the Gazette of India. The President proclaims that having been elected to be the President of India, he has assumed his office. The present incumbent Mrs. Pratibha Patil was elected to the office of President on July 25, 2007. She is the first woman President of India.

Criticism of Election Procedure of President

A critical examination of the system of election of President in India shows that there are serious drawbacks in it which may be summed up as under :

1) It is not a Proportional Representation System : The system of Proportional representation is adopted for multi member constituencies, whereas the constituency for the election of the President is a single-

member. It is not, there for preferential system rather is a preferential vote system.

2) Preferences of Preferences is a not obligatory : Exercising of preferences is not obligatory for votes . It would become impossible to elect the president in case voters do not exercise their second preferences and no candidate gets elected in the first round. In such a situation there may emerge a constitutional crisis.

3) There is not uniformity in the representation of different states : Constitutional makers wanted to have a uniformity in the representation of different states. For that purpose they included a formula to determine the value of votes of the member, but this formula does not ensure uniformity in the representation of states.

4) Election on the Party Basis : The method of election adopted is such that only political persons can succeed in winning the election and there is no possibility of non political persons getting elected.

5) Difficulty for Illiterate Voters : The system of the election of the president is complex and is difficult to understand. For illiterate voters it is also difficult to write preferences against the name of the candidates.

2.2.4 POWERS OF THE PRESIDENT

The Constitution makes the President a repository of immense and diverse powers. He has a vast reservoir of executive, legislative and judicial powers. He has also substantial financial power. Added to these are his numerous other constitutional and statutory powers. A brief description of his powers are as under :

2.2.4.1. Executive Powers

The executive powers of the President may briefly be summarised as under :

(i) Powers of appointment : Of the different kinds of administrative powers vested in the President his wide ranging appointing powers are very significant. The President appoints the Prime Minister of the country and other ministers are also appointed by him on the advice of the Prime Minister. The President also appoints the Judges of the Supreme Court and the High Courts. He also appoints Governors of States, Administrators of Union Territories, the Attorney General of India, the Controller and Auditor General of India and Military officers of various ranks.

1. President also appoints chairman and members of the following

commissions :

- i) Inter State Council.
- ii) Zonal Council.
- iii) The Finance Commission
- iv) The Union Public Service Commission.
- v) Joint Public Service Commission for two or more states.
- vi) The Election Commission.
- vii) Linguistic Commission.
- viii) The National Commission for the Scheduled Castes and Scheduled Tribes.
- ix) The National Commission for women.

It may be noted that the President exercises his power of appointment on the advice of the Council of Ministers.

ii) Diplomatic Powers : The President of India represents his country in international affairs. As head of the State, he appoints Indian ambassadors to foreign countries and also receives diplomatic representatives from other countries. All treaties and international agreements are concluded in the name of the President.

iii) Military Powers : Under the Constitution, the President is the Supreme Commander of the defence forces. He appoints the chiefs of the Army, Navy and Air Force. It may be noted that the exercise of military powers by the President is regulated by laws of Parliament. The President has the power to declare war and peace but that power is regulated by law. Like other powers of the President, the military powers is to be exercised on the advice of the Council of Ministers.

Miscellaneous Executive Powers

- i) **The power to administer Union Territories :** The President is the administrator of all Union Territories and Tribal Areas. Every Union Territory is administered by him acting through an administrator appointed by him.
- ii) The President can issue directions to the state governments for the proper observance of the union laws.
- iii) The President can make rules and regulations for the appointment of the employees of the Supreme Court, regarding the administrative power of Controller & Auditor General etc.

2.2.4.2 Legislative Powers

The President's Legislative powers may be summed as under :

- i) The President summons and prorogues the sessions of Parliament. It is required that the President shall summon the sessions of the Parliament in a way that six months should not intervene between its last sitting of the previous session and the date appointed for its first sitting in the next session.
- ii) In case of a deadlock between the two Houses of the Parliament on a non-money bill, the President may call a joint sitting of the Parliament and frame rules for the transaction of business therein.
- iii) He can dissolve the Lok Sabha before the expiry of its normal term of five years. He can do so only on the advice of the Council of Ministers.
- iv) The President may address either House of Parliament or both Houses assembled together, and for that purpose requires the attendance of members.
- v) At the commencement of the first session after each general elections to the House of the People and at the commencement of the first session of each year, the President shall address both Houses of Parliament assembled together and informs Parliament of the causes of its summoning.
- vi) The President nominates twelve members to the Rajya Sabha from among persons having special knowledge or practical experience of literature, science, art and social service.
- vii) He can nominate two persons of the Anglo-Indian Community to the Lok Sabha if he feels that this community has not been able to have adequate representation in the lower chamber of the Parliament.
- viii) He can also send message to either House of Parliament from time to time asking it to consider certain matters pending with it.
- ix) When a bill has been passed by the Houses of Parliament it shall be presented to the President for his assent. In the case of non-money bill, President may either give his assent, or withhold it. He may return the Bill to the Parliament with a message for its reconsideration or any specified provisions thereof. In case of the same Bill is repassed by the Parliament, the President, in that case

cannot withhold his assent.

- x) Money Bills cannot be introduced in the Lok Sabha without the prior recommendation of the President.
- xi) Approval of the President, over certain bills is required after these are passed by the State Legislature, such as the bills for the requisition of private property. Any bill seeking to make alternations in the boundaries of a State also requires the prior recommendation of the President before its introduction in the Parliament.

Power to issue Ordinance :

- i) Article 123 of the Constitution gives to the President extensive powers of law-making when Parliament is not in session. At a time when the Parliament is not in session, the President may promulgate an ordinance that shall have the force of law. But every such ordinance should be laid before both Houses of the Parliament when it reassembles for session. It shall cease to have effect after six weeks from the date of sitting of the Parliament commences. The Parliament has the power to disapprove the ordinance even before the expiry of the stipulated period of six weeks.

2.2.4.3 Financial Powers

The financial powers of the President may be summarised as under :

- i) No Money Bill can be introduced in the Lok Sabha without his prior recommendation.
- ii) The Constitution enjoins upon him the responsibility of causing to be laid before Houses of Parliament the Annual Financial Statement of the Government of India in respect of every financial year.
- iii) The Contingency Fund of India is at President's disposal. He can make advances out of it to meet unforeseen expenditure pending its authorization by the Parliament.
- iv) The President also constitutes a Finance Commission at the expiration of every fifth year or at such earlier time as the President considers necessary. The Finance Commission should consists of a Chairman and four other members to be appointed by the President.
- v) The President prescribes, after considering the recommendations of Finance Commission, the amount, manner and time for distribution

among the states of their share in taxes or income other than agricultural income.

- vi) He causes the reports of the Comptroller and Auditor General relating to the Union Accounts and the recommendations of the Finance Commission to be placed before Parliament for consideration.
- vii) He gives assent to Finance and Money Bills passed by Parliament, but he cannot return a money bill for reconsideration by Parliament.

2.2.4.4 Judicial Powers

- i) The Judicial powers of the President constitute his prerogative of mercy. He has the power to grant pardon to the offenders. He can remit or suspend or commute the sentence of a convict.

The President's power of pardon covers, offences against Acts relating to the matter of the Union List. It does not relate to the offences committed against matters given in the State List and Concurrent List unless Parliament expressly provides for this through a legislation. It should also be noted that the President can exercise his power of pardon only after the conviction of the offender.

- ii) The President has also the power to grant reprieves, respites or remissions of punishment or to suspend, remit or commute the sentences of any person in the above noted causes.

Reprieve refers to a stay in the execution of sentences for temporary period. Respite means a lessening of a penalty, and remission is reduction in the amount of sentence and is analogous with respite. Commutation is the change of one form of penalty in to a lighter penalty of a different form.

2.2.4.5 Miscellaneous Powers

The President also enjoy a miscellany of powers of great variety. These powers include.

- i) Giving consent to use any foreign tide by a person holding an office of trust under the state.
- ii) Approving the sitting of the Supreme Court in a place other than Delhi.
- iii) Referring a question of law or fact of public importance for the

opinion of the Supreme Court.

- iv) Determining the number of judges of a High Court.
- v) Transferring a judge from one High Court to another.
- vi) Transferring a Governor from one State to another and
- vii) Referring additional matters to the Union Public Service Commission for advice.

2.2.5 EMERGENCY POWERS OF THE PRESIDENT

The framers of the Constitution anticipated that a situation might arise when regular constitutional machinery might not deliver the goods and some extraordinary measures might be required to deal with such situation. They, therefore, incorporated Emergency Provisions in the Constitution and saddled the President with enormous powers to deal with the unforeseen situation. Three kinds of Emergencies are envisaged in the Constitution.

- 1) Emergency arising out of a threat to security of India or to any part of it.

(Article 352)

- 2) Emergency arising because of the failure of constitutional machinery in a State, (Article 356), and
- 3) Emergency arising because of a threat to the financial stability or credit of India.

(Article 360)

The President has to exercise these Emergency Powers in accordance with the provisions stipulated in the Constitution.

An analytical description of all the three types of emergency is given below :

1. EMERGENCY ARISING OUT OF A THREAT TO THE SECURITY OF INDIA

1) Proclamation of Emergency : Article 352 envisages that if the President is satisfied that a grave emergency exists whereby the security of India or of any part of it is threatened, he may make a Proclamation of Emergency. The threat to the security of India may be due to war or external aggression or an armed rebellion. Such a Proclamation may be made before the actual occurrence of war or any such aggression or armed rebellion if the President is satisfied that there is an imminent danger thereof.

2) Decision of the Cabinet : The President of India can declare this emergency on the written request of the union council of Ministers.

3) Approval of the Proclamation by the Parliament : The Proclamation of Emergency made under Article 352 has to be placed before each House of Parliament. It ceases to operate at the expiry of one month unless within this period the Proclamation is approved by resolution of both Houses of Parliament. The approval of the Parliament shall require adoption of the resolution in each House by a special majority i.e., absolute majority of the whole House and two-thirds (2/3) majority of the members present and voting.

4) Period of Emergency : The Proclamation of Emergency, if approved by the parliament, remains in force for a period of six months from the date of passing the resolution approving it by the Parliament. The Proclamation may be revoked earlier by the President. The Parliament can approve the continuation of Emergency for six months at a time.

5) Revocation of emergency Proclamation : The Constitution authorises the Lok Sabha to get the Proclamation for Emergency revoked at any time during the period of its operation. One-tenth of the total number of members of the Lok Sabha may give notice in writing and duly signed by them indicating their intention to move a resolution for disapproving the continuance in force of a Proclamation of emergency. Such notice may be given to the Speaker, if the House is in session and to the President, if the House is not in session. Within fourteen days from the date on which such notice is received by the Speaker, or by the President, a special sitting of the House shall be held for the purpose of considering such resolution. If a resolution is passed by the House of People with a simple majority the President shall revoke the proclamation of Emergency in operation.

6) Emergency Proclamations is Justifiable : Proclamation of emergency can be challenged in the court. The law concerning the election the President passed in 1952 and amended in 1969 and 1974 provides for the procedure to be followed as under :

Effects of the Proclamation of Emergency : While a Proclamation of Emergency is in operation, then :

- a) The Executive power of the Union shall extend to the giving of direction to any State as to the manner in which the Executive Power of the state is to be exercised.
- b) The power of the Parliament to make laws with respect to any matter shall include power to make laws on any matter irrespective

of the fact it is enumerated in the Union List or not. This means that the law-making power of the State Legislature remains suspended during the Proclamation and the Union Parliament gets absolute power to legislate on any of the subjects.

- c) The President can alter the financial arrangements between the States and the Centre by issuing an order to the effect.
- d) The Lok Sabha can extend its normal life of five years by another year at a time. However, its term cannot exceed beyond six months after the Proclamation of Emergency ceases to operate.
- e) The Fundamental Rights available to the citizens of India under Article 19 of the Constitution are automatically suspended.
- f) The President may by an order suspend the right of the people to move any court for the enforcement of such rights conferred by Part III of the Constitution. It may be added that the right to move the court for the enforcement of such rights contained in Article 21 cannot be suspended even during the period of the Proclamation of Emergency. Article 21 provides for the Right to life and personal liberty.

2. EMERGENCY BECAUSE OF FAILURE OF CONSTITUTIONAL MACHINERY

1) Issuing of a Proclamation : Article 356 provides that if the President on receipt of report from the governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with provisions of the Constitution he may issue a Proclamation.

2) Approval of the Parliament : Every Proclamation issued under Article 356, has to be laid before each House of Parliament within a period of two months from the date of its issuing. If the Parliament does not approve of the Proclamation within the stipulated period of two months, the Proclamation will cease to be effective.

3) Duration of the Proclamation : Once the Proclamation of Emergency under article 356 has been approved by the Parliament it remains in operation for a period of six months from the date of issue of the Proclamation. It can be revoked earlier also. The duration of the Proclamation can be extended by the Parliament for six more months at a time. No such Proclamation can in any case remain in force for more than three years. Such an emergency can continue beyond one year:-

- i) If proclamation under Article 352 is issued.
- ii) If the Election Commission certifies that the elections can not be held in the state.

4) Effects of the Proclamation : During the period when such Proclamation is in operation, the President may :

- a) Assume to himself all or any of the functions of the government of the state.
- b) He may declare that the powers of the Legislature shall be exercisable by or under the authority of Parliament.
- c) He may make such incidental and consequential provisions as appear to the President to be necessary for giving effect to the objects of the Proclamation. President cannot assume to himself any of the powers vested in a High Court. He also cannot suspend the operation of any provision of the Indian Constitution relating to High Courts.
- d) The Union Parliament can delegate to the President, the power of making laws for the state. It can authorise him to delegate these powers to any other authority to be specified by him in that behalf.
- e) The President can take any step that may be deemed essential for giving effect to the objectives of the Constitution.

3. FINANCIAL EMERGENCY

Article 360 of the Constitution vests the President of India with the power to declare Financial Emergency. The Article provides that if the President is satisfied that a situation has arisen whereby the financial stability or credit of India is threatened he may declare Proclamation of Financial Emergency.

1) Approval of Parliament : The Proclamation made under Article 360 of the Constitution has to be laid before each House of Parliament within two months from the date of its declaration. Unless approved by two Houses of the Parliament by simple majority thereof in the stipulated period of two months, the Proclamation of Financial Emergency ceases to operate.

Duration of the Financial Proclamation : The proclamation of financial Emergency shall continue unless revoked by the President of India. That means there is no specified and fixed duration of this type of Proclamation and it continues so long it is not revoked by the President.

Effects of the Proclamation : During the period, Proclamation of Financial Emergency is in operation, the executive authority of the Union

shall extend to the giving of directions to any State to observe some canons of financial propriety. The President can also issue other directions as he may deem necessary and adequate for the purpose. These directions may require the reduction of salaries and allowances of all or any class of persons serving in connection with affairs of a state. The President can also issue directions for the reduction of salaries of all persons serving in connection with the affairs of the Union including the judges of the Supreme Court and High Courts. The directions may also require that all Money Bills or other bills should be reserved for the consideration of the President after these are passed by the Legislature of the State.

2.2.6 EVALUATION OF EMERGENCY POWERS

The provisions relating to Emergency Powers of the Indian President have been subjected to scathing criticism. These have been criticised mainly on the following grounds :

1) Dangerous for the State Autonomy : The Proclamation of Emergency will have the effect of practically turning the federal Constitution into a unitary one. While a Proclamation of Emergency is in operation, Parliament can have unrestricted power to make laws for the whole or any part of India with respect to any of the matters enumerated in the State List. Again the executive power the Union will extend to the giving of directions to any State in any matter as to the manner in which the executive power thereof is to be exercised.

Any failure on the part of a State to comply with any directions may be followed by the issuing of a Proclamation under Article 356 and the assumption by the President of the powers of the State Government. The Presidents power of suppression of a State Government is, therefore, very drastic and unfederal.

2) Suspension of Fundamental Rights : The executive in India has been empowered to suspend some of the most important fundamental rights. The issuing of a Proclamation of Emergency will have the automatic effect of suspending the fundamental rights guaranteed under Art. 19 of the Constitution. And while a Proclamation of Emergency is in operation, the President will have the power to suspend the right to move the courts for the enforcement of any of the other fundamental rights.

3) Implementation of Article 356 for Political Purposes : The way Article 356 has been invoked in the past bears a clear testimony to the fact that the ruling party at the Centre can use the emergency powers for its

political ends. Article 356 is a convenient handle in the hands of the ruling party at the Centre to embarrass any of the state governments being run by the opposition. The misuse of Article 356 is all the more possible since the President can take recourse to Article 356 even without having received a report of the failure of Constitutional machinery in the state from its Governor. The repeated misuse of Article 356 has led some of the political parties demand its deletion from the Constitution.

4) No Time-Limit Fixed : It is a matter of grave concern that no time-limit for the duration of national and financial emergencies is fixed. These emergencies can be extended for any length of time. Some time-limit should have been given in regard to the maximum duration of national and financial emergencies. It is a serious loophole of the constitutional framework and the sooner it is removed the better it is.

5) Against Democratic Principles : The emergency provisions included into the Constitution are completely inconsistent with the democratic principles. During the national emergency the rights and the liabilities are suspended. Emergency provisions also provide for the centralisation of powers in the hands of the President, who is bound by the advice of the Council of Ministers. Hence, these powers become the powers of Council of Ministers. During the emergency under Article 356, State Administration is handed over to the Governor who is the nominee of the centre in the states.

6) Inadequate Safeguards : The safeguards provided in the condition are inadequate the provisions that the President is always bound to act upon the advice of the council of ministers, contains the danger of the political misuse of the emergency provisions. The provision of Parliamentary approval of an emergency proclamation is limited by the fact that the council of ministers which is a decision making body, enjoys the confidence of the majority in Parliament and it enables to secure parliamentary approval for the proclamation.

On all these grounds, the emergency provisions of the constitution are subjected to severe criticism.

JUSTIFICATION OF THE EMERGENCY POWERS

It is undeniable that the emergency powers are very drastic. Indeed, it is difficult to refute the criticism that the powers given to the executive to meet emergencies are totalitarian in character. On the other hand, there are certain factors which, to a considerable extent, justify the inclusion of emergency provisions in the Constitution. Some of the factors are as follows :

1) National security is more important : It is indisputable that the security of the state as a whole is of far greater importance than the individual liberty of a few citizens. It is the state that protects the liberty of citizens, and if the state itself is destroyed, the liberty of all citizens would have no meaning at all. Similarly, the rights of the citizens have no value when the very existence of the state is threatened. The state must get priority over the individual and there is nothing wrong to suspend the fundamental rights of the citizens in the interest of the state.

2) Historical Experience : The history of India reveals that a weak central authority was always a source of instability and disintegration. India is a country whose people are divided by the caste, linguistic, religious, regional and racial barriers. Under the circumstances, it was natural for the framers of the Constitution to put greater emphasis on the need for the maintenance of the integrity and security of the state in grave national emergencies than on guaranteeing individual liberty in such situations. It is quite conceivable that in times of crisis a few antisocial elements and the inimical foreign powers may try to harm our national interests. Here lies the justification of arming the executive with enormous emergency powers which enable it to tide over any unforeseen crisis to the nation.

3) Constitutional responsibility of the Centre : Article 355 lays down the duty of the Union to protect every State against external aggression and internal disturbances and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. The Emergency provisions definitely vest the Centre with sufficient powers to carry out this constitutional responsibility.

4) Emergency Powers are not absolute : These powers are not the normal feature of our Constitution. Their use and operation are expressly confined to emergencies. Further, the President alone is not competent to proclaim an emergency at any time. The President shall exercise his functions in accordance with the advice of the Council of Ministers. The President can declare emergency under Article 352 only after receiving a written recommendation from the Cabinet.

5) Presidential Proclamations Justiciable : The Presidential Proclamations are justiciable. Their constitutional validity can be challenged in the Supreme Court. The justiciability of Presidential Proclamations is a strong safeguard against the misuse of emergency powers.

6) Impeachment of the President : President can not use his powers in a dictatorial manner, If he does so than he can face impeachment at the hands of the Parliament and can be removed from his office.

2.2.7 CONCLUSION

It is true that emergency powers run counter to our democratic political system but it must be admitted that certain provisions to meet an unforeseen emergency must be there to save the unity and integrity of the country. Such type of powers are given to the head of the states during emergencies, but we must say that ruling party should not use these powers for political purposes.

POSITION OF THE PRESIDENT

A. Constitutional Head : Indian Constitution has provided for a parliamentary system in India. It is the essence of the Parliamentary Government that the real executive power should be exercised by the Council of Ministers, collectively responsible to the lower chamber of the Legislature. The Indian President cannot exercise his powers without the aid and advice of the Council of Ministers. The existence of Council of Ministers is mandatory. Thus, it is clear that the President of our country cannot go against the advice of his council of Ministers and the position of the Indian President is nothing more than that of the constitutional or nominal Head of the State.

The President has a role to play : The position of the Indian President is undoubtedly very weak. But the weak position of the President does not mean that his office is superfluous and he has no role to play.

In the present era of coalition politics, the President has to play an active role as an impartial umpire of the game of politics being played by large member of Indian political parties and political leaders. If he feels that no party or no political combine can provide a stable government he can ask for the advice of the Council of Ministers to dissolve the Lok Sabha in order to have a fresh mandate of the people. The President K. R. Narayanan did so April 25, 1999. When he was convinced that no party could provide an alternative government at the Centre. On the direction of Mr. Narayanan the Council of Ministers headed by Mr. A.B. Vajpayee recommended the dissolution of the 12th Lok Sabha and as per its advice the 12th Lok Sabha was dissolved by the President on April 26, 1999.

2.2.8 SELF CHECK EXERCISE :

Attempt any two questions out of the following :

Short Answer-Questions :

1. How the President can be removed from Office ?
2. Who elect the President ?
3. Describe President's powers of issuing ordinances.
4. What do you know about the emergency powers of the president.

Long Answer-Questions :

1. How the President of India is elected ?
2. Discuss in brief the powers of the President of India.
3. Critically examine the emergency powers of the President of India.

Note: The lesson have been written by the financial assistance of D.E. C.

THE UNION PARLIAMENT
(Composition, Role and Legislative Procedure)

- 2.3.1 Objectives of the lesson.*
- 2.3.2 Introduction–Bicameral Parliament*
- 2.3.3 Council of States (Rajya Sabha)*
 - 2.3.3.1 Composition of Rajya Sabha*
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- 2.3.4 House of People (Lok Sabha)*
 - 2.3.4.1 Composition of Lok Sabha*
 - 2.3.4.2 Powers and Functions of Lok Sabha*
- 2.3.5 Conclusion*
- 2.3.6 Self Check Exercise*

2.3.1 OBJECTIVES OF THE LESSON

The Objective of this lesson is to describe the organisation and powers of the Union Parliament. In India there is a parliamentary form of Government, therefore you should know how Parliament exercises control over executive. Lower house is a representative of the people and hence, enjoys more power than Rajya Sabha. After reading this lesson, you will be able know all these facts about the Indian Parliament.

2.3.2 INTRODUCTION—BICAMERAL PARLIAMENT

Chapter II of Part V of the Indian Constitution deals with the Parliament of India, Article 79 provides a bicameral Parliament for the Union. It consists of the President and two Houses to be known respectively as the Council of States (Rajya Sabha) and the House of People (Lok Sabha). The Rajya Sabha is the upper chamber while the Lok Sabha is the lower chamber. Though, President is not a member of either House of Parliament, yet he is an integral part of the Parliament and performs certain functions relating to its proceedings.

2.3.3 COUNCIL OF STATES (RAJYA SABHA)

2.3.3.1 Composition of Rajya Sabha : The Rajya Sabha or the Council of States is the Upper House of the Parliament. It is also known as the second Chamber of Indian Parliament. The maximum membership of the Rajya Sabha is fixed at 250. Out of them, twelve members are nominated by the President and the remaining i.e., 238 are the representatives of the States and of the Union Territories.

Unequal Representation to the States : Unlike a truly federal constitution our Constitution does not give equal representation in the Rajya Sabha to all the States of the Indian Union. The basis of distribution of seats of the Rajya Sabha to the various states is the number of people of a state. The states which are having larger population have been given lion's share in the distribution of seats of the Rajya Sabha while the less populous states have been given a fewer seats.

Election : Twelve members to be nominated by the President are chosen from amongst the persons having special knowledge or practical experience in literature, science, art and social service. The representatives of each state in the Council of State are elected by the elected members of the Legislative Assembly of the respective State. The election is held in accordance with the system of proportional representation by means of a single transferable vote. The representatives from the Union Territories are elected by the members of the legislative Assembly of the respective Union Territory.

Qualifications : To be qualified to be elected to the Council of States, a person :

- a) must be a citizen of India
- b) must not be less than thirty years of age.
- c) must be a parliamentary elector in any state of the Union of India.
- d) must make and subscribe before some person authorised in that behalf by the Election Commission an oath or affirmation asserting his allegiances to the Constitution of India.
- e) must possess such other qualifications as may be prescribed by the Parliament for that purpose from time to time.

Disqualifications : A person shall be disqualified for being chosen as, and for being, a member of the Council of State:

- a) he holds any office of profit under the Government of India or the Government of any State:

- b) he is of unsound mind and stands so declared by a competent court.
- c) he is an un-discharged insolvent.
- d) he has voluntarily acquired the citizenship of a foreign State.
- e) he is under any acknowledgement of allegiance or adherence to a foreign State.
- f) he is so disqualified by or under any law made by Parliament.

Term : The Council of States is a permanent chamber and is not subject to dissolution as a whole. But the Constitution prescribes that as nearly as possible one-third of the members of the Council of State retire after every two years. Thus, the members of the Rajya Sabha are elected for a term of six years.

Quorum : One tenth of the total membership of the Rajya Sabha constitutes the quorum for holding a meeting of the House.

Sessions : The President of India summons each House of Parliament to meet at such time and place as he thinks fit. It is to be noted that a period of six months should not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. It implies that each House of Parliament must meet twice in a year.

Presiding Officers : The Vice-President of India is Ex-officio Chairman of the Council of States. In addition, the Council also elects a Deputy Chairman from amongst its members. A member holding office as Deputy Chairman shall vacate his office if he ceases to be a member of the Council of States. The Deputy Chairman presides over the meetings of the House in the absence of the Ex-officio Chairman of the Rajya. As the Vice-President is not a member of the House, he is not entitled to vote in the Chamber. However, he has been given a casting vote in the case of an equality of votes.

Languages to be used: According to Article 120 of the Constitution the business in the House is transacted in Hindi or in English. However, the Chairman of the Council of States may permit any member, who cannot adequately express himself in Hindi or in English to address the House in his mother tongue.

2.3.3.2 Powers of the Council of States (Rajya Sabha)

1. Legislative Powers : The Union Parliament is empowered to legislate on the subjects enumerated in the Union List and Concurrent List. In very exceptional circumstances it can legislate also on the subjects given in the

State List. But such circumstances are very rare. Parliament can legislate on those subjects also which fall within the scope of its “residuary power of legislation”. Residuary powers relate to those subjects which are given by the Constitution neither to the Parliament nor to the State Legislatures.

In case of ordinary bills the Council of States has almost equal powers with that of the House of the People. It is provided that a non-money bill may originate in either House of Parliament. No Bill can be taken as passed by the Parliament unless agreed to by both the Houses. In the event of divergence of opinion of the two Houses with regard to any non-money bill, the final decision is taken in joint sitting of the two Houses. The President is empowered to call a joint sitting of two Houses in order to resolve the deadlock. The joint session of the Houses is presided over by the Speaker of the Lok Sabha.

Technically speaking, both the chambers of Indian Parliament seem to have been placed at par so far as the ordinary legislation is concerned. But, practically speaking, the position of the Council of States is comparatively weak due to the fact that in the joint session the factor of numerical strength is likely to go in favour of the Lok Sabha because its strength is more than double than that of the Rajya Sabha.

2. Executive Powers : It is true that the Rajya Sabha does not enjoy equal powers with Lok Sabha in the Executive sphere. But it does not mean that the Rajya Sabha has no control over the Government. It is a fact the Council of Ministers is collectively responsible to the Lok Sabha and the Rajya Sabha cannot pass a vote of no-confidence or censure motion against the Council of Ministers. Yet there are number of ways by which the members of Rajya Sabha exercise control over the administration. The members can ask for all types of information from various Ministers through questions. Besides this, the members of Rajya Sabha may exercise control over the Government by means of moving adjournment motions, introducing resolutions and call attention motions etc.

3. Financial Powers : The Rajya Sabha is almost powerless in financial matters. A money-bill cannot originate in the Rajya Sabha. It can be initiated only in the Lok Sabha. After it is passed by the Lok Sabha it goes to the Rajya Sabha for its recommendations or suggestions. The Rajya Sabha will have to give its recommendations within a period of fourteen days from the date of receipt of the Bill. In case it returns a money bill with some

recommendations to the Lok Sabha, it depends upon the Lok Sabha to accept them or not. In case the Rajya Sabha does not take any action on a money bill within the stipulated period of fourteen days, it is taken that the bill has been passed by the Rajya Sabha. Thus, it is evident that with regard to a money -bill, the maximum what the Rajya Sabha can do, is to delay it for a period of fourteen days.

4. Constituent Powers : Rajya Sabha enjoys equal powers with the Lok Sabha with regard to the amendment of the Constitution. A Constitution Amendment Bill must be passed by both Houses by a special majority. Such a Bill may originate in either House of Parliament. The Constitution does not provide that in the event of a disagreement between the two houses over a constitution Amendment Bill, the President shall call joint sitting of the Houses to resolve the deadlock. The Rajya Sabha did not approve of five clauses of 44 Constitution Amendment Act in 1978 and as a result those clauses had to be deleted from the Amending Bill Earlier in 1970 also there was a deadlock between the two Houses on Twenty Fourth Constitution Amendment Bill, but to resolve the deadlock no joint sitting of the Houses was convened by the President.

5. Judicial Powers : The Rajya Sabha performs the following Judicial functions :

- i) Rajya Sabha, alongwith, the Lok Sabha takes part in the impeachment proceedings of the President and Judges of the Supreme court & High Court. It both the members of the Parliament pass the impeachment resolution with 2/3rd majority members present & voting the official is removed from his office.
- ii) For the impeachment of the vice President only the Rajya Sabha has the right to frame charges against him.
- iii) Rajya Sabha in collaboration with Lok Sabha can pass a resolution against Attorney General, Comptroller & Auditor General and the Chief Election Commissioner etc. If a resolution is carried out then the President can dismiss such an official.
- iv) The Rajya Sabha can enquire about the behaviour and activities of any of its members, if the charges are established he can be expelled from the House.

6. Electoral Powers : The members of Rajya Sabha participate in the election of the President and Vice-President of India. In the election of the

President only the elected members of Rajya Sabha take part in it.

7. Miscellaneous Powers : The Rajya Sabha in co-operation with the Lok Sabha, also exercises the following powers :

- i) It gives approval to the ordinance issued by the President of India.
- ii) Can include new states into the Indian union or can make a change in the territories of the states or change the names of states etc.
- iii) Makes a change in the Jurisdiction of the supreme Court and High Courts of India.
- iv) Consider the reports of Union Public Service Commission, Finance Commission and the comptroller and Auditor General of India etc.
- v) It has power to establish joint public service Commission for two or more states.

8. Exclusive Powers of Rajya Sabha : Rajya Sabha enjoys some exclusive powers which are not shared by the Lok Sabha. They are:

- i) The Rajya Sabha may pass a resolution by a two-third majority of the members, present and voting whereby a subject in the State List may be placed for legislation within the legislative jurisdiction Union Parliament. It can be done on the plea that it is necessary or expedient in the national interest that the Parliament should make laws with respect to the matter specified in the resolution.
- ii) The Rajya Sabha is empowered to declare by a resolution supported by not less than 2/3rd of the members present and voting that it is necessary or expedient in the national interest to create one or more, All Indian Services common to the Union and the States. Without such a resolution of the Rajya Sabha, no new All India Service Can be created.

2.3.3.3 Position of Rajya Sabha

From the above account of Rajya Sabha, it is obvious that the upper chamber of Indian Parliament is not a subordinate or secondary chamber. In actual practice, it has come to play an effective and useful role in the working of the Indian Parliament.

- i) The Rajya Sabha is a House where the states are represented. It would have been more in accordance with the federal principles if all the states of the Indian Union had been given equal representation in the Rajya Sabha.
- ii) The Rajya Sabha which contains mature, senior and experienced

persons provides an opportunity for the reconsideration of the Bills, passed by the lower chamber and interposes some delay which enables the passions to cool down.

- iii) The Rajya Sabha may delay the drastic changes in the law of the country made in the heat of momentary passion. It affords opportunity for its reconsideration by delaying its adoption for a limited period.
- iv) It is a permanent chamber and is never dissolved as a whole. One third of its members retire after every two years. Thus the institution of Rajya Sabha ensures continuity in the legislative wing of the government.
- v) The members of the Rajya Sabha are called elders. They are indirectly elected and are not likely to be swayed by the fluctuating currents of popular passions. In the House of Elders, a debate of high quality is more possible which brings dignity to the legislative measures.

In a nutshell, unlike the British House of Lords the Rajya Sabha is an effective chamber. It plays an effective and significant role in the matters of the legislation and administration.

2.3.4 HOUSE OF THE PEOPLE (LOK SABHA)

14.4.1 Composition : House of the people or the Lok Sabha is the popular chamber of the Indian Parliament. It consists of elected representatives of the people. It is also known as first or lower chamber of the Union Parliament. Its maximum elected strength has been fixed at 550. Out of these not more than 530 members can be chosen by direct election from territorial constituencies in the states, and not more than twenty members can be chosen from the Union Territories. According to a law of Parliament, the representatives from the Union Territories are also elected directly by the eligible voters.

Nominated members of Parliament. The Constitution also provides for the nomination of two members of the Anglo-Indian community. If the President is of the opinion that the Anglo-Indian community is not adequately represented in the House of the People, he can nominate not more than two members of that community to the House of the People. The two nominated members of the Anglo-Indian community are not included in the maximum strength of 550 elected members provided by the Constitution.

Qualifications : A person seeking membership of Lok Sabha must possess the following qualification :

- 1) He must be a citizen of India.
- 2) He must make and subscribe before some person authorised in that behalf by the Election Commission an oath or affirmation.
- 3) He must not be less than twenty five years of age.
- 4) He must be registered as voter in any Parliamentary constituency of the country.
- 5) He must possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Disqualifications of a Member : A person is considered to be disqualified for being chosen as, and for being, a member of either House of Parliament if:

- 1) He holds any office of profit under the Government of India or the Government of any State.
- 2) He is of unsound mind and stands so declared by a competent court.
- 3) He is an undischarged insolvent.
- 4) He has voluntarily acquired the citizenship of a foreign State.
- 5) He is under any acknowledgement of allegiance or adherence to a foreign State.
- 6) He is so disqualified by or under any law made by Parliament.
- 7) No person can be a member of both Houses of Parliament. No person can be a member of Parliament and of a House of a Legislature of a State.

If a person is chosen a member of both Houses of Parliament, he shall vacate his seat in one House or other within six months.

Allocation of Seats : Seats in the Lok Sabha are allotted to various States and Union Territories on the basis of their respective population. According to the Constitution (Article 82) upon the completion of each census, the allocation of seats in the House of the people to the States and the division of each state into territorial constituencies should be readjusted by such authority and in a such a manner as Parliament may by law determine.

Reservation of Seats : Special provisions have been made for the reservation of seats in the House of the People for the Scheduled Castes and the Scheduled Tribes. The reservation is to be made in the population ratio

of the Scheduled castes and Scheduled Tribes. Presently there are 84 seats reserved for the Scheduled Castes and 47 seats for the Scheduled Tribes. In a reserved constituency persons belonging only to these castes and tribes can contest election to the Lok Sabha.

ELECTION OF THE MEMBERS OF LOK SABHA

The members of Lok Sabha are elected on the basis of following principles:-

1) Universal Adult Franchise : The elections to the Lok sabha are held on the basis of universal adult franchise. Every citizen of India who is not less than 18 years of age is entitled to be registered as a voter for the Lok Sabha.

2) The members of Lok Sabha are elected directly by the people of India.

3) Joint Electorate System : Under the joint electorate system every voter in a constituency is entitled to participate in electing a representative from that constituency. No doubt, under the Indian constitution some seats of Lok Sabha are reserved for the Scheduled Castes and Scheduled Tribes. But for the purpose of electing representatives of these sections even from the reserved seats, all the voters in those constituencies are entitled to vote irrespective of their caste, creed or community.

3) Single Member Constituency : Under our electoral system one member from each constituency is elected. This system is known as a system of single member constituency.

4) Secret Ballot : Secrecy of vote is the keynote of the Indian electoral system. It implies that such arrangements are made for electing the members of the Lok Sabha as do not reveal the identity of the voter and his choice of the candidate. In other words, it cannot be known which voter has voted for which candidate.

Tenure : The House of the People, unless dissolved earlier, enjoys the tenure of five years from the date appointed for its first meeting. While a Proclamation of Emergency is in operation the normal duration of the House of the People can be extended by Parliament by law for a period not exceeding one year at a time. It should not extent in any case beyond a period of six months after the Proclamation has ceased to operate. In other words, the new Lok Sabha must be elected within six months after the termination of the Proclamation of Emergency.

Dissolution of Lok Sabha : The President may dissolve the House of the People before the expiry of its normal term. He can do so only on the advice of the Council of Ministers.

For instance, on 6th February, 2004 the 13th Lok Sabha was dissolved by the President eight months before the expired of its normal term of five years on the advice of the Prime Minister. The Prime Minister did so as per the decision of the Cabinet.

Sessions : The sessions of the Lok Sabha are summoned by the President. The Constitution provides that the President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit. It is obligatory for the President to see that six months should not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. It implies that the House of the People must meet at least twice a year.

Quorum : One-tenth of the total membership of the House of the People constitute a Quorum for holding a meeting of the House. The Quorum is the minimum number of members required to be present in order to enable the House to transact its business. The House cannot continue its sitting without the presence of at least one tenth of its total membership.

Presiding Officers : The Lok Sabha chooses two of its member as Speaker and Deputy Speaker. The Speaker presides over the settings of Lok Sabha and control its working. When the office of the Speaker is vacant, or when the Speaker is absent from any sitting of the House, the Deputy Speaker performs the duties of Speakers office. The Speaker continues in his office even if the Lok Sabha is dissolved till newly elected Lok Sabha meets.

Languages to be used by members in Debate : Under Article 120 of the Constitution, the business of the House is transacted in Hindi or in English. But a member who cannot adequately express himself in these two languages can, with the permission of the Speaker, address the House in his mother tongue. He can also address the House in any of the languages mentioned in Eighth Schedule of the Constitution.

2.3.4.2 Powers and Functions of the House of the People or Lok Sabha

The Powers and functions of the Lok Sabha may be placed under the following categories :

1. Legislative Powers : Lok Sabha & Rajya Sabha are competent to make laws on subjects included in the Union List; the Concurrent List, the

Residuary Subjects and in certain cases even on State list. An ordinary bill may be introduced in either house of the parliament yet in reality about 95 per cent bills are first introduced in the Lok Sabha. An order the bill must be passed by both houses of the parliament. If there is a disagreement about an ordinary bill between the two houses. Then, the President will summon a joint sitting of the two house of the Parliament. Such a Joint session is presided over by the Speaker of the Lok Sabha. If the differences are not resolved in the Joint session than the bill stands dropped. In the Joint session the Lok Sabha has the advantage because of its numerical strength over the Rajya Sabha.

Legislative Powers of the Lok Sabha with Regard to the Subjects included in the State List

Lok Sabha can legislate on state subject under the following circumstances :

- i) If the Rajya Sabha declares any subject included in the State List as of national importance.
- ii) If the legislative Assemblies of two or more states pass a resolution than Parliament becomes competent to legislate on state list.
- iii) In case of proclamation of emergency under Article 352, the union parliament can frame laws on state subjects.
- iv) In case there is a Presidential rule under Article 356 in any state than the parliament can enact law on state subjects for that particular state.
- v) To implement international treaties.

1. Residuary Powers

Parliament can enact laws on residuary subjects. The above mentioned Legislative powers of the parliament indicate that the Lok Sabha is more powerful than Rajya Sabha.

2. Financial Powers

With regard to financial matters the Rajya Sabha is powerless and the Lok Sabha alone is powerful. A money bill cannot be initiated in the Rajya Sabha. It can originate only in the Lok Sabha and after having been passed by it is sent to Rajya Sabha for its recommendations. The Rajya Sabha must return the Bill with or without its recommendations within a period of fourteen days. If the Rajya Sabha does not take any action within the stipulated period, the money bill is deemed to have been passed by both

Houses of Parliament. In case, the Rajya Sabha returns the money bill with some recommendations, it shall depend upon the will of the Lok Sabha to accept them or not. It is up to the Speaker to decide whether a particular Bill is Money Bill or not. It is, thus, evident that the Lok Sabha alone is powerful in the financial sphere.

3. Control over the Executive

The Council of Ministers is the real executive of India, which is collectively responsible towards Lok Sabha. Lok Sabha exercises its control over the council of Ministers as under:-

i) Questions : During the fixed question hour members of Lok Sabha can ask any question to the Ministers concerned with their departments.

ii) Debate : Through debates members of Lok Sabha criticize the policies of the Ministers.

iii) Call Attention Motion : In order to focus the attention of the ministers towards some important matter members of the Lok Sabha can introduce a Call Attention Motion.

iv) Adjournment Motion : During the session of the Lok Sabha any member can introduced Adjournment motion for discussion on any issue of public importance. If the motion is accepted by the speaker of the Lok Sabha than members put debates on the concerned issue.

v) Motion of No Confidence : The members of Lok Sabha can pass a no confidence motion against the council of ministers and can remove them from their office. The motion of no confidence is expressed in the form of censure motion, cut motion, in the union budget or by rejecting Govt. Bills. All these devices provide adequate opportunity to the members of Lok Sabha to grill the government.

4. Constituents Powers

A bill proposing an amendment in the Constitution may be initiated either in Lok Sabha or in Rajya Sabha. The bill shall be presented to the President for his assent only when it is passed by both the Houses of Parliament. In case of conflict over a constitutional amendment bill between the two Houses, the Constitution does not provide for joint sitting of the House of Parliament. As such both houses of Parliament stand at par and enjoy equal footing.

5. Judicial Powers

The Lok Sabha also possesses the following Judicial powers which it

can exercise in alongwith Rajya Sabha.

- i) Lok Sabha alongwith Rajya Sabha takes part in the proceedings of impeachment against the President, Judges of the Supreme Court and High Courts of the States. One house frame the charges and the other house makes investigation. If the resolution is passed by 2/3 majority of the members present & voting in both the Houses, then the concerned official gets removed from the office.
- ii) The impeachment charges against the Vice President are framed by the Rajya Sabha but the resolutions is also passed by the Lok Sabha.
- iii) If any member or any other person violate the privileges of the members of the Lok Sabha then it can take action against such a defaulting members. On December 19, 1978. The Lok Sabha dismissed Mrs. Indira Gandhi from the membership of the House after declaring her quality of breaking the privileges of the House.
- iv) The lok Sabha alongwith Rajya Sabha, can pass a resolution against Attorney General, Comptroller & Auditor General and the Chief Election Commissioner and thus recommend to the President of India for their removal from the office.

6. Electoral Functions

The Lok Sabha elects its Speaker and Deputy Speaker. In addition to it, elected members of Lok Sabha take part in the election of the President and all the members take part in the election of the vice president.

7. Power with regard to ordinances

When the parliament is not in session and the country needs the passing of a law then the president can issue ordinances. The ordinances have the same authority as that of laws passed by the Parliament. Such ordinances shall be laid before both the houses of Parliament and the ordinance shall cease to operate at the expiry of six weeks from the reassembly of Parliament. Both the houses can approve or disapprove the ordinance by resolutions.

8. Power with Regard to Declaration of Emergencies

The constitution of India empowers the President to declare three types of emergency under Article 352, 356 and 360 Each declaration of emergency must be approved by both the Lok Sabha and Rajya Sabha within a stipulated period.

9. Power of Lok Sabha for the Termination of Emergency

Ten percent members of the Lok Sabha can initiate action for the termination of an emergency, This notice is given to the president it in case the Lok Sabha is not in session, or to the speaker if it is in session, such a requisitioned meeting of the Lok Sabha has to be held within 14 days of the issue of the notice by the 1/10 members of the Lok Sabha. In case the Lok Sabha passes the resolution, for the termination of the proclamation by a simple majority, the proclamation than ceases to operate and the president has to withdraw the proclamation.

2.3.5 CONCLUSION

The above account in respect of the Lok Sabha makes it abundantly clear that the Lok Sabha is far more powerful than the Rajya Sabha. There is no denying the fact that if the Parliament is the Supreme organ of the State, the Lok Sabha is the supreme organ of the Parliament. In fact, for many practical purposes the Lok Sabha is the Parliament.

Note: The lesson have been written by the financial assistance of D.E.C.

2.3.6 SELF CHECK EXERCISE

Attempt any Two questions :

Short Answer-Questions :

1. What do you know about composition of the Parliament of India.
2. How does the Lok Sabha controls the Executive.
3. Describe exclusive powers of Rajya Sabha.
4. When a Joint sitting of the two houses is convened ?

Long Answer Questions :

1. Discuss the Structure, powers and the functions of the house of People.
2. Discuss the composition, powers and functions of Rajya Sabha.

**UNION COUNCIL OF MINISTERS : ITS FORMATION, FUNCTIONS
AND ITS RELATION WITH PRIME MINISTER AND PRESIDENT**

As you know all the powers and functions of the Union Government have been vested in the President and the President exercises them directly through officers subordinate to him in accordance with the provisions of the constitution. He exercise these powers and performs his functions through "The Union Council of Ministers".

Formation of the Council of Ministers

Article 74(i) of the Indian Constitution provides for the creation of Union Council of Ministers headed by the Prime Minister to aid and advise the President in the exercise of his functions. According to 42nd Amendment of the constitution, President is obliged to accept its advice. Article 75 provides for the formation of the Union Council of Ministers. This article merely provides that the Prime Minister is appointed by him the President and other Ministers are appointed by on the advice of the Prime Minister. In fact, the formation of Council of Ministers is a two stage process. Certain conventions have come into existence to regulate the appointment of ministers.

The first step is the appointment of the Prime Minister. The leader of the political party which commands majority in the Lok Sabha always appointed the Prime Minister. The majority party in the Lok Sabha holds a meeting and elects a leader and the name of the leader is conveyed to the President, who is then formally appointed as Prime Minister by the President. It may be recalled that Jawahar Lal Nehru, Lal Bahadur Shastri, Mrs. Indira Gandhi and Sh. Morarji Desai all have been leaders of the majority party in the Lok Sabha when they were appointed the Prime Ministers. It will have to be kept in mind that the President can use his discretion when no political party commands majority in the Lok Sabha. This situation arose in 1979 due to the split of Janata Party when Morarji Desai, having lost his majority in the house, tendered resignation of his 28 months old ministry on July 15, 1979. President Sanjeeva Reddy extended the invitation to Y.B. Chavan to form the new government, as he was the leader of the opposition. Since Congress (I) had only 74 members in the Lok Sabha, he intimated his ability to form the ministry. President then asked Morarji Desai and Charan Singh, both to submit the list of their supporters to settle the rival claims. President turned down the claim of the Janata Party to be invited to form the government on the basis its being the largest party. He rather asked the two leaders to prove their majority. After ascertaining the list, he invited Charan Singh to form a coalition Government as he had support of 262 members against 236 of Janata Party. He was asked to prove his majority within one month. In other words, it is for the President to make an assessment as to

whom he should invite and which party can provide a stable government. He was asked to prove his majority within one month. After 1989 Lok Sabha elections, no single party won the majority but the National Front was the largest group whose leader V.P. Singh was appointed the Prime Minister. The fall of V.P. Singh after no-confidence motion having been passed against him, led to the appointment of another Prime Minister (Chander Shekhar) having only 57 MPs of his group but supported by Congress (I) from outside. Prime Minister P.V. Narsimha Rao was appointed as he was the leader of the largest political party after the 10th Lok Sabha election though again not having clear majority of its own. Though later on he managed majority and Congress remained in power for a full term of five years. In 1996 general election, again no party secured clear majority though BJP emerged as a single largest party. It staked its claim to form government; National Front renamed United Front later on (a front consisting of 13 parties, most of them regional) too staked claim to form government with outside support of Congress party. Now final decision rested with the President and the President considered it appropriate to invite BJP first of all since it was the single largest party. The President appointed Atal Bihari Vajpayee as the Prime Minister and asked him to prove his majority within fifteen days. BJP government stayed in power for 13 days under the leadership of Atal Bihari Vajpayee but it had to go because it was defeated on the floor of the house. The President then invited United Front to form the government and we had United Front government at the centre giving two Prime Ministers H.D. Deve Gowda and I.K. Gujral, as first the Congress decided to withdraw support if the Front did not change its leader. The UF went through the vote of no confidence and later decided to have Gujral, as P.M. to which Congress gave support for another seven months. Ultimately the Congress withdraw the support over the controversy regarding Jain Commission Report. New election were held in March 1998. Once again a hung Parliament was the result. The President chose to follow the precedent of inviting the single largest party to form the govt. The BJP with Atal Bihari Vajpayee because the Prime Minister with its eighteen odd alliance partners. This Govt. also fell after thirteen months due to shortage of one vote. In 1999, elections Vajpayee was again appointed Prime Minister as he was leader of NDA. Congress came to power with UPA in 2004 general elections and S. Manmohan Singh was appointed Prime Minister. In 2009 election UPA again formed Govt. in which Congress has 206 seats.

The second step is the formation of the Council of Ministers. The Prime Minister selects the Ministers of different ranks from his party and presents the list of these Ministers to the President who appoints them formally.

Though the constitution does not mention it, but the fact is that in the entire process of selection of Prime Minister and other Ministers in normal situations, the President has no discretion (like the Queen in the U.K.). The practice has been that he must appoint

the leader of the majority party in Lok Sabha as the Prime Minister and he must appoint others as Ministers whom the Prime Minister has selected. The President must act strictly according to this practice and must not deviate from it. All the Presidents have acted in accordance with this practice.

But when no political party is commanding majority in the Lok Sabha, or a political party or some political parties (if a single political party has failed to secure majority) fail to elect a leader, the President then, may have an opportunity to exercise his discretion in appointing the Prime Minister. The example have already been cited.

Conditions for Appointed to the Council of Ministers

1. According to the constitution, normally only those persons are appointed as ministers who are members of Parliament.

The practice has been that only few ministers are appointed from the Rajya Sabha. Most of the Ministers are taken from the Lok Sabha. The Lok Sabha is the nerve centre of political and democratic activity and represents the political aspirations of the people of the country being directly elected by the people. Also it is to be kept in view that the Ministers are responsible to the Lok Sabha and not to the Rajya Sabha.

The constitution, however, permits the appointment of Ministers, who are not the members of Parliament, as a temporary measure. A Minister (if he is not a member of Parliament) must become a member of Parliament within six months from the date of his appointment as a Minister. After the expiry of this date, he ceases to remain a Minister, unless he becomes a member of Parliament. This practice is not common in other countries having parliamentary form of Government as in U.K. in the congress government elected through 1991 elections three ministers, including the P.M. (the other two being Finance Minister & Defence Minister) secured membership of Parliament after being inducted into the Ministry. Even H.D. Deve Gowda was not a member of Parliament when he assumed office of the Prime Ministers though later on he got elected to Rajya Sabha from his home state Karnataka.

2. As a rule, Ministers should always belong to the majority party. It is necessary for the unity, and solidarity in the Council of Ministers and for its homogeneous working and for proper discipline which is possible only if they all belong to the same political party. In fact, in his first Council of Ministers constituted on 15-08-1947 Jawahar Lal Nehru tried to accommodate 5 Ministers from different Political Parties to give his government a national standing instead of party standing, but the experiment failed and the efficiency of the government suffered due to mutual bickering. Since then, all the Ministers are taken from the majority party in the parliament and if it is coalition government, like that of the governments

of United Front and the government of BJP and its allies, then each party gets share according to its party strength usually. 1999 Government was also coalition of 24 parties named NDA Govt. In 2004, general elections Congress formed the Govt. with its allied UPA of 13 parties with the outside support of communist parties. In 2009 UPA again formed the Govt. with six parties. Congress again had upper hand with 206 seats.

Factors that Influence P.M.'s Choice

Theoretically the Prime Minister had a free hand in selecting the Ministers, but actually he/she is bound by various considerations.

Certain loyal and dependable friends in the party must have a place in the Council of Ministers which in fact becomes his/her inner Cabinet.

Party unity has to be maintained and hence all the interests and different shades of opinion in the party are given representation in the Ministry.

India is a multi-national state and hence the representatives of different communities, races, speaking different languages, professing different religious and belonging to different geographical areas have to be included in the Council of Ministers.

The Scheduled Castes and backward communities, women and minorities are also always provided representations in the Ministry.

For the efficient working of the Government and for effective participation in Parliamentary debates the Prime Minister has to include in the Ministry certain persons who possess administrative experience and skilled parliamentarians are also included in the Ministry.

Special consideration is also shown to younger persons in the party so that they gain experience for managing the government. But in a coalition govt., it usually have the various alliance partners who according to their respective strength and support, bargain for berths in the Council of Ministers and also the allocation of particular portfolios.

Categories of Ministers

The constitution provides only for Council of ministers and makes no mention of various categories of Ministers, but right from the start there have been three types of Ministers in the Union Council of Ministers which are called Cabinet Ministers, Ministers of State and Deputy Ministers.

How many ministers-there will be in the different categories was earlier left to the discretion of Prime Minister and the number of ministers has been changing from time to time in accordance with the wishes of the Prime Minister but in 2003 by 91st amendent the provision were charged now the total number by ministers, including PM shall not exceed 15% of the total strength of the Lok Sabha.

Cabinet Ministers are senior most ministers and are the senior most leaders in the ruling party. They hold independent charge of various important departments of government. In fact, it is they who constitute the government of India. They hold meetings normally once a week under the chairmanship of the Prime Minister and lay down the major policies of the government in all fields of administration. All departments later on implement those policies and decisions. There have been occasions when the Prime Minister has also included, ministers without portfolio. Of course, this has been done very rarely.

Next in status are Ministers of State and some of them may hold independent charge of government's departments. They have no right to attend the cabinet meeting except when they receive a special invitation from the Prime Minister to attend such meetings and normally they are invited to attend the meetings when matters concerning their department are to be discussed.

The rank of Deputy Ministers is lower than that of the Ministers of State. They have no independent charge of department. They are attached to Cabinet Ministers or Ministers of state and their main job is to perform only such functions as are delegated to them by minister-incharge of the department to which they are attached.

There are Parliamentary Secretaries too. They do not fall in the categories of ministers. Also they are not appointed by the President but are appointed by the Prime Minister and the Oath of Office and of the secrecy too is administered to them by the Prime Minister. They are lower in status to the Deputy Ministers. Prime Minister attached them to various departments to help the Ministers in their administrative and parliamentary work.

Deputy Ministers and the Parliamentary Secretaries are in fact probationers and with their good work and training they may hope to secure a higher position in a future Council of Ministers.

Distinction Between the Cabinet and Council of Ministers

There is three fold distinction between the two :-

1. Whereas the constitution provides for the Council of Ministers, the Cabinet was an extra-constitutional organisation for a very long time as it was not mentioned anywhere in the constitution. However, it cannot be said so after the 44th Amendment which while making alterations in President's power of proclamation of emergency asks him to do so only on written advice of the cabinet.
2. The difference in their composition. Council of Ministers includes all categories of Ministers i.e. Cabinet Ministers, Ministers of State and Deputy Ministers and is a large body of Ministers. Its membership varies at different times according to the discretion of the Prime Ministers.

Cabinet does not include other two categories of Ministers i.e. Ministers of State and Deputy Ministers. It is a very small part of Council of Ministers and

hence it is said that Cabinet is a wheel within the wheel and it is an inner circle in a large body.

3. They differ in their functions and status too. The cabinet is the real government. Its members are the senior-most and are first rate leaders of the ruling party, hold weekly meeting and make major decisions of the government. Whereas, other ministers of Council of Ministers and Junior Ministers and Junior Leaders of the ruling party, lower in status, never hold a meeting to make decisions. Their only job is to implement faithfully the decisions of the Cabinet.

However, Cabinet and all other members of the Council of Ministers are the political executive, belong to one political party or to different coalition parties as members of parliament and are responsible individually and collectively to the Lok Sabha.

The Necessity of a Cabinet

In England, it is a product of historical growth. When Curia Regis of Norman times became a very large and unwieldy body, it became inconvenient for discussion and therefore Charis-II elected five members of this body (CABAL the first letter of the make of five members) to advise him and this became the parent of modern.

In India we established a government more or less on the British Model and same consideration were responsible for the creation of a Cabinet different from Council of Ministers. Today, as D.C. Gupta puts it, "in the modern age of science, technology democratic processes, concept of welfare state and growing Internationalism; the task of government has become highly complex, delicate and sensitive. Very often situation at home and abroad arose and needed discussions and decisions. Often, there were problems in which the involvement of too many was neither feasible nor safe and some time a good deal of manipulations, horse-trading and maoevering were done, and obviously these could not be done in the presence of 40-45 Ministers who comprised the Council of Ministers. In order to deal with such problems, the Prime Minister selected from the Council of Ministers a smaller body of important and leading members of his party and that body was known as the cabinet".

Distribution of Portfolios

Though constitutionally the portfolios are allocated to the Ministers by the President, however, it is the prerogative of the Prime Minister. It is his right to allocate a Government Department to a particular Minister but there are certain examples when the Prime Minister had no choice but to allocate a particular Department to a particular person as demanded by that person. Prime Minister has to take their claims into consideration in view of his awareness of the political effect, that their exclusions may be a source of embarrassment. Since 1947, we can quote various examples when ministers insisted and got the department of their choice.

This, however, depends upon the personality of the Prime Minister and his position in the party and among the people. A strong Prime Minister will not allow anyone to limit his discretion in this regard. However, as we will discuss a bit later the position of the Prime Minister heading a minority coalition govt. is very precious and his choice in all these matters is very limited.

Salaries, Oath of Office and Secrecy, etc.

Salaries of Ministers are determined by a law of the Parliament. According to the Salaries and Allowances of Ministers Act of 1952, a Cabinet Minister got Rs. 2250 per month as salary plus Rs. 500 per month as sumptuary allowance. A Minister of State got Rs. 2250 per month and no allowance and a Deputy Minister got Rs. 1750 per month only as his salary. These Salaries have been increased from time to time.

Before a Minister enters upon his office, the President administers to him the Oath of Office and Secrecy.

A Minister can attend the meetings of both the House of Parliament but he can vote only in the House of which he is a member (and not in the other House).

Its Working

The Cabinet in India functions under the leadership of the Prime Minister. Though it holds weekly meetings, it may meet often depending upon the Prime Minister's discretion. Its agenda is fixed by the Prime Minister and all its discussions and decisions are coloured by the personality of the Prime Minister. The Prime Minister summons the meetings and these are regarded as the decisions of the Cabinet. The Ministers are to keep the proceedings of the Cabinet meeting secret.

The Cabinet works through certain committees-standing and adhoc Committees. Defence Committee, Foreign-Affairs Committee and Parliamentary Affairs Committee are few example of standing committees. Adhoc or temporary committees are constituted from time to time for specific purpose only and as soon as they submit their reports, they to out of existence. All the committees are nominated by the Prime Minister.

These exists a Cabinet Secretariat also which consists of a Cabinet Secretary, a Joint Secretary, various officers and the subordinate staff. It functions under the direct control of the Prime Minister.

Cabinet's Collective Responsibility

Cabinet is responsible to the Parliament for its functioning and this responsibility is reflected in the practice of asking questions by the members of the Parliament from the Ministers and the right of the Parliament to discuss government policies and criticise the government on different matters in Parliamentary debates. The members of the Lok Sabha may move a vote of no-confidence against the entire Council of Ministers

and if a no-confidence motion-against one Minister is passed it means that the whole Ministry has to resign.

It also means that at the decision making stage, the minister who cannot own the decision, must resign from the Cabinet, or he must own its decision. It also means that if he has not resigned, he must support this decision on the floor of the house and outside the House.

It also means that only the Minister is responsible to Parliament for the actions and decisions of his department of which he is the head and not the officers of this department on whose advice he took the decision. "Credit or discredit for all acts of the department would go the Minister".

Ministers must work in the spirit of "give and take" and should be willing to make compromises only then they can make a solid team and give a strong and efficient government to the country. There is truth in what Ogg has said, "the essence of the Cabinet System is solidarity - A "common front of the Cabinet". The Principle of joint responsibility of Council of Ministers is specifically provided in our constitution.

This does not mean that no individual minister ever leaves office the Prime Minister may ask a minister to resign or may advice the President to dismiss a minister or he may be dropped from the Cabinet at the time of the reconstitution of the Cabinet. The reason for this may be minister's gross misconduct which may tarnish the name of the party of the Prime Minister in the eyes of electorate and the Parliament. Sh. K.D. Malaviya had to go in 1968 because of certain charges of corruption against him and T.T. Krishnamachari had to go because of his alleged involvement in the Mudhra case. Devi Lal was dismissed by the Prime Minister V.P. Singh. In the Cabinet of P.V. Narsima Rao, Madhav Singh Solanki had to resign from the Foreign Affairs Ministry. Over an alleged handing over a slip to the Swedish counterpart of Sihlitarly. P. Chidambram resigned in connection with the security-scam. Many senior ministers from Narsimha Rao ministry had to go due to alleged involvement in Hawala dealings. Various other examples are these when individual ministers had to go because of one reason or the other. In the NDA government, George Fernandes resigned as Defence Minister in the wake of Tehalka exposure. However, he was later inducted again into the Cabinet.

Powers and Functions of the Council of Ministers

Though the constitution provides for the creation of a Council Ministers, its power and functions are nowhere defined except that it is to aid and advise the President in the exercise of the functions. As we have already said, our President is only a nominal head, and in fact all his functions are performed and his power are exercised by the Council of Ministers in his name. In the name of Council of Ministers all the powers are exercised by the Cabinet. The 42nd amendment has legalised the already existing practice according to which all the Presidential powers are exercised by the Cabinet in the name of President.

The following are the more important functions which the Union Cabinet performs today :-

1. To act as Supreme Executive

It supervises the working of all departments of the government. It supervises the implementation of policies of the Cabinet by the different departments. Its members head the various departments and they control their working and for the Department's working they are answerable to the Cabinet.

2. Policy Determining Body

It formulates the policies and makes major decisions for the upliftment of the country in the economic, social and political fields. Various measures have been adopted following the new economic policy leading to liberalisation and offering incentives to NRIs for investment in Trade and Industry in India.

3. Proclamation of Emergency

The President's powers of proclamation of emergency under Article 352, 356 and 360 are in fact powers of the Cabinet. It is the Cabinet, which decides to proclaim an emergency in the wake of foreign aggression or armed rebellion. It is the Cabinet which decides that the constitutional breakdown in a particular state has taken place and on its advice Presidential rule is imposed in a particular state. Same is true for the proclamation of the Financial emergency also. All further action in the wake of declaration of Emergency is decided upon by the Cabinet.

4. Diplomatic Powers

It determines the country's foreign policy. It negotiates and approves agreement with the foreign countries. It decides the question of war and peace. The Prime Minister, the Foreign Minister and other Ministers keep constant contact with the foreign diplomatic missions in India and leaders of foreign countries.

5. Appointments

All the major appointments made by the President are indeed decided upon by the Cabinet. Judges of Supreme Court, State High Courts, Governors, Ambassador, Chairman and members of the Union Public Service Commission, Accountant-General of Central Revenue, Comptroller and Auditor-General of India, Chief Election Commissioner and various members of the other commissions are appointed from time to time by the President on the advice of the Cabinet.

6. Legislative Functions

Though legally all laws are passed by the Parliament, but in fact most of times Parliament passes only those laws which are introduced and piloted by the Ministers.

It is the Cabinet which decides the dates for holding of the sessions of the Parliament,

decisions about the dissolution of the Lok Sabha, decides the date of holding new elections in the Lok Sabha and decides the name of persons who are to be nominated to the Parliament by the President.

It also decides and recommends to the President to issue ordinances and exercises further Legislative powers through the medium of subordinate legislation. The ordinance issued by the President in September 1998 regarding the changes in Parsar Bharti Bill has raised a lot of controversy.

The Cabinet also decides as to which parts of constitution are to be amended by the Parliament which only passes these formally. In fact Cabinet makes the laws with the approval of the Parliament.

7. Financial Functions

It prepares the budget, determines new taxes which are to be imposed and how the revenues are to be spent. A money bill can be introduced in the Lok Sabha by the Finance Minister (and by no other member of Lok Sabha). In recent years, the new taxes were imposed through the ordinances (that means before the Parliament had the opportunity even to discuss them). So it is the Cabinet which controls the State purse.

8. A Coordinating Agency

Cabinet is not only an administrator and lawmaker but is also a coordinator and a mediator. It prevents departmentalism and irons out the differences that may crop up between the various departments and in this sense it acts as a mediator. It coordinates the activities of various departments which is very essential for good administration.

Position of the Cabinet

Considering the above mentioned functions of the Cabinet, we can conclude that in India Cabinet is not less dictatorial than its counterpart in U.K. The President must act in accordance with its advice. It has the majority in the Parliament and so the latter works according to the wishes of the Cabinet. In fact, the Cabinet controls the President as well as the President and hence there is nothing wrong if we say that in India too we have the dictatorship of the Indian Cabinet. In case it enjoys absolute majority in the Lok Sabha.

The Relation of Council of Ministers with the Prime Minister

Prime Minister holds prominent position in relation to the Council of Ministers and this position is recognised in our constitution itself. Article 74(i) provides that there is a Council of Ministers 'with Prime Minister at its head', 'to aid and advice' the President in the exercise of his functions. Similarly Article 75(i) says that the Ministers are appointed by the President on the advice of the Prime Minister.

Also according to Article 78, the Prime Minister acts as a channel of communication between the Council of Ministers and the President. Clearly the constitution gives a position of superiority to the Prime Minister in relation to other Ministers.

(A) Selection of Ministers

The constitution gives an impression that the President appoints the Prime Minister and all the other Ministers. But such an impression is completely without any foundation. It is an established fact that formation of council of Ministers, the removal of minister, allocation of portfolios among Ministers and reshuffling the Council of Ministers and reallocation of the offices among them is the P.M.'s prerogative. This is his undisputed right.

He selects the Minister, decides about the category to which they should belong and decides the size of the Council of Ministers. He may select them from outside in his party, even from outside the parliament. Nehru appointed ministers who were non-congressmen and almost all the Prime Ministers appointed ministers, some of whom were not members of Parliament. The President and the Parliament have no right to interfere with Cabinet making and allocation of work by the Prime Minister. In June 1964, Prime Minister Shastri included Sh. Sanjiva Reddy in his Cabinet. Objections were raised in the Parliament but the Speaker ruled that appointment of Minister was the P.M.'s prerogative and Parliament had nothing to do with Cabinet formation. Similarly when Mrs. Indira Gandhi constituted her first ministry in 1966, Mr. Kamraj, the party President raised objections on including some persons in the Cabinet, but the P.M. brushed aside the objections and remained firm on her right to appoint any one as minister in her Cabinet. Between 1966 and 1973 Mrs. Gandhi reshuffled the Council of Ministers IX times and gave the impression that she had unquestioned power of constituting her Government. Similarly, Rajiv Gandhi resorted to very frequent shuffling and reshuffling of his Cabinet. This was equally true of J.L. Nehru and Lal Bahadur Shastri who refused to concede such leadership in the matter of selecting the ministry. However, it has to be kept in mind that they all headed single party majority government. And the position of the Prime Minister in today's changed political scenario is far weaker in all these respects.

(B) Distribution of Portfolios

Similarly, it is prerogative of the Prime Minister to distribute portfolios among the ministers.

All the Prime Ministers have exercised this power in an unrestricted manner, though, there are instances when the Prime Minister's hands were tied to allocated a particular department to a particular Minister and at a latter stage either the portfolios were withdrawn or the Ministers were dropped out by the P.M. or were forced to resign from the Cabinet. Even Mr. Morarji Desai with the mightily support of the Syndicate group could not retain his Finance portfolio in 1969 and his seat in the Cabinet. Kamraj plan

was one such device used by Nehru in 1963 to oust such ministers.

(C) Removals

Though, according to the constitution, the minister holds office during the pleasure of the President and also that the President can dismiss ministers but, in fact, the President has no say in these matters and the decision of the Prime Minister is final. He may ask a minister to resign or may advise the President to dismiss him or may drop him out by the reconstitution of the Ministry. Ministers like C.D. Deshmukh and M.C. Chagla and Mahavir Tyagi resigned on account of differences with the Prime Minister. Likewise, T.T. Krishnamachari, Dr. Ram Subhag Singh and Mohan Dharia resigned due to differences with the Prime Minister. During Janata Party rule, Raj Narain had to go from the Cabinet. Devi Lal who was the Deputy Prime Minister and Agricultural Minister during V.P. Singh government was also removed from the Cabinet.

Hence, we can say that anybody can be thrown out, anybody can be brought in and anybody can be shifted from one ministry to another. It is said that the Prime Ministers in India have treated other Ministers "Less as a body of colleagues and more as a band of Palace-Guards" (J.C. Johari). However, this is not true in case "there is a coalition government which makes the Prime Minister less assertive and vulnerable to different pressures" and compromises.

Prime Ministers as Coordinator

Prime Minister's unquestioned supremacy over the Council of Ministers is also reflected in his acting as a Chief Coordinator and a Chief Supervisor of the working of the Government. He/she exercises a general surveillance and coordinating influence over various departments. He/she sees that the ministers function in close cooperation with each other. J.L. Nehru and Mrs. Indira Gandhi had taken such detailed interest in the working of various departments that the ministers are said to have been reduced to the position of Prime Minister agents, assistants or at the most, their glorified secretaries. But again a Prime Minister depending upon the support of his heterogeneous alliance partners finds himself in a different position.

Prime Minister and Cabinet Meetings

The Prime Minister summons the meetings of the Cabinet, presides over its meetings and fixes the agenda. He/she dominates in the meeting and his/her personality colours the decision and discussion in the Cabinet. Sometimes Prime Minister commits himself/herself to a particular policy without consulting the cabinet and takes decision, later on approval by the cabinet is merely a formality. It is interesting to recall that Mrs. Indira Gandhi advised the President to impose national emergency at her own decision on 26th June, 1975 and the cabinet approved this on the following day.

All the decisions even taken by the ministers about their departments which were not discussed in the Cabinet meetings must have the approval of the Prime Minister.

All the decisions and proceedings of the cabinet must be kept secret and it is the prerogative of Prime Minister only to decide as to what is to be released and at what time it is to be related to the press and to country.

Comments

We have had many Prime Ministers so far J.L. Nehru, Lal Bahadur Shastri, Mrs. Indira Gandhi, Sh. Morarji Desai, Sh. Charan Singh, Sh. Rajiv Gandhi, Sh. V.P. Singh, Sh. Chander Shekhar, Sh. P.V. Narsimha Rao, Sh. H.D. Deve Gowda, Sh. I.K. Gujral and Sh. Atal Bihari Vajpayee. Sh. Gulzari Lal Nanda acted as interim Prime Minister twice. Some of them have demonstrated that they were the masters of the government and enjoyed unlimited and unquestioned supremacy in the affairs of state, whereas some proved really weak and appeared to be always compromising.

J.C. Johari has commented that the P.M.'s office in India has been presidentialised i.e. has been acting more like an American President "conducting his personal rule with the help of his personal advisor responsible to none but himself alone and less that of the English Prime Minister, counting on the collective support of the Cabinet Ministers, collectively, responsible to the people through their chosen representatives sitting on the national legislature", but this statement does not hold good regarding Prime Minister of a coalition govt.

However, there is a truth in the observation that "the office of the P.M. is what its holder chooses to make it". The office varies with character and personality of the Prime Minister.

Nehru reigned supreme over the government and the party and the same was true about Mrs. Indira Gandhi. The reasons certainly are found in the dynamism and strength of their personalities and their national image and enormous popularity among the masses. Morarji Desai as Prime Minister carried on his duties with active consultation of his serious colleagues like Atal Bihari Vajpayee, Chander Shekhar and Jagjiwan Ram. However, Prime Minister Charan Singh enjoyed limited authority, as he was leading a coalition ministry comprising of Janata (Secular) and Congress (S). He can be cited as an example where the Prime Minister never faced the Lok Sabha. Rajiv Gandhi was able to consolidate his position vis-a-vis other ministers, though he was new to politics. During the Janata Dal regime, V.P. Singh gave the impression in the beginning, that he will prove to be a success, but he remained busy in balancing the left and the right support, apart from tackling his deputy Devi Lal. As far as Chander Shekhar was concerned, he could never come out the pressure of his supporting party. He had to take decisions under extreme limitations and ultimately he had to resign after four months. P.V. Narsimha Rao, who emerged as the consensus candidate was though to be just another weak P.M. in the beginning but the way he gained increasing popularity and support from his party, made his position quite secure. The Congress party succeeded in consolidating its position in the Lok Sabha and completed its term successfully under his leadership. After 1996 election, H.D. Deve Gowda, was replaced by I.K. Gujral. The position of the Prime Minister in such an arrangement is certainly very

weak as is evident from the example of the NDA Prime Minister too. After L.K. Advani, Home Minister also became the Deputy Prime Minister. It was said that in reality the power was shared between the two Atal Bihari Vajpayee and Advani. With 2004 general elections, Congress with UPA formed Govt. with S. Manmohan Singh as Prime Minister, much depends on the relations of partners. Similar is the case with 2009 elections UPA formed Govt. with Manmohan Singh as Prime Minister with 6 parties in the alliance.

The relations between the Council of Ministers and the President

The President is not a part of the Council of Ministers and stands outside it. Even though he issues the order for appointing and dismissing them, in fact, it is merely a constitutional formality and no more.

The President, in fact, has no direct connection with the Council of Ministers except through the Prime Minister, who acts as a channel of communication between the President and the Council of Ministers. The constitution imposes a duty upon the Prime Minister under Article 78 which stipulates that :

- (a) he is to communicate to President all decisions of the Cabinet relating to the administration of the union and proposals for legislation;
- (b) to furnish the information desired by the President in relation to the administration of the Union and proposals for legislation;
- (c) If the President 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 Cabinet.

We can say that the Prime Minister acts as the Chief Spokesman of the Council of Ministers and is Chief Advisor of the Indian President.

However, it does not mean that other Ministers do not meet the President. They do meet the President in connection with the affairs of State but with the prior approval of the Prime Minister. It is a breach of Cabinet etiquette for any other minister to revise the account of information given by the Prime Ministers or reveal to the President the substance of Cabinet discussion. Prime Minister is the only official channel for the President to know about the affairs of the State.

According to convention established in our country, all the Presidents have always acted in accordance with the advice of the P.M. and have never meddled in the affairs of the government by refusing to approve the decision of the Council of Ministers as conveyed to them by the Prime Ministers, nor the Prime Ministers and the Presidents had any serious disagreement over the affairs of the state. There have been differences, but the Presidents never allowed these differences to be stretched too far and have restrained from making an issue of them. The President knows that the Prime Minister is politically

very strong and can create embarrassing situation for the President either by resigning from the Prime Ministership and then by refusing to accept Prime Ministership again (being the leader of the majority party in the Parliament) when called to accept the office, or by threatening an impeachment of the President through the Parliament which is controlled by the Prime Minister. Due to the fear of impeachment, President, will ditto the lines if the decision is disagreeable to him. There was a lot of controversy during the last days of President Giani Zail Singh regarding his relations with the then Prime Minister Rajiv Gandhi. It grew out of the non-submission of the Thakkar Commission Report to the President, who asserted that under Article 78 he had the right to all information. There was even remorse and speculations that the President may dismiss the Rajiv Gandhi government, however, nothing of the sort happened and Giani Zail Singh's term was over.

The convention of accepting every advice of the Prime Minister had been given constitutional shape after the passage of 42nd Amendment and the President now is bound by the advice of the Council of Minister. Article 74(i) has been amended saying that the President shall in the exercise of his function act in accordance with by the advice of the Council of Minister. It makes it legally obligatory on the part of the President to act in accordance with the advice of Council of Ministers. However, the 44th Amendment has given power to the President to send for reconsideration any decision of the government. The Cabinet may examine the advice of suggestions but ultimately the President is bound to accept the advice of the Cabinet.

The President holds a position of dignity and of considerable influence and is not a mere figure head; or a 'rubber stamp'. We have evidences to show that the President in India have raised objections to certain policies and decisions of the government and conveyed their opinions of dissent to the Prime Ministers and this is a fact that their views have carried a great weight with the government and they have been able to exert influence in shaping the policies of the Government. So it can be said that President is a constitutional head of the state

THE PRIME MINISTER - POWERS AND POSITION

According to Article 74 of the constitution, there shall be a Council of Ministers with the Prime Minister as the head, to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. This is the position after 42nd Amendment. The 44th Constitution Amendment has only empowered the President to send back the decision of Cabinet for reconsideration once.

Appointment of the Prime Minister

According to the Article 75(i) of the constitution, the Prime Minister is to be appointed by the President and at the time of his appointment, it is not necessary that he should be member of either House of Parliament. But in case a person who is not a member of either House of Parliament is appointed as the Prime Minister. He will have to resign if he does not become a member within six months of his appointment. Sh. P.V. Narsimha Rao was not a member of the Parliament when he took office, he secured the seat in Lok Sabha later on. Similarly, H.D. Deve Gowda was elected to Rajya Sabha from Karnataka. Later on as he was not a member Parliament when he became Prime Minister.

In England, there is a convention that the Prime Minister should ordinarily belong to the House of Commons. This convention was established in 1923 and was strictly followed till 1963. In 1963, this convention was temporarily violated when after the resignation of Harold Macmillan, the Queen appointed Earl of Home as the Prime Minister who was the member of the House of Lords. But just after his appointment, he resigned his seat in the House of Lords and contested a seat for the House of Commons and became its member. In India, however, there was no such convention. After the death of Lal Bahadur Shastri in 1966, Mrs. Indira Gandhi, who was the member of Rajya Sabha at the time, became the Prime Minister.

It may, however, be asked as to how far the President has a discretion in the appointment of the Prime Minister? As it has been discussed in earlier lesson, so long as one of the political parties has a clear majority in the Lok Sabha and has a clearly recognised leader the President has no say in his appointment. But in case, none of the parties has a clear majority in the Lok Sabha, when the elections are held, the President may play quite an important role in the appointment of the Prime Minister. In such a situation, he may or may not appoint the leader of the largest party in the Lok Sabha as Prime Minister. However, the practice has been by the tradition of first inviting the leader of the largest party to try to form the government.

It is pertinent to recall that the President N. Sanjeeva Reddy extended invitation on July 18, 1979 to Mr. Y.B. Chavan, the leader of the opposition in Lok Sabha after the

resignation of Janata Ministry headed by Morarji Desai on July 15, 1979. He was compelled to resign due to the split in the Janata Party and obviously thought it desirable to resign rather than to get a defeat on the floor of the Lok Sabha. Mr. Chavan declined the invitation as he had only 74 members of his party. Instead of inviting Morarji Desai and Mr. Charan Singh simultaneously to furnish the names of their supporters to settle the rival claims for the formation of new Government. After screening lists, President invited Mr. Charan Singh to form a coalition Ministry as he had the support of 262 members as against 236 of Janata Party. Again when V.P. Singh Govt. of National Front fell after 11 months in Nov. 1989, the President Venkatraman called upon Rajiv Gandhi the leader of the opposition to form a Govt. But he refused as Congress (I) did not have majority at its own. The President accepted the claim of Chandra Shekhar, the leader of break away group JD(S) of Janata Dal, who had ensured support by Congress (I) and its allies. Mr. Chandra Shekhar was asked to prove his majority in Lok Sabha within one month. Prime Minister P.V. Narsimha Rao was appointed on June 21, 1991. The process of electing P.V. Narsimha Rao was extremely smooth in sharp contrast to the heat; even acrimony witnessed during the first four years, Mr. Rao headed country's fourth minority govt. dependent for survival on its allies. Rao won vote of confidence with relative ease on July 15, 1991 well within the time frame given by the President. He later on even managed to turn his minority government into a majority government and Congress remained in power for a full term of five years. As mentioned earlier, we had a United Front government at the Centre which was a combine of 13 parties in the beginning later 17 parties were supporting it. As explained earlier too the President first of all invited the single largest party i.e. B.J.P. to form government, but since it was unable to win the Vote of Confidence on the floor of the house it had to resign on the 13th day and then he invited United Front to form government. The 1998 election, again gave the President discretion to make a decision for appointing the Prime Minister. The President invited the leader of the largest party to form the government.

(I) Dismissal of the Prime Minister

The Prime Minister holds office during the pleasure of the President which ordinarily means that he stays in office only so long as he enjoys confidence of the House of the People. When on account of large scale organised defections his majority becomes doubtful the President can ask him to face the House without unnecessary delay if he refuses to do so, the President can dismiss him.

However, no such situation has arisen so far. When Mr. Morarji Desai lost majority, he submitted his resignation before the vote of no confidence was introduced in the house. Charan Singh submitted his resignation without facing the Lok Sabha in 1979, vote of no confidence was passed against NF government headed by V.P. Singh in Nov. 1990 and he resigned. Again Chandra Shekhar resigned after remaining in office for only four months as Congress (I) had taken a stand which showed their withdrawal of support,

though they did not declare it. As pointed out earlier as well, in May 1996, Atal Bihari Vajpayee had to go after remaining in power for just 13 days, before even motion of no confidence was passed against his government. Again Atal Bihari Vajpayee had to resign in 1999 when the vote of confidence fell short by one vote which he was asked to gain by the President after AIADMK left the coalition.

(II) The Prime Minister and the Council of Ministers

(i) Appointment of Ministers

According to Article 75(i) of the constitution, the Ministers appointed by the President on the advice of the Prime Minister. In this respect, it may be asked as to how far the Prime Minister has a free hand in the selection of colleagues. To great extent, it will depend upon the following two factors :

1. The position of the Prime Minister in party.
2. The party position in the House of the People.

If the Prime Minister has a complete control over the party and there is none to challenge him then he will have greater freedom in the selection of his colleagues. Such had been a situation in India between 1952-1954 and again between 1971-1976 when Nehru and Mrs. Indira Gandhi respectively were Prime Minister. In such circumstances the Prime Minister has a greater freedom in the selection of his colleagues. But if on the other hand, in the party there is another leader who can challenge the Prime Minister, then to that extent, the Prime Minister's choice is limited. This was the position in India between 1947-1950 when Patel was alive because at the time, even Nehru could not ignore him and he had to be appointed as Deputy Prime Minister. He even had to consult him while selecting his cabinet colleagues. Again there was such a situation between 1964-1967. Morarji Desai was a force to reckon with and it was with the help of the organisational leaders like Kamraj and others that his challenge could be faced and as a result thereof, Prime Minister Shastri in 1965 and Mrs. Indira Gandhi in 1965, had to form their respective Ministers in consultation with them and to that extent the Prime Minister was not completely free in the choice of his or her colleague. So much so that in 1967 Morarji Desai had to be given the Deputy Prime Ministership in order to avoid the contest with the party.

If there is a coalition or a group of political parties actually merge or form a front (Janata Party, Janata Dal or United Front on the NDA or UPA, the present set-up of alliance partners) the choice of the Prime Minister in selection of his colleagues is severely limited because in that case usually the political parties who are partners in the coalition government select their nominees and hence, the Prime Minister may have absolutely no hand in their selection. The Janata Government in 1977 headed by Morarji Desai which had BLD, Congress (O), Jana Sangh, CFD and Socialist Party as its constituent

units, at the time of taking office in March 1977, was at best a Coalition Government in which various parties were allowed their representatives as Ministers. In the first Coalition Government headed by Charan Singh which assumed office on July 26, 1979 the High Command's of the parties (i.e.) Janata Secular and Congress (S) decided the names for inclusion in the new Ministry. Similarly, the National Front Government had Ministers from all its partners. The Lok Dal Group headed by Devi Lal and the Jan Morcha group of Arun Nehru played great role in the constitution of the Ministry and the Prime Minister V.P. Singh had limited choice of his own : The Council of Ministers formed by Chander Shekhar had Ministers only from JD(S) and the total number of its own members being so less, the choice was too limited. Narsimha Rao had to accommodate the leader of all internal groups of Congress (I). The United Front Government had to face similar compulsions since it had to accommodate all the parties included in it. The Prime Minister in the BJP led coalition government was in no better position. The alliance partners had their share of cake and the internal pressure of various alliance partners, whose number was as many as twenty four, kept coming to the fore every now and then. With 2004 general elections Congress with UPA formed Govt. The alliance had 15 partners with communist parties outside support. In 2009 again UPA formed Govt. with six parties.

(ii) Dismissal of Ministers

Though according to Article 74(2), the Ministers hold office during the pleasure of the President, yet in practice it means that they remain in office during the pleasure of the Prime Minister. Since the Council of Ministers is collectively responsible to House of People, therefore, whenever, a Minister has a difference of opinion with the policy laid down by the Council of Ministers or with the Prime Minister, he will have only two alternatives, that is either to reconcile with the views of the majority in the cabinet or quit the cabinet. There is a long list of Ministers who resigned on the basis of policy differences.

Whenever, there are differences between the Prime Minister and the Ministers, the former can ask the latter to resign. This course of action was adopted by Mrs. Gandhi in 1969 when she asked four of her Junior Ministers in October and two Cabinet Ministers in November, 1969 to resign. These ministers submitted their resignations directed by the Prime Minister.

In 1949, John Mathai resigned because of difference on economic policies and also because he did not agree with the composition of Planning Commission. Neogy and Shyama Prasad Mukherjee resigned in the wake of the signing of Nehru-Liaquat Pact in 1950 B.R. Ambedkar resigned on October 11, 1951 because he thought that he was being ignored in policy making even with regard to his own department. Finally, he made issue of India's foreign policy, the treatment of scheduled castes and the

postponement of the passage of Hindu Code Bill for his resignations from the cabinet; V.V. Giri resigned on September 7, 1954 because the Bank Award for the employees was not accepted.

C.D. Deshmukh resigned on August 1, 1956 because he did not agree with the scheme of reorganisation of Bombay State in 1965, Mahavir Tyagi resigned in 1966 because he did not agree with Tashkent agreement. Chagla (External Affairs) on September 5, 1967 and Ashok Mehta, Petrol and Chemical Minister in August 1966 also resigned because of Policy differences with the Prime Minister in August, 1966, also resigned on the issue of handling of J.P. movement and corruption.

But if the minister refuses to resign, the Prime Minister can ask the President to dismiss him or he can resign and reconstitute the entire Council of Ministers. In National Front Government, Mr. Devi Lal was dismissed from the Council of Ministers by the Prime Minister when the long drawn controversy arose over Devi Lal's son O.P. Chautala. Madhav Singh Solanki resigned as Foreign Minister from Narsimha Rao's government after he allegedly handed-over a slip to his Swedish Counterpart regarding Bofor's inquiry. Similarly, P. Chidambaram resigned in the wake of multi security scam investigations, George Fernandes resigned as Defence Minister after the Tehelka expose. Many other ministers resigned later on due to their alleged involvement in Hawala dealings.

It will not be out of place to mention here that Nehru, instead of asking his colleagues to resign, used Kamraj Plan under which six Cabinet Ministers including four senior ones were dropped. This was an unusual step which was taken for the first time. It is interesting to know that in 1975, Mrs. Indira Gandhi recommended the dismissal of Mohan Dharia without asking him to resign.

(iii) Allocation of Portfolios

Besides the appointment of Ministers, the Prime Minister, also allocates portfolios among them. However, even in this respect, whether the Prime Minister example, in Nehru's time, Patel chose his own portfolio. Similarly, in 1967 Morarji Desai had option of choosing any portfolio except Home and in 1961 Desai refused to accept the portfolios as Commerce and Industry. Similarly, S.K. Patil resisted Nehru's move to shift his portfolio from Food to Railways. In February, 1969 Mrs. Indira Gandhi wanted to reorganise her cabinet but she could not. But after the split of the Congress Party, she was in complete command of the Party and in 1970 she changed the portfolios of Y.B. Chavan, Dinesh Singh and Fakhruddin Ali Ahmed and when Chavan expressed his unwillingness, the Prime Minister is reported to have told him that if he refused to move as directed, he might have to quit. This shows that the Prime Minister's position determines whether she or he will have free hand in this respect or not. The Prime Minister of a coalition government cannot take this liberty. As in 2004, UPA Govt. Railways

was chosen by RJD and DMK also pressurised for ministries of its own choice. Similarly in 2009 different parties specially DMK took portfolio according to their likings.

(III) Prime Minister and Parliament

The Council of Ministers headed by the Prime Minister is collectively responsible to the House of People. So long as one of the political parties has a clear majority in the House of People, and its leader is the Prime Minister, the control of House of People on the Prime Minister is merely formal because in reality, in such a situation it is not the House of People who would control the Prime Minister, but the Prime Minister who would control the House of People. This has been the position in India between 1956-1969 and again between 1971-1976. But in case the majority Government is in office, the House of People can exercise some control over the Prime Minister. This was the situation in 1969 in India after the Congress split. At that time, the Prime Minister had to take into account the views of her supporters even from outside her party. It was because of this reason that Preventive Detention Act could not be continued. Similarly, in spite of the Prime Minister's wishes the abolition of Privy Purses Amendment Bill was rejected by the Rajya Sabha. This situation, however, changed after 1971 elections because in those elections the Prime Minister got massive majority and therefore, the Prime Minister dominated the Parliament, and the Parliamentary Government changed into the Prime Ministerial Government. The Prime Minister, therefore, got the constitution amend as many as 19 times within a period of six years and that too deposit the opposition of the major opposition parties in Parliament. Some of the amendments changed the basic structure of the constitution. Attitude of Nehru, as far as the amendment of the constitution was concerned, was different. He used to seek cooperation of opposition parties in this respect. For example, when he heard that the opposition parties in regard to the seizure of property of persons, detained under Defence of India Rules, he directed it to be dropped. Similarly, when he found there was opposition to the Eighteenth Constitutional Amendment Bill, he dropped it though it had been passed at first stage.

Not to speak of constitutional amendments even in respect of ordinary legislation he showed due regard to the opposition keeping in view their numerical weakness in the house of the people. For example, Civil Procedure Amendment Bill was similarly withdrawn and the Preventive Detention Bill of 1952 was sent to a select committee by Nehru against the previous declaration of his Home Minister. When the opposition demanded a white paper about the developments regarding India's northern borders with China in August 1956. Nehru agreed and the white paper was issued accordingly in 1960. Even much against his wishes, he appointed the Commission of Inquiry against Kairon in 1963. This shows that in spite of the numerical weakness of the opposition, Nehru had some considerations for the demands of opposition in the House of People and it was because of this reason that for about ten years, the opposition did not move a vote of no confidence against him when in November, 1962 a move was made to

censure the government the motion secured only seven votes and hence, failed to be tabled.

The policy of Mrs. Indira Gandhi, after 1971 elections which gave her a majority, had been different. She instead of carrying the opposition with her passed MISA, DIR and the Prevention of Objectionable Matters Act and the 42nd Amendment Act of their opposition and these laws from the point of view of individual liberty and democratic way of life had far reaching consequences for the Indian Political system. The above mentioned repressive Acts were not suspend even during the elections of 1977 inspite of the demand of the opposition that for free and fair elections. They should be suspended if not annulled during the election days at least. After 1984 elections, though Congress (I) got 3/4 majority in Lok Sabha but the government could not pass any amendment without the support of opposition parties as it was not having absolute majority in Rajya Sabha. The decision of the opposition parties to act collectively in 1989 led to the failure of 62nd & 63rd constitutional amendment bills in Rajya Sabha. The position of V.P. Singh was not in any way strong vis-a-vis the Lok Sabha. The Narsimha Rao's government 1991-96 not having clear majority of its own had been getting the support of NF-Left combine and BJP alternatively. However, after the by-elections to Lok Sabha & Punjab Vidhan Sabha elections the position of the Congress (I) government at the centre became stronger. The 1996 elections again gave rise to Hung Parliament and a coalition govt. of diverse political parties having support from Congress. The govt. had to make many adjustments and accommodations. The same was true about the Vajpayee led NDA and UPA government.

(i) Summoning of Parliament

According to the constitution, the parliament is summoned by the President at time and place as he thinks fit, but six months shall not intervene between the last sitting of the previous session and the first sitting in the next session. Ordinarily, the President summons the Parliament on the advice of the Prime Minister. If the Prime Minister loses majority in the House of the People of defections or split, the President can also advice the Prime Minister to face the Lok Sabha at the earliest and if the Prime Minister refuses to do so, the President can dismiss him, if the alternative Government is possible.

(ii) Proroguing of Session

The President progues the session of Parliament on the recommendation of the Prime Minister. Before the 42nd Amendment Act, the President was not bound to accept the advice of the Prime Minister particularly when the vote of confidence against the Ministry was being discussed in the House of the People because the constitution did not indicate any restriction on this power of the President. This was the judgement of Supreme Court in 1968. After the 42nd Amendment Act, it is made obligatory for the President to accept the advice of the Prime Minister.

(iii) Dissolution of the House of the People

The Power to dissolve the House of People by the President is also ordinarily exercised on the recommendation of the Prime Minister. It is important to note that the House of the People was dissolved by the President on the advice of the Prime Minister in 1970 before the completion of its normal term. This happened because the President was favourably inclined towards the Prime Minister. But when the majority support of the Prime Minister is doubtful or when he is defected on the floor of the House, the President may or may not accept the advice of the Prime Minister in this respect. In the Commonwealth and other countries there are many examples where the Head of the State refused to grant dissolution on the recommendation of the Prime Minister. This happened in Canada in 1925, in Germany under Weimer Constitution in 1932 and in South Africa in 1925. Even in India at the State level we have many examples, where the Governors have refused the dissolution as advised some of the Chief Ministers. This happened in Travancore Cochin in 1954, in Punjab in 1967, in Madhya Pradesh in 1969.

On August 22, 1979 President Sanjeeva Reddy dissolved the Lok Sabha on the advice of Charan Singh who was installed into office on July 26, 1979. Mr. Charan Singh tendered the resignation of his coalition Ministry (comprising of Janata Secular and Congress (S) just an hour before he was scheduled to face the vote of confidence on August 20, 1979 as the Congress (I) had withdrawn support to coalition Ministry. The President's action of accepting the decision of conditional Prime Minister (The President had laid the condition of winning the confidence of the House by third week of August while inviting him to head the coalition government on July 28, 1979) to dissolve the House became a controversial issue. The leader of Janata Party and many constitutional experts criticised the conduct of President to dissolve the Lok Sabha on the advice of the Prime Minister who headed a minority Government from the very birth of his government. The Janata Party leaders were so critical of President's action that they threatened to impeach him. The 9th Lok Sabha was also dissolved on the recommendation of the then Prime Minister. The 10th as well as the 11th Lok Sabha were also dissolved by the President before the expiry of their full terms. The 12th Lok Sabha was dissolved because AIADMK withdrew the support and Govt. fall lack of one vote the 13th Lok Sabha was dissolved early before time because BJP and its allies (NDA) presumed they will win and get majority. But 14th Lok Sabha was dissolved only when election were due.

The Prime Minister and the Administration

The administration of the country is, in fact, run by the Prime Minister. All the important appointments such as that of the Government Ambassadors, Chairman and members of the Union Public Service Commission, Attorney General, The Chief of the Army, Navy and Air Force, The Chief Justice and other judges of the Supreme Court are

made by the President on his/her recommendation. While making convention of seniority rule, if any. This is exactly what happened when three judges were superseded in 1973 while appointing the Chief Justice of the Supreme Court. However, after the 1983, Supreme Court judgement specific guidelines have been incorporated for the appointment of the judges and the President cannot ignore them. The clarifications by Supreme Court in 1998 on consultation with the Chief Justice of Supreme Court for appointment of judges is also important.

The Prime Minister and the Party & the position of the Prime Minister of a Minority Government

Usually the Prime Minister is the leader of his party both in the Parliament and in the country. But so long as Patel was alive, it was he and not the Prime Minister who controlled the Party machinery. But after his death in 1950, Nehru forced P.D. Tandon to resign from the Party Presidentship and he himself became the Congress President. So long as he was alive, the Congress President, was his nominee. But so long as Azad, Kidwai and Pant were alive, he used to give a great weight to their advice both in party and governmental matters and after their death even Desai Chavan, Sanjiva Reddy, Patil, Kamraj, C.B. Gupta, Dr. B.C. Roy and a few others also asserted and had their say in important matters. While allocation the party tickets for the Parliament and State Legislature, these leaders had a considerable say, hence, so long as Nehru was alive he shared power with some of the leaders. It was under the pressure of some of these leaders that V.K. Krishna Menon had to resign in 1962.

When Shastri succeeded Nehru he did not have control over the party. The party affairs were controlled by the so called Grand Council - a body which include some important members of the Congress High Command, some central ministers and some State Chief Ministers. Because of this reason, when Shastri asked Kairon, to resign after Das Commission report, he refused to do so because he had some of his powerful supporters in the party and he ultimately resigned only after the publication of inquiry against Biju Patnaik and Bire Mitra (former Chief Minister of Orissa) but because of the pressure of the party leaders, he could not do so. This shows that Shastri did not have a control over the party.

The position of Mrs. Indira Gandhi was not much different in this respect till 1969 but her position in the party improved after the Congress split in 1969 and after the election of 1971 she enjoyed the complete control on the party and on the Congress High Command. No Chief Minister could stay in office against her wishes. In fact, as far as the State Congress Legislative parties were concerned, they left the choice of the Chief Ministers to her. Even the choice of the party candidates, for the election of 1977 was left to her. For example, the Congress parties in Punjab, Haryana, Bihar, Orissa, West Bengal and some other states passed resolutions authorising Mrs. Indira Gandhi and not the Congress High Command to select the Congress candidates for the elections of

1977. When Jagjiwan Ram, the senior most Minister in the Government and in the Congress party resigned both from the Government and party, he alleged that the Prime Minister did not listen to any body in the party and the Congress party had ceased to be a democratic party. Same was the allegation of Mr. H.N. Bahuguna on leaving the Congress party after 1980 midterm polls for the Lok Sabha. Although during Rajiv Gandhi's tenure, there was a significant change in style of Prime Minister with his predecessors, the fact none the less was that by maintaining control over the organisational wing of the congress party, the Cabinet form of government became virtually Prime Minister Government, significant variation to note was during the Janata Government of 1977 when Morarji Desai as Prime Minister did not have much control over the Janata Parliament party and he had to share his power with Charan Singh, Jagjiwan Ram, Atal Bihari Vajpayee, Chander Shekhar and other members of his party. In a coalition government the position of the Prime Minister obviously becomes weak, as he is dependent upon the support of coalition partners in Lok Sabha. Had there been one party, in the sense as Congress was, this tendency of the system would have reflected even during the Janata rule. The position of V.P. Singh was of a weak type as he had to take decisions in consultation with the other groups. As long as P.V. Narsimha Rao was the Prime Minister as a consensus candidate of the Congress Party the different factions in the Congress (Arjun Singh and Sharad Pawar) had been indulging in the game of struggle for power though later on his position became strong i.e. when he managed the Congress to have majority. Soon after the death of Mr. Rajiv Gandhi, the loyalists of Gandhi family (better known as the "coterie") tried to persuade Mrs. Sonia Gandhi, to first accept the Presidentship of the Congress Party and then fight the Lok Sabha seat of Amethi. However, Mrs. Sonia Gandhi did not agree. This gave some strength to P.V. Narsimha Rao. He was elected the President of the Congress Party again. Though he had been always saying that he prefers one man one post principle. All this goes to show that when the same person had both positions i.e. Presidentship of the party and Prime Minister, his position is very strong. The position of the Prime Minister in the United Front Govt. was further worse. He had to accommodate not only the diverse interests and factions in his own party (Janata Dal, which ironically had just around fifty members) but all constituents of United Front. Further, it was depending upon Congress support. So the Prime Minister could not act without maintaining balance in all these groups.

As has been referred at many places in the lesson the position of the Prime Minister in a coalition govt. is usually weak and if the coalition partner's number is more the problems of the Prime Minister also become more serious. And further if even after having a number of alliance partners, the govt. does not enjoy clear majority or is supported by some to give it a razor thin majority, the fate of the Prime Minister and the government is always hanging in the air. The United Front Govt. as the first BJP led alliance government had thrown up many interesting varieties of supporters of the government. Some supporters being pre-election partners, some

post election partners, some joining the Council of Ministers, some staying outside the government but supporting, some parties opposing BJP govt. (TMC) at the state level and supporting it at the centre (like the Chautala Lok Dal in Haryana) and some being a front at the state level of many parties and exercising greater bargaining at the Central level (AIADMK and its alliance partners). So such a situation becomes very fluid and the Prime Minister is vulnerable to different pressures. Prime Minister Atal Bihari Vajpayee had been facing this situation ever since he took hold the charge of the government in 1998. He had to kept all the alliance partners happy and at times buckled under their pressure. This was because he was heading a coalition government comprising of as many as eighteen parties. After the Lok Sabha elections of 1999 the NDA was able to get clear majority though it was still only razor thin. Prime Minister Vajpayee remained not very strong. He had been attached sometimes by the Non BJP allies including the allies belonging to the Singh Parivar. Such a Prime Minister cannot exercise complete control over his Cabinet or government. NDA govt. led by Atal Bihari Vajpayee after 1999 Lok Sabha elections became a coalition of twenty four parties with some replacement (i.e. AIADMK replaced by DMK) but it had clear majority and was comparatively more stable, though problems of different partners kept coming to the fore. Here it may be added that the Congress party brought in a vote of no confidence against the Vajpayee government which was debated on 18th and 19th August in the Lok Sabha. The voting took place on 19th August. However the motion fell by 126 votes. 312 votes were cast against the motion and 186 in favour. The AIADMK and NC abstained from voting. 2004 elections were advanced by few month as NDA had idea that they will win but congress with UPA of 15 parties formed the Govt. with Manmohan Singh of Congress as Prime Minister. They worked on CMP, communist parties supported Govt. from outside. They withdrew support from Govt. in July 2008 on the issue of Nuclear deal and Govt. saved with support of Samajvadi party. Congress had 145 seats and with allies in UPA the number became 217. Communist parties had 61 seats. 2009 election UPA again formed Govt. with 6 parties and 262 seats. But CPI (M) withdrew support on the issue of Nuclear deal and it was only timely support given by the Samajvadi party that Govt. was saved from no-confidence motion. Again in the 2009 elections Govt. was formed by UPA with main six parties and few small parties having total 262 seats and Congress had 206 seats. In 2014 and 2019 parliaments elections, BJP won the majority of seats in the House of People-Despite a party in Power with majority of seats BJP choose the policy of coalition govt. and it shared the cabinet, with the allied parties in the National Democratic Alliance (NDA).

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SUGGESTED QUESTIONS

1. How is the Council of Ministers constituted? What are the powers and position of the Council of Ministers?
2. "The Prime Minister is the key stone of the Cabinet arch". Comment.

SHORT ANSWER TYPE QUESTIONS

1. Mention the relationship between the President and the Union Council of Ministers.
2. Mention the difference between Cabinet and Council of Ministers.

SUPREME COURT OF INDIA-ORGANISATION, POWERS AND POSITION

The renowned American scholar Rawle 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." 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 are 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 federal constitution are (i) the supremacy of the constitution, (ii) the distribution of powers among bodies, with limited and co-ordinated 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 agency to preserve that distribution and to adjudicate disputes with regard to it. Such functions 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 the Federal court. The federal judiciary consists of a hierarchy of three kinds of courts of District Courts at the bottom, the Circuit Courts of Appeals above them and the Supreme Court 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 courts 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 is High Court 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. Before the inauguration of the Indian 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 the Federal Court.

The Federal Court remained in existence only for a brief period as highest court of the land and finally gave place to the Supreme Court constituted under the Constitution of free India and established on the inauguration of the Indian Republic on 26th January, 1950.

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 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) the original constitution stated in Art. 124 (I). There shall be a Supreme Court of India consisting of a Chief Justice of India and until the Parliament by law, prescribes a large number of, not more than seven other judges. Later through parliamentary legislation in 1956 the number of Justice Judges was increased from seven to ten, again in 1960 from ten to thirteen and again in Dec. 1971 to eighteen. In 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 was appointed as judge of the Supreme Court. She was Meera Sahib Fatima Bibi. In feb.2009, the centre notified an increase in the number of SC judges from 26 to 31, including chief justice of India. Besides the Chief Justice of India, has the power, with previous approval of the President of India to request a retired Judge of the Supreme Court to work of a temporary period. Similarly, the Chief Justice, with previous consent of the President may request High Court Judges otherwise qualified for Judgeship of Supreme Court, to act as adhoc judges.

Appointment of the Judges

With regard to the appointment of the Judges of the Supreme Court, it had been laid down in Article 124 (2) that every judge of the Supreme Court shall be appointed by the President by 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 appeared to be 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 no where it had been laid down whether the advice tendered by the Chief Justice of India or the Judges is binding on the President or not. The literal interpretation of Article 124(2) gave an impression that the matters relating to the appointment of the Judges of the Supreme Court relate to the discretionary

authority of the President and the provision that he must consult such Judges of the Supreme Court and of the High Court in the State as he yet deem necessary in the event of the selection for the post of the Chief Justice of India as of a recommendatory and not a mandatory character.

It may be noted here that while interpreting the position regarding the advice of the Chief Justice in the appointment of Judges, the Supreme Court gave its verdict in *Supreme Court Advocates Vs. Union of India* Oct. 6, 1993 in which the advice of the Chief Justice was declared to be obligatory as it said consultation would generally mean concurrence. In 1998 (Third judges case), Supreme court opined that the consultation process to be adopted by the CJI requires consultation of plurality judges'. The sole option of the CJI does not constitute, the consultation process. He should consult a collegium of four seniormost judges of the SC and even if two judges given an adverse opinion, he should not send the recommendation to the government. The court held that the recommendation made by the CJI without complying with the norms of requirements of the constitution process are not binding on the government.

The 99th constitutional Amendment Act, 2014 and National Judicial Appointment Commission (NJAC) Act of 2014 have replaced the collegium system of appointing judges to the SC & HCs with a new body called NJAC. However, in 20-*****15, (The Fourth Judges case) the SC has declared both 99th Amendment as well as the NJAC Act as unconstitutional and void. Consequently, the earlier collegium system become operative again.

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 suppression of three judges, Justice Shelat, Hegde and Grover. This appointment raised a public discussion and some public leaders and lawyers charged the government with infringement and violation of the independence of the Judiciary in India. But the Government justified its action on the plea that Law Commission had recommended that "the appointment to the office of the Chief Justice rests on special considerations, and does not as a matter of course go to the senior most judge." On January 28th, 1977, Mr. Justice Maza Hamidulla Beg was again appointed Chief Justice of India in suppression of Mr. Justice H.R. Khanna who was senior to Justice Beg. In fact, the suppression was said to be because of his dissenting judgment in *A.D.M. & Shikla Case* (1976). J.R. Gokhale, the then Union Law Minister said in a statement made on 28th January, 1977 that the appointment of Mrs. 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 Mrs. 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. Mr. Khanna submitted his resignation from Judgeship, to the Supreme Court and that too without mentioning any reason for it. However, after that principle of seniority has been respected. After the Supreme Court Judgment of 1993, it appears the discretion of the executive has been curtailed.

Qualification

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 qualifications 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 judges 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 two or more such courts in succession or (b) has been for at least ten years and advocate of a High Court or two or more such Courts in succession, or (c) in the opinion of the President, a "distinguished jurist."

Tenure of Office

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 judges of Supreme Court of India hold office during good behavior and not during pleasure of the President as in 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 misbehavior or incapacity. This strict prescribed procedure for removal regarding parliamentary intervention ensures non-interference in the working of the court and assures to the 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 R. Ramaswamy, who before becoming a judge of the Supreme Court in India. This was Chief Justice of Punjab and Haryana High Court. The impeachment case was discussed and debated on May 10, 1993 in Lok Sabha but it fell because of lack of required majority as the Congress abstained from voting.

Salaries of Judges

The salaries of the judges of the Supreme Court are fixed by Constitution In Article 125(T), it is laid down that these shall be paid to judges of the Supreme Court, 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 the other judges Rs. 4000/- per menses. But with the amendment in 1986 it was increased to 10,000 & 9000 respectively. In 2018 the Salaries and conditions of service bill and the salaries of Judges were further increased. Now Chief Judge gets 2.8 lakh and others 2.5 lakh. 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 the Parliament."

Ban on Practice after Retirement Clause 7 of Article 124 clearly lays down that "no person who 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 judiciary and maintaining the dignity on 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.

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 services of its officers can 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 by the Chief Justice of India with prior approval of President.

Powers of the Supreme Court

The jurisdiction of the Supreme Court is of three kinds: (i) Original (ii) Appellate and (iii), Advisory. The 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 and federal in character and are confined to disputes between the Government of India any of the states of Union, the Government of India and any state on one side and other state 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 above mentioned 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 of legal character and not a political one.

(ii) The original jurisdiction of the Supreme Court does not extend to a dispute arising out of any treaty, agreement, convenient, engagement, sanad 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 the said jurisdiction shall not extend of such a dispute.

(iii) Article 262 of the Constitution provides that the parliament may by law exclude the jurisdiction of Supreme Court in disputes or complaint with respect to the use, distribution or control of the waters of any inter state river valley. Article 32 of the Constitution has guaranteed the right to move Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III of the Constitution. It has been laid down that Supreme Court shall have power to issue directions or writs for enforcement of any of the rights conferred by part three of the Constitution. The jurisdiction for the Supreme Court to entertain an application under Article 32 of the issue of a constitutional writ for the enforcement of the fundamental rights is sometimes viewed by these jurists as original jurisdiction of Supreme Court. Undoubtedly, the said jurisdiction may be original in the sense that the aggrieved party has right for 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 an Amendment and 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 original position has been restored. It means that the Supreme Court can now judge the constitutional validity of state laws too.

Appellate Jurisdiction

The appellate jurisdiction of the Supreme Court covers the following four categories:

- (i) Cases involving a substantial question of law as to interpretation of the Constitution (Art. 132)
- (ii) Civil Cases (Art. 133)
- (iii) Criminal Cases (Art. 134)
- (iv) Appellate jurisdiction by special leave of the Supreme Court against

judgment, order etc. or any court in the tribunal in India (Art. 136)

Appeals in the Constitutional Matters

The Supreme Court has appellate jurisdiction in all cases - civil, criminal or others in which any matter involving any question of interpretation of any provisions of the constitution arises. An appeal comes before the court either by virtue of certificate given by the High Court stating that a question of law as to the interpretation of the constitution involved as given in Article 134 (A) added by the 44th amendment. A High 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.

Appeal in Civil Cases

A civil case relates to private rights in connection with the enforcement of property interest, contractual obligation etc. Within 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 judgment, decree or final order of the various High Courts. Prior to the adoption of 30th constitutional amendment in 1972, the provision in Article 133 was that an appeal lay from any judgment, decree or final order of a High Court if a High Court granted a certificate stating that (a) the valuation of the subject matter in dispute both in the court of first instance and in the appellate court was Rs. 20,000 or above (b) or the judgment, 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 provisions now stand amended by virtue of the Constitution (Thirtieth Amendment) Act, 1972. The said amendment has substituted a new clause (1) 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 (a) 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 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 the 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.

Appeal in Criminal Cases

Prior to the amendment of present constitution, there was no court of criminal appeal over the High Courts. It was only in a limited sphere the 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 judgment, or final order of sentence in a criminal proceedings of a High Court in two specified categories of cases namely (1) where the High Court has 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 withdrawn a case from any subordinate court for its consideration has passed a death sentence upon the accused.

In these two categories of cases relating to 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 in the cases of criminal appeal, the Parliament is empowered to make any law conferring on the Supreme Court further powers to hear appeal from criminal matters. As a consequence of it 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 a High Court sets aside an order of acquittal on an accused person and sentences him to imprisonment for not less than ten years. The same holds good even though a Court has passed similar sentence in a case withdrawn from the lower court of trial before itself. The only condition is that the high Court certifies that the case involves substantial question of law of general importance.

Special Leave for Appeal

Article 136 confers very wide discretionary powers on the Supreme Court in matters of granting special leave to appeal any from any judgment, decree, determination, and sentence in 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 is regarding the judgment of any court or tribunal constituted by or under any law relating to the Armed Forces. The powers given in Article 136 of the Constitution are in the nature of special or residuary power which is 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 by 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 cases of miscarriage of justice. Miscarriage 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

judgments, decrees, determinations or sentences of the High Courts and other courts of law, Appeals by the special leave of Supreme Court also lie against the decisions and awards of various administrative tribunals such as industrial and condensation etc.

Advisory Jurisdiction

Article 143 lays down that "if at any time it appears to the President that question of law or 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 any, after such hearing as it thinks fit, report to the President its opinion there upon." It means that unlike the Supreme Court of the U.S.A., the British House of Lords and 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 for its opinion if the President considers that the question is of such a mature 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 judgment of the Supreme Court. In other words, the authority conferred on the court in this regard is not the authority to hear any case, 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 court as it is not a judicial pronouncement under Article 141 which says that the "law declared by 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, though usually the opinion is respected and accepted.

Power to Review its own decisions

Article 157 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 judgments 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 beneficial effect on the general. Interests 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 at law as perpetuation of mistakes will be harmful at 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 the law declared by the Supreme Court, shall be binding on all courts. Within the territory of India, very obviously refers to the courts rather than the Supreme Court..

Powers regarding Transfer of Cases

The 42nd Constitutional Amendment incorporated a new Article 139 (A) in the Constitution. The Article provides, "If, on the application made by the Attorney General of India, the Supreme Court is satisfied that cases involving 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 or cases pending before the High Court 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 proceedings before any High Court to any other High Court: This power of transfer of certain cases vested in the Supreme Court has enhanced its prestige and influence.

Court of Record

Article 129 of the 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 the power to fine and imprison a person for its contempt and its acts are preserved because they have evidentiary value and are conclusive evidence of that what is recorded in them.

Rules regarding decisions of the Supreme Court

Under Article 145, the Supreme Court has the power to make laws to regulate its own procedure. There is no conflict between the legislative power of Parliament and the rule 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 judgment in open court either at once or on some further date fixed for judgment after due notice to the parties. A judgment is arrived at by the majority of 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 judgment.

Effect of 44th Constitution Amendment on Judicial Provisions

44th constitution amendment has introduced significant changes in the judicial system of our country and it has done away with some of the distortions which were brought about by the 42nd constitution amendment. We can summaries these changes as under:

1. The High Courts are now required to consider question of granting certificate for appeal to the Supreme Court immediately on the delivery of judgment. It should be considered on the basis of an oral application by either party or, if the High Court deems it fit to do so, on its own motion.
2. The provisions of Article 132 relating to grant of special leave of 'Supreme Court in cases, where the High Court refuses to give a certificate not stands committed with the amendment of Article 134 taking effect. Cases of special leave to appeal to Supreme Court will henceforth be left to be regulated exclusively by Article 136 of the constitution.
3. The Article 139-A inserted through the 42nd Constitution Amendment now stands amended to enable a party to a case, or cases similar in nature, to apply to the Supreme Court. The position earlier was that the Supreme Court takes action only on an application by the Attorney General.
4. The writ jurisdiction of High Courts (Article 226), now stands restored with a modification. As modified, this article now provides that in cases in which an interim order is made "ex-party" on or in any proceedings relating to a petition (made under this article) the party against whom such an order is made may make an application to the High Court for vacation of such order and furnish a copy of such application to the party concerned. It has been provided now that if the High Court fails to dispose off the application within a period of two weeks of its receipt by the court or on receipt of its copy by the party against whom it is made, which is latter. The interim order will stand vacate. When the High Court is closed on the last day of the two-week period this interim order will stand vacated only if the application is not disposed off before the adjournment of the High Court on the next day.

Power of Judicial Review

The Supreme Court of India is the guardian of constitution because it is the final interpreter of it. The power of the courts to interpret the constitution and to secure its supremacy is indeed inherent in any constitution which provides government with limited powers. Madison has correctly remarked "a limited constitution, one which contains specified exceptions to the legislative authority can be preserved in practice

in no other way than through the medium of the courts of the Justice, whose duty must be to declare all acts contrary to the constitution void. Without this, all the reservations of the particular rights or privileges amount to nothing." Before the adoption of 42nd constitutional amendment in December, 1976 the Indian constitution did not expressly invest the Supreme Court with the power of judicial review. Besides, unlike the American constitution, there is no express provision in the constitution of India declaring the constitution to be the supreme law of the land. But despite this, it cannot be denied that the Indian constitution was and is the supreme law of the land because India is a federation and federal policy functions within the demarcated and delimited spheres. The constitution of India very much imposes definite limitation so of the powers of the various organs of government and it is very evident that any exercise of excess of authority by any organ of the government, is a clear violation of the constitutional limitations. Undoubtedly, it is the court's domain to determine whether any of constitutional limitations has been transgressed or not, justice Das of the Supreme Court had observed in the case of A.K. Gopalan Vs. the State of Madras that, "while in the main leaving our Parliament and State Legislatures supreme in their respective legislative fields, our constitution has, by some of its Articles, put upon the Legislature certain specified limitations. The point to be noted, however, is that so far as there is any limitations on the legislations power, the court must, on a complaint being made to it, scrutinise and ascertain whether such limitation has been transgressed, and if there has been any transgression, the court will courageously declare, the law unconstitutional for the court by its oath to uphold the constitution. But outside the limitations on legislative powers, our Parliament and State Legislatures are supreme in their respective fields and the court has no authority to question the wisdom of policy or of the law duly made by the appropriate legislatures. Our Constitution, unlike the English Constitution, recognises the court's supremacy over legislative authority, but such supremacy is very limited one, for it is confined to field where the legislative power is circumscribed by limitations upon it by the constitution itself." The constitution of India imposes two kinds of restrictions on the powers of the legislature: (i) the legislative competence and (ii) fundamental rights conferred by Part-III of the Constitution these two kinds of limitations on the powers of India's Legislatures are the basic source of power of judicial review.

Legislative Competence

India being a federal polity, contains a dual set of government where in each government has been allotted a specified sphere of legislative competence Article 246 contains scheme of the distribution of legislative powers between the Union and the States. Under the scheme three lists namely, Union List, State List and Concurrent List have been drawn up for the purpose of legislation by Union and State Legislatures. It is provided in Article 246 that Union Parliament has exclusive power to make laws with

respect to the subject's enumerated in the Union list, and the State Legislatures. In normal times, have exclusive jurisdiction to legislate with respect to the subjects given in the State list. If Parliament enacts a law without having a proper constitutional authority on a subject given in the State list, it shall be clear transgression of its legislative competence. Here in enters the role of courts and thus the Supreme Court in India has the power to pronounce upon the validity of laws on the ground of excess of legislative competence. The legislative enactments can be declared null and void by the competent court on the ground of being in contravention of the constitution.

Contravention of Fundamental Rights

Article 13 of the Constitution places a far reaching limitation on the powers of the legislatures in India. The Article states that the state shall not make any law which takes away or abridges the right conferred by this part and any law made in contravention shall be void. It means if any of the fundamental rights is infringed by any enactment of the authority, the appropriate court has the power to declare the enactment, to the extent it transgresses the limits, invalid. Moreover, the fundamental rights guaranteed in the constitution are not absolute. In some cases the limitations have been imposed by the constitution itself and at the same time Parliament has been empowered to impose reasonable restrictions by law. In this context it becomes the duty of the Supreme Court to see whether the limitations imposed by a law of Parliament are reasonable or not.

Other Sources of Judicial Review

Apart from being implied in the division of powers between the Union and the States and in the incorporation of fundamental rights in the Indian Constitution, judicial review is also inflied in step constitutional provisions that the Supreme Court is a final court of appeal in the case involving the interpretation of the Constitution and this position of the Supreme Court also implies in it, the power of judicial review. Article 32 has guaranteed the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights. This right to move the Supreme Court is itself a Fundamental Right.

Judicial Review is, therefore, an essential part of the Indian constitutional system and Fathers of the Constitution kept no secret about their intentions when they described the Supreme Court in Constituent Assembly as "the guardian of the Constitution." "A watch dog of democracy", "a champion of liberties", etc. Besides the judges of the Supreme Court take oath uphold the constitution and law. No other functionary, not even the President of India, is administered a similar oath and as such the judiciary has solemn duty of upholding the constitution against attack from legislature and the executive. 42nd constitutional amendment very explicitly vested the powers of judicial review in the Supreme Court by inserting a new Article 131(A) in the Constitution.

where it is provided "no withstanding anything contained in any other provision of this constitution, the Supreme Court shall, to exclusion of any other court, have jurisdiction to determine all questions relating to the constitutional validity of any central law". By this Article, High Courts were excluded from judging the validity of central laws but this Article has been deleted by 43rd amendment and now the High Courts have been given the power to judge the constitutional validity of central laws also, along with State laws.

It may be pointed out that in India the scope of Court's power of judicial review is not as wide as that of the Supreme Court of the United States. Infact, there is no "due process of law" clause in the Constitution of India. That is why unlike the American Supreme Court, the Indian Supreme Court cannot bring in their own conception of justice and equality. It has no right to question the wisdom or policy of the law duly made by the competent legislature. It cannot declare law unconstitutional on the ground of its having unjust and oppressive provision or that it is likely to violate natural or political rights of the citizens. Unless such injustice is prohibited or such rights are guaranteed by the constitution.

In regard to the exercise of the power of the judicial review of the doctrine of progressive interpretation gained wide prominence in the seventies. As important question was being hotly discussed whether the provisions of the constitution, should be understood in the light of conditions that existed at the time of the making of the constitution or that they should be given a broad consideration from time to time in order to include new trends and circumstances arising with the development of social and economic life of the people. Some of the decisions of Supreme Court of India had impeded the country's movement towards socialistic aims. For instance, in the Bank Nationalisation case the 'Supreme Court had held in 1970 that a law seeking to acquire or requisition property for a public purpose should also satisfy the requirement of Article 19(f) which guarantee the freedom to acquire, hold and dispose off property. The Supreme Court had also held that the constitution has guaranteed right to compensation and that it is equivalent in money terms to the property acquired. On these grounds, the Supreme Court invalidated the Bank Nationalisation Presidential Order. Though the concept of rulership with privy purses and special privileges is incompatible with an egalitarian social order, yet the Supreme Court invalidated the President's order abolishing the Privy Purses land Spcial Privileges of erstwhile rulers of principle state. Besides this, earlier in 1967 in the Gokal Nath case, the Supreme Court reversed by a narrow majority, its own earlier decision upholding the power of Parliament to amend all part of constitution Including Part-III relating to Fundamental Rights. The result of the judgment was that Parliament was considered to have no power to take away or curtail any of the fundamental rights even if it becomes necessary to do so for giving effect to the Directive Principles of State Policy and for the attainments of the objectives set out in the Preamble

to Constitution All such developments led to the emergence of a heated controversy concerning the power of the Judicial Review of the Supreme Court. In some quarters, it was strongly demanded that the Supreme Court should be deprived of this power and in the matter of enactment of legislation of authority of Parliament should be-final and supreme Quite contrary to it some people reacted sharply and they strongly emphasized that the power of judicial review should not be done away with. Ultimately, the government of India decided to go midway between the two extremes For this purpose, the Supreme Court's powers of judicial review were reasonably circumscribed. The forty second constitutional amendment inserted a new Article 144A in the constitution. The new Article provided (i) the minimum number of judges of the Supreme Court who shall sit for the purpose of determining the question of the constitutional validity of any central law or state law shall be seven. (ii) A central law or a State law was not to be declared invalid by the Supreme Court unless a majority of not less than two-third of judges sitting for the purpose of determining the question as to the constitutional validity of such law held it to be constitutionally invalid. This high objectionable principle meant in actual practice that law remained even if a majority of judges declared it ultravires of the constitution The 43rd constitutional amendment deleted these provisions and restored the position earlier to 42nd amendment.

Viewed in right perspective, the power of judicial review is a very powerful instrument in the hands of judges to act as the custodians and defenders of the rights and liberties of the people and the democratic system of government. In the presence of the power of judicial review the onslaughts of executive or legislative deposit cannot deprive the ordinary people of their basic rights But it must be stated that this power does not vest in the judges the authority to insert their personal philosophy into the social philosophy of the nation and thereby retard the progress of the nation in the light of ever changing circumstances. In 1952 Chief Justice Patanjali Shastri, in the case of VG Row Vs the State of Madras correctly observed that "In evaluating such elusive factors and forming their own conception of what is reasonable in all the circumstances of a given, case, it is inevitable that the social philosophy and the scale of the values of the judges participating in the decision should play all important part and the limit to their interference with legislative judgment in such case can only be dictated by their sense of responsibility and self restraint and the sobering reflection that the constitution is meant not only for the people of their way of thinking but for all, that the majority of the elected representatives of the people have, in authorising the impositions considered them to be reasonable.

SUGGESTED BOOKS

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| 1 . | <i>Constitution of India</i> | : | Dr. M.J. Kagzi |
| 2. | <i>Constitution of India</i> | : | Dr. V.N. Shukla |

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| 3. | <i>Commentary on the Constitution of India, Vol I, II, III</i> | : | D.D. Basu |
| 4. | <i>Suppression of Judges</i> | : | Kuldip Nayar |
| 5. | <i>Constitution of India</i> | : | A.C. Kapoor |