



BLOCK 2
PARLIAMENTARY DEMOCRACY IN
INDIA

UNIT 5 INDIAN FEDERALISM

Structure

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Federalism in India
 - 5.2.1 Historical Background
 - 5.2.2 Federal Features of Indian Constitution
 - 5.2.3 Unitary Features of Indian Constitution
- 5.3 Division of Powers under Indian Constitution
 - 5.3.1 Legislative Sphere
 - 5.3.2 Administrative Sphere
 - 5.3.3 Financial Sphere
- 5.4 Working of Indian Federalism
- 5.5 Conclusion
- 5.6 References and Further Readings

5.0 OBJECTIVES

After going through this Unit you should be able to:

- explain the meaning and features federalism,
- list the peculiar characteristics of federal system in India,
- elaborate upon the working of centre-state relations in India, and
- analyze the problems and hurdles in the working of federal system in India.

5.1 INTRODUCTION

We have adopted a federal system of government wherein there are two levels of government functioning at the Union level and State level. In this Unit, we will focus on the features of the federal system, as operating in India and relationship between these levels.

Further, this Unit will have three Units, namely, legislature, executive, and judiciary. These Units will be also discussed, as part of this Unit.

To begin with is a discussion of federalism in India

5.2 FEDERALISM IN INDIA

Some of the features of Indian federalism are discussed below:

5.2.1 Historical Background

Historically, the Government of India (GOI) was unitary in nature. However, At the end of First World War, it began to be realized that purely unitary government was not befitting to Indian system of administration. The Act of 1919 introduced

‘diarchy’, which can be regarded, as a first step towards federalism in British India. Further, the enactment of the Government of India Act, 1935 specifically provided for provincial autonomy. When the Constituent Assembly met in 1946, it was agreed upon to have a federal form of government in India. The Constitution of India incorporated many provisions of 1935 Act, but without using the word ‘federalism’ anywhere in its text.

5.2.2 Federal Features of Indian Constitution

Following are the federal features of Indian Constitution:

1) Rigidity

Making amendments to the Constitution is a very rigid, process as compared to passing of ordinary laws. Amendments pertaining to those parts of the Constitution, which define the relationship between the Union and States, are required to be passed by a two-third majority of the members present and voting in the Parliament and be ratified by half of the states of the Indian Union.

2) Written Constitution

In India, we have a written Constitution, which is the supreme law of the land. Both the Central and State governments derive their powers from it. It serves, as a written contract between the two levels of governments.

3) Division of Powers

The very objective for, which a federation is formed, is the division of powers between the union and the states. There seems to be a comprehensive attempt to define the limits of the Central and State governments in the Indian Constitution. The Constitution has three lists, List I that is the Union List, List II that is the State List, and List III that is the Concurrent List. List III includes residuary subjects on which both the governments can make laws. In fact, it was presumed that central coordination in certain fields would be desirable in the national interest and, therefore, the subjects of national and common interest were placed in the concurrent jurisdiction of the two governments¹. This exhaustive attempt to define the jurisdiction of the two governmental levels supports the federal claim of the Indian Constitution.

4) Independent Judiciary

Indian Constitution provides a system of judicial review of the governmental legislations by the Supreme Court and the High Courts. Judiciary can set aside an Act of any government, if it goes against the provisions of the Constitution or if, in its opinion, has been passed without concurrence to the procedure laid down by the law.

5) Bicameralism

Bicameralism means there are two houses of Parliament—a lower house or a popular house having representatives elected directly by the people; and an

¹ In case both the governments make laws on any subjects of the Concurrent List at the same time, it is the law of the Union Government that prevails.

upper house or a second chamber representing the federating units². The Indian Parliament is also bicameral. It has two houses, namely the lower house, that is, the Lok Sabha; and the upper house namely the council of states, that is, the Rajya Sabha.

The Indian Constitution also has unitary features, as mentioned below:

5.2.3 Unitary Features of Indian Constitution

The features that highlight the unitary trend of our Constitution are discussed below:

1) Absence of word 'Federation' in the Constitution

Our Constitution makers have conspicuously avoided the use of the word 'federation' in the Constitution. This can be considered, as a deliberate attempt on part of the constitution makers to keep India unitary in spirit. India has been described, as a 'Union of States' in the Constitution.

2) Single Constitution for the Union and States

Both the Union and state governments derive their authority from the Constitution. States do not have their own constitutions. This upholds uniformity in adherence to laws.

3) Single Citizenship

Indian Constitution does not provide for dual citizenship. Every citizen of India is Indian by birth. There is only one nationality.

4) Centre's Supremacy

Theoretically, in a federation, both the governments should be independent of each other and none should be allowed to encroach upon the autonomy of the other. In our federation, we have a strong Centre, as compared to the states. Owing to its strong position politically, economically, and financially, the Centre can make inroads into the provincial sphere of action. This does not uphold the federation spirit. It is not just 'distribution of powers' but it is the constitutional guarantee of the state autonomy that makes the 'distribution of powers' the essence of federalism. In Indian case, a powerful Centre with a large jurisdiction can always show its supremacy over the states.

The Unitary Territories in India are also administered by the central government. Other than this, the 42nd Constitutional amendment has empowered the Central government to deploy armed forces in any state to deal with law and order situations. The Indian government follows an integrated judicial system with composition of state High Courts being decided by the centre. Besides, the Supreme Court of India is authorized to reverse the decisions of these courts.

5) Dominance of Parliament

The Parliament reigns supreme in the following manner:

² The States send their representatives.

- As per Article 249, the Rajya Sabha can transfer any of the subjects included in the state list to Parliament, when viewed from the perspective of national interest. However, this has set in a wrong precedent. This is usually resorted to when different political parties hold the forte at the centre and states.
- Under Article 253, Parliament has got the supreme power to make laws for the whole or any part of the country. Likewise, it can take decisions for implementing any treaty, agreement, and convention with any other country or countries.
- Parliamentary supremacy over the State Legislature is also indicated in Article 3. By virtue of this Article, the Union Government can at any time change the boundaries of any existing state, merge it with some other state, create a new state out of an existing one, or abolish a state altogether.

6) Appointment of Governors and other High Appointments

The Governors are appointed by the President at the behest of the Centre. State governors hold office at the pleasure of President. There is no effective say of a state government in regard to the appointment or removal of a Governor. A Governor merely acts, as an agent of the centre. Apart from the appointment of Governors, the judges of the High Courts, who come under the jurisdiction of the state, are appointed by the President of India.

Centre also dominates the States in regard to All India Services (AIS) like Indian Administrative Services (IAS) and Indian Police Services (IPS). Members of AIS are appointed by the President of India. The Parliament may also create a new AIS, if the Rajya Sabha passes a resolution by a 2/3rd majority of its members present and voting. The manner of posting and promotion of the members of AIS is also decided by the Centre. Disciplinary action against such officers can be initiated by the UPSC alone.

The Election Commissioner and the Comptroller and Auditor General of India are the central government employees and they do work for the states also. This reflects the state governments are virtually run by the high officials of the Union Government.

7) Provisions regarding Emergency

Articles 352, 356, and 360 provide for the emergency powers. They are bestowed on the President of India to be exercised owing to the existence of either condition, that is, when there is threat to sovereignty of the nation or break down of constitutional machinery in a State or financial instability and bankruptcy of any government respectively. These powers are so sweeping in their effects that the very nature of the Indian state gets altered into a purely unitary one.

5.3 DIVISION OF POWERS UNDER INDIAN CONSTITUTION

As per the Indian Constitution the division of powers has been broadly outlined in three areas, namely, legislative, administrative, and financial. In the upcoming discussion we will deal with each of them separately.

5.3.1 Legislative Sphere

The legislative powers are divided into three exhaustive lists, as per the Seventh Schedule. These lists are Union List, State List, and Concurrent List.

The Union List included 97 subjects and now has 100 subjects. Some of these include defence, war & peace, railways, foreign affairs, etc. The State list, which had 66 subjects initially and now, has 61 subjects, such as public health, agriculture, police, irrigation, prisons, etc. are the ones on, which the states are free to legislate. The Concurrent List, which earlier had 47 subjects and now include 52 subjects, are the ones on, which both the Union and State governments can legislate. However, in case of conflict, the Centre prevails.

Residuary subjects in the Constitution have been left with the Union government, which refers to a subject that is not included in any of the three lists.

As per Article 249, the Rajya Sabha can pass a resolution by two-third majority of its members present and voting that a particular subject in the state list is of national importance and need to be transferred to Parliament to legislate. Moreover, during emergency Parliament gets power to legislate on the entire state subjects. As per Article 250, such legislation ceases to have any effect after expiry of six months of the ceasing of emergency. Similarly, the Union Parliament may also legislate on any State subject, if the legislatures of two or more States require the Parliament to do so.

Some of the selected subjects under the three lists are depicted in Chart No.5.1 below.

Chart No. 5.1 : (Some Selected Subjects)

| Union List(100 Subjects) | State List(61 Items) | Concurrent List(52 items) |
|---------------------------|----------------------------|--------------------------------------|
| Defence | Police | Civil Procedure |
| Foreign Affairs | Public Health & Sanitation | Criminal Law and Procedure |
| Banking | Liquor | Education |
| Currency & Coinage | Agriculture | Marriage |
| Insurance | Fisheries | Labor Welfare |
| Navy, Army, and Air Force | Prisons | Contract |
| CBI | Irrigation | Economic and Social Planning |
| War and Peace | Land | Trusts |
| Citizenship | Market & Fairs | Bankruptcy and Insolvency |
| Extradition | Money Lending | Forests |
| Railways | Land Revenue | Protection of Wild Animals and Birds |

| | | |
|-------------------|----------------------------|--|
| Post & Telegraph | State Public Services | Prevention of Cruelty to Animals |
| Inter-State Trade | Taxes on Professions | Population Control and Family Planning |
| Foreign Loans | Taxes on Vehicles | ———— |
| Atomic Energy | Taxes on Animals and Boats | ———— |

5.3.2 Administrative Sphere

Articles 257, 258, 262, and 263 of the Indian Constitution deals with the administrative arrangement between centre and the states.

Article 257 provides that the states will exercise their executive powers in such a way, as not to impede or prejudice the exercise of executive powers of the Union. The GoI may give directions to a State, as may appear to it necessary for the purpose.

Article 258 provides that the President can conditionally or unconditionally entrust to the states functions to, which the executive power of the Union extends.

Article 262 empowers the President to provide the law for adjudication of any dispute among States with respect to the use, distribution, and control of river waters.

Article 263 deals with the establishment of an Inter-State Council.

All these provisions do ensure a cordial relationship between the two levels of government. However, during an emergency, the power to give directions to the state vis-à-vis the exercise of executive power relating to any matter rests with the centre.

5.3.3 Financial Sphere

In a federal set up, it is necessary that the division of legislative and executive powers must be accompanied equally by division of financial powers and resources too. Article 264 to 300 of the Constitution provide for allocation of financial resources:

1) Exclusive Financial Sources of Union Government

The sources of revenue exclusively under the domain of the Union are enumerated in the Union List. Corporate tax, currency, foreign exchange, customs and export duties, income tax, estate duty, posts and telegraphs, railways, etc. come under the List.

2) Financial Sources of State Governments

Capitation taxes, duties in respect of succession to agricultural land, taxes on agricultural income, land revenue, taxes on land and buildings, excise duty on goods produced or manufactured in the states, such as, alcohol, opium, etc.; taxes on consumption of electricity, taxes on sale of goods other than newspapers, taxes on goods and passengers carried by road or inland waterways, taxes on luxuries, and taxes on entertainments and amusements-are the sources of revenue of the states.

3) Taxes Levied by the Union but Collected and Appropriated by States

Article 268 lays down that certain taxes that shall be levied by the Union but shall be collected and appropriated by states. These are:

- Stamp duties on bills of exchange, cheques, promissory notes, bills of lending, letter of credit, policies of insurance, transfer of shares, etc.
- Excise duties on medicinal and toilet preparations containing alcohol and opium.

4) Taxes Levied and Collected by Union but Assigned to States

Article 269 of the Constitution provides for duties and taxes that shall be levied and collected by the Union government but shall be assigned to the States. These include estate duty in respect of property, taxes on railway fares and freights, taxes on sale/purchase of newspapers, and terminal taxes.

Besides the above, there is also provision of taxes, which are levied and collected by the Union but distributed between centre and states such as taxes on income and excise duty.

There is a provision of grants-in-aid to the states. Articles 275 and 282 contain an elaborate system for conditional and unconditional grants. Parliament may give grants-in-aid to the needy States. The States can also make requests for borrowing for their specific projects.

Article 280 provides for a Finance Commission to be appointed by the President at a five years interval. The Commission is responsible for the assessment of needs of the States and, as per, recommend for the financial assistance required. It makes recommendations for the distribution of the proceeds of taxes between the union and states. It also suggests the principles that should govern the grant-in-aid to the States.

5.4 WORKING OF INDIAN FEDERALISM

After going through the basic Constitutional framework regarding the federal nature in India, it becomes interesting to analyze the actual working of this arrangement. As far as the Constitutional provisions are concerned, there is a clear tilt of powers towards the centre. The Union List carries almost double the number of items, as compared to State list and this has been further strengthened by the provisions of central priority in the case of concurrent list. Some scholars have found that the unitary bias in our Constitution has gone further in its actual working. Vast financial powers of the Union and increasing dependence of the States upon Central grants, and dominance of Union planning machinery to bring about socio-economic development of the country corroborate this. Infact both these controls are aimed towards bringing about uniformity, national strength, and rapid development. A strong centre also seems to be necessary so as to fight the separatist forces of communalism, linguism, or terrorism that intends to disrupt the harmony and national progress. However, despite conflicts between the Union and few States; we still have the spirit of 'cooperative federalism' moving on.

Sarkaria Commission Report

In 1983, a three member Commission, headed by Justice Ranjit Singh Sarkaria was appointed by the Central government to examine the relationship and balance of power between the Union and state governments and to suggest changes, as per. The Commission submitted its Report in the year 1987, which clearly found nothing fundamentally wrong with the Constitution but insisted on having a strong centre and stated that without it everything will wither away. Highlighting the importance of decentralization, it found it necessary in light of India being a federal state that it is was not merely the centre that was important, but equally were the components of the federation that were the states. The Report suggested a few but significant amendments in the structural aspect and also in functional aspect of the Constitution governing the legislative, executive, and financial relations between the centre and states.

The Commission sought in mending the imposition of Article 356 relating to President's rule in the States. Article 356 should be used sparingly after due warning to the erring State. The State Legislature should not be dissolved before the presidential proclamation has been considered by the Parliament.

The Commission also recommended that the Centre should consult the States before legislating on a subject in the concurrent list. The Commission has suggested a growth of healthy convention in this matter.

Activity

Let us know how you figure out the working of Indian Federalism?

5.5 CONCLUSION

In the Unit, we have discussed about the federal features of our nation, as propounded by the Indian Constitution. Undoubtedly, there are well laid down features like division of legislative, administrative, and financial jurisdiction between the centre and states. There is a written constitution and existence of an independent judiciary. Nevertheless, there are many more unitary features that assign a quasi-federal nature to our democracy. There is total absence of word 'federation' in our Constitution. Single citizenship, one constitution for both the states and Union, dominance of parliament, centre's supremacy in making higher appointments, etc. reflects inclination towards Centre's superiority. We need to make the states also on par so as to give real meaning to our federal character.

5.6 REFERENCES AND FURTHER READINGS

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UNIT 5 (A) LEGISLATURE

Introduction

India adopted a democratic system of governance. Institutions of democracy in India in fact had begun to grow during the colonial rule itself. The provisions of democracy found their place in the Government of India Acts of 1909, 1919, and 1935. Following independence, deliberations in the Constituent Assembly led to the country becoming Republic with Indian Constitution coming into effect on January 26th 1950. India opted for the Parliamentary form of government with the nation state adapting the principles of sovereign, socialist, secular, democratic republic.

In a Parliamentary democracy, sovereignty of the nation is upheld by ‘legislature’ (Parliament). The Constituent Assembly continued, as the provisional Parliament of India till a new Parliament was constituted under the provisions of the new Constitution. The first elected Parliament came into being in May, 1952, after the first general election was held during that year.

Legislature is a general term, which subsumes specific names like Parliament, Congress, National Assembly, and such others. It is called by different names in different countries such as, ‘Diet’ in Japan, ‘Cortes’ in Spain, ‘Jatiya Sangshad’ in Bangladesh, and such others. In case of India, the legislature at the Union level is called Parliament. We shall be using the term Parliament in this Unit.

This Unit shall familiarize you with the importance and role of Parliament in the Indian context. To begin with, we shall be discussing about the importance of Parliament in Indian governance.

Importance of Parliament

The importance of legislature has been highlighted by Lord Bryce¹ (1921) in his work, ‘Modern Democracies’. He found legislatures constituted an indispensable part of the government machinery in democracies.... Michael Ameller has emphasized that in a democratic set up, the Parliament lays down basic principles for the executive to apply in implementing programmes of government and the Judiciary to use them, as frame of reference. K.R. Narayanan (1992), the former President of India, acknowledged Parliament and the State Legislatures, as supreme institutions. He mentioned that “Parliament and legislatures constitute the head and front of the body-politics in India. They are the institutional embodiments of the audacious experiment in democracy by the founding fathers of our republic.”

The first elected Parliament came into being in May, 1952, after the first general election was held during that year. Parliament in India, occupies a position of preeminence and over the years, it has carved out a niche for itself by becoming a forum through, which the citizens of the country articulate and realize their aspirations on one hand and ventilate their grievances and seek solutions to their problems, on the other. It is the supreme representative body of the people

¹ Lord Bryce was a British academic, jurist, historian, and liberal politician

mentioned by Kashyap. Thus, it can be said that among the three organs of the state, as, legislature takes precedence over the other two.

Our founding fathers made provisions for the working of Parliamentary democracy by way of Articles 79 to 123 in the Constitution of India. These articles provide for the composition of the Parliament, the qualifications of members of the Parliament, the tenure of the two houses, their sessions, prorogation and dissolution, their officials and their roles, and conduct of business; and the legislative and financial procedures. The following discussion explains all these aspects in detail.

Composition

The Indian Constitution provides for a bicameral Parliament, which has, as its Executive Head the President of India and two Houses known, as the upper House (Rajya Sabha) and the House of people (Lok Sabha)². The Rajya Sabha is referred, as upper house and Lok Sabha, as lower house of the Parliament. As the government is federal in nature, there was unanimity among the framers of our Constitution to achieve a balance between the indirect representation of people in the lower house; and the representation of federal units, that is, the states in the upper house. Hence the rationale for having two houses, one representing the people, as a whole; and other the federal units.

The President is an integral part of the Parliament. The President is elected by both Houses of Parliament and thereby considered as the Chief Executive and every business of the government is carried out in the President's name.

We will now discuss the composition of the Rajya Sabha and Lok Sabha individually.

Composition of Rajya Sabha

1. Rajya Sabha is composed of not more than 250 members, of whom (a) 12 members shall be nominated by the President; and (b) the remaining (that is 238 members) shall be representatives of the States and the Union Territories elected by the method of indirect election (Art.80).
2. The 12 nominated members shall be chosen by the President from amongst persons having 'special knowledge or practical experience in literature, science, art, and social service'. The Constitution thus adopts the principle of nomination for giving distinguished persons a place in the upper Chamber.
3. The representatives from each State shall be elected by the elected members of the Legislative Assembly of the respective State in accordance with the system of proportional representation by means of the single transferable vote system.³
4. The representatives of the Union Territories shall be chosen in a manner, as prescribed by the Parliament. Parliament prescribes representatives of Union Territories to be indirectly elected by members of an electoral college⁴ of

² We will be using the term 'Rajya Sabha' and 'Lok Sabha' in the Unit.

³ Single transferable vote system is a proportional voting system designed to achieve or approach proportional representation through voters ranking candidates in multi-seat constituencies.

that Territory, in accordance with the system of proportional representation by means of single transferable vote system.

Federal representation to the Rajya Sabha has a large variance in terms of 1 member from the State of Nagaland to that of 31 members from the State of Uttar Pradesh reflecting the federal nature of our country.

Composition of Lok Sabha

The Lok Sabha has a variegated composition. The Constitution prescribes for composition given, as follows:

- 1) Not more than 530 representatives are to be elected by people of States. The representatives from the states shall be directly elected by the people of the states on the basis of adult suffrage. Every citizen, who is not less than 18 years of age and is not otherwise disqualified e.g., by reason of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to vote. There will be no reservation of seats for any minority community other than the scheduled castes and scheduled tribes.
- 2) Not more than 20 representatives of Union Territories will be directly elected, as per law prescribed by the parliament for the purpose.
- 3) Not more than 2 members of the Anglo-Indian community, nominated by the President, if he/she is of opinion that the Anglo-Indian community is not adequately represented in the House of People.

Owing to these provisions the entire country is divided into suitable territorial constituencies for purpose of holding elections to the lower house. The territorial constituencies are bifurcated in a manner that the ratio of the population in each constituency stands represented to the number of seats allotted to.

Qualifications

The qualifications that are required in order to be chosen, as a member of Parliament, are given below:

- 1) The person must be a citizen of India.
- 2) He/she must be not less than 30 years of age to be a member of Rajya Sabha; and not less than 25 years of age in case of Lok Sabha.

Additional qualifications can be prescribed by Parliament by law.

A person stands to be disqualified on the basis of either of the grounds, as a member of either House of Parliament, if he/she:

- 1) holds an office of profit under the Government of India or Government of any State, other than an office exempted by Parliament by law.
- 2) Has an unsound mind and stands so declared by a competent court.
- 3) Is insolvent.
- 4) Is not a citizen of India or has voluntarily acquired citizenship of a foreign

⁴ Electoral College is a body of electors.

State or is under acknowledgement of allegiance or adherence to a foreign power.

5) Is disqualified by or under any law of the Parliament.

Duration of Term of Houses

Rajya Sabha is a permanent body and not subject to dissolution. Only 1/3 of its members retire on the expiration of every second year. An election is conducted to fill-in 1/3 of its members in the beginning of every third year. The order of retirement of the members is governed by the Rajya Sabha (Term of Office of Members) Order, 1952.

On the other hand, Lok Sabha is elected for a period of 5 years, but it can also be dissolved before the completion of its term by the President. Also, its normal term can get extended by an Act during an emergency period. However, there is a limit to this extension. The Act lays down that the extension cannot be made for a period exceeding one year at a time and also such an extension cannot continue beyond a period of six months after the emergency ceases to operate.

Sessions

The President has the power to summon, prorogue, and dissolve the lower house. The Constitution requires the President to summon each of the Houses at such intervals that six months shall not intervene between the last sitting of the House in one session and the date appointed for its first sitting in the next session. The net result of this provision is that Parliament must meet at least twice a year and not more than six months shall lapse between the date on, which the House is prorogued and the next session is commenced.

It would, in this context, be proper to understand certain terms used in relation to the Parliament. Transaction of business takes place when the Parliament is in session. Within a session, there are a number of daily sittings on different important areas. There may be adjournments that do not put an end but merely postpones the further transaction of business for a specified time that may be hours, days or weeks. While prorogation merely terminates a session, dissolution brings down the term of the lower house to an end, calling for a fresh election.

Activity

Express your views on Parliamentary any elections in our country. (cost factor, representative factor especially gender and disadvantaged groups etc.) .

PRESIDING OFFICIALS

There are presiding officials for each House, as mentioned below:

Speaker

Each of the Houses has its own presiding official and secretarial staff. There will be a Speaker, as a presiding officer of the Lok Sabha. Lok Sabha, in its first sitting, will choose two members from the House to be the Speaker and Deputy Speaker respectively.

The main job of the Speaker is to preside over the sessions. The Speaker will have the final power to maintain order when the Lok Sabha is in session and to interpret its Rules of Procedure. The Speaker's conduct in regulating the procedure or maintaining order in the House will not be subject to any court's jurisdiction.

In the absence of a quorum, it will be the duty of the Speaker to adjourn the House or to suspend the meeting, until the quorum is fulfilled.

Also, he/she will not vote in the first instance, but shall exercise a casting vote in case of a tie. The absence of vote in the first instance is to make the position of the Speaker impartial; and the casting vote is there to resolve an impasse.

Besides presiding over the House, the Speaker enjoys certain powers unlike the Chairperson of the Rajya Sabha. These are:

- 1) The Speaker shall preside over a joint sitting of the two Houses of Parliament.
- 2) When a Money Bill is passed from the lower house to the upper house, the Speaker shall endorse a certificate on the Bill of it being a Money Bill. With this, the subsequent procedure in the passage of the Bill will be governed, as per the provisions relating to the passage of the Money Bills.

The term of the Speaker or Deputy Speaker is co-terminus with the Lok Sabha. However, the office may terminate early also, if he/she ceases to be a member of the House or resigns or is removed from office by a resolution, passed by a majority of all the members of the House. However, such a resolution shall not be moved unless 14 days notice has been given of the intention to move the resolution. While a resolution for his/her removal is under consideration, the Speaker shall not preside the session of the House. However, he/she will retain the right to speak and take part in the proceedings of the House.

When the office of Speaker is vacant or the Speaker is absent from a sitting of the House, the Deputy Speaker will preside, except when a resolution for his/her own removal is under consideration.

Chairperson

In the Rajya Sabha, the Chairperson is the presiding officer. While in the Lok Sabha, the Speaker is elected by the members from among themselves, the Chairperson of the Rajya Sabha is an ex-officio position. The Vice President of India is the ex-officio Chairperson of the Rajya Sabha and is Presiding Officer of the House so long, as he does not officiate, as the President of India during a casual vacancy in that office. When the Chairperson has to officiate, the Deputy Chairperson performs the duty of the presiding officer. The Chairperson's term is co-terminus to the office of the Vice-President.

The functions of the Chairperson in the Rajya Sabha are similar to those of the Speaker of the Lok Sabha except that the Speaker has certain special powers of certifying a Money Bill, or presiding over a joint sitting of the two Houses.

ROLE OF PARLIAMENT

Indian Parliament is constituted, as the supreme legislative body. It is a multifunctional institution performing a variety of roles. These roles are discussed below:

Legislative Role

The primary function of Parliament is law-making. It is the law making that makes the legislature a paramount body.

The lower house of the Parliament seems to enjoy a key role with regard to money bill. These bills can be introduced only in the Lok Sabha and not in Rajya Sabha. Once the bill is passed by the lower house, it goes to the Rajya Sabha for consideration. The Rajya Sabha is given fourteen days time to take action on the bill. The Rajya Sabha can either pass it or can amend or reject it. If the bill is passed by the Rajya Sabha, then it goes to the President for his assent. If it is amended or rejected, then it goes back to the Lok Sabha for reconsideration and then voted by a simple majority and is sent to the President for assent.

In case of ordinary bills, both the houses have equal powers. These bills can be introduced either in the Lok Sabha or the Rajya Sabha. The Rajya Sabha may amend or reject a bill that is passed by the Lok Sabha. If the Lok Sabha disagrees with the action of the Rajya Sabha or if it happens vice versa, when the Rajya Sabha disagrees to the amendments made to a bill by the Lok Sabha, then the matter is placed before a joint sitting of both the Houses and then it gets passed by a simple majority. A bill passed in a joint sitting is sent to the President for his assent. With regard to Constitutional amendment too, both the Houses have equal powers. The Constitution cannot be amended unless the Rajya Sabha also agrees to bring in such amendments.

Control over the Executive

Another important role of the parliament is the control of the executive. In the Constitution, the Council of ministers is collectively responsible to the Lok Sabha⁵. The lower house enjoys the right to call for information pertaining to policies and programmes of the government and to see whether it has acted in conformity with its obligation. The parliament's control over executive is meant to galvanize and promote administrative pro-activeness in all matters of public interest. This makes the executive to be always vigilant to work in public interest.

There are numerous procedures by which the lower house controls the executive. Parliamentary questions to ministers, adjournment motions, and call attention motions are the procedures, which enable members to draw attention to specific grievances or issues and elicit government's responses on them. The lower house has a right to pass a no-confidence or censure motion against the government (this right does not exist with the Rajya Sabha). Besides, there are motions of short duration discussions, private members' resolutions, motions for modification of statutory instruments, and reporting by the departments and public undertakings that keep a tab on the administrative lapses or shortcomings of the government

⁵ The Rajya Sabha has every right to be fully informed on all matters connected with the government's activities, which are raised on its floor.

machinery.

Parliamentary control over public finance-the power to levy or modify taxes and the voting of supplies and grants-is one of the important checks against the executive assuming arbitrary powers. No taxes can be levied and no expenditure can be incurred from the public exchequer without Parliamentary authorization of the same by law.

Representational Role

Parliament is a body, which represents the people. Its members are drawn from every part of the country and represent interests. Parliament acts a forum, where members from diverse parties and varied interests come together under a common platform. Here is where consensual politics can happen with dialogue and interaction taking place face to face.

Also by being a forum, the needs and aspirations of the masses here get expressed. In the words of Kashyap “Parliament represents the changing...needs of the people. It is not only a microcosm and a mirror of the people, but also a barometer of their mood and pulse”.

Parliament, as a people’s institution and its members, as peoples’ representatives, has always championed the cause of masses. Parliament has all along been a body, which responds to matters of public interest zealously- raising matters of public importance in the House. It has culminated to a role of being an ombudsman of the grievances of the people of the country.

Special Powers of Rajya Sabha

The Constitution has assigned some special powers only to the Rajya Sabha. Article 249 of the Constitution empowers the Rajya Sabha to make laws on matters coming under the state list keeping national interest in perspective. Similarly, under Article 312, the Rajya Sabha is empowered to decide by a resolution supported by a two-thirds majority about setting up of an All India Service. The Lok Sabha comes into picture later, after the Rajya Sabha has passed the laws concerning these.

Thus, we see that the two Houses of Parliament, though constituted differently and enjoy some powers on an equal/ exclusive basis are nevertheless coordinate chambers. Both the Houses have equal powers in matters such as in the impeachment of the President, removal of the Vice-President, Constitutional amendments, and removal of the judges of the Supreme Court and the High Court. Besides, Presidential ordinances, proclamation of emergency, and proclamation of the failure of Constitutional machinery in a state must be placed before both the Houses.

However, there are certain powers that are in the exclusive domain of each of the Houses. Whereas the council of ministers enjoys financial powers and owes a sense of collective responsibility to the lower house, the upper house does enjoy certain powers, as has been already mentioned in Articles 249 and 312.

PARLIAMENTARY PROCEDURE

The lower house, that is, the Lok Sabha has the elected representatives of the people, who form the executive. The executive has members. The entire executive is having a Council of Ministers having both the state ministers and Cabinet ministers. The Cabinet ministers hold different portfolios.⁶ The entire Council of Ministers is headed by the Prime Minister of the political party that has a majority of seats in the Parliament. The executive is thereby formed by the ruling party. The Cabinet continues in powers as long as, it retains majority in the lower house of the parliament.

There are different stages in the parliamentary procedure relating to passing of bills (other than money bills) that are discussed, as follows:

- 1) **Introduction:** A bill other than money or financial bill may be introduced in either House of the Parliament and requires passage in both the Houses before it can be sent for the President's assent. A bill may be introduced either by a Minister or by a private Member.
- 2) **Motions after introduction:** After a bill has been introduced, the Member in-charge of the bill, may resort to any of the following motions:
 - That it can be taken into consideration.
 - That it can be referred to a select committee
 - That it can be circulated for the purpose of eliciting public opinion.
- 3) **Report by Select Committee:** If the bill is referred to a select committee, then the select committee of the House considers the provisions of the bill. After consideration, it submits its report to the House. Once the report is received, the clauses of the bill are open for discussion and amendments are admissible.
- 4) **Passage in the other house:** When a bill is passed in one House, it is sent to the other House. When the bill is received in the other House, it undergoes all the stages, as in the originating House subsequent to its introduction. The House, which receives the bill from another House can take either of the following courses:
 - It may reject the bill altogether. In such a case the provision of joint sitting may be convened by the President.
 - It may pass the bill with amendments. In this case, the bill will be returned to the originating House. If the originating House amends the bill, as per, then the bill is sent to the President for his/her assent. If, the originating House does not agree to the amendments made by the other House and there is a disagreement between the two Houses, the President summons a joint sitting for resolution.

⁶ Ministries and departments

⁷ The difference in the two cases is that any member other than a Minister desiring to introduce a Bill has to give notice of his/her intention and to ask for leave of the House to introduce the bill.

- 5) **President's assent:** When a bill has been passed by both the Houses, it is sent to the President for assent. If the President withholds his assent, there is an end to the bill. With the President's assent, the bill becomes an Act w.e.f. the date of assent. The President can also return the bill for reconsideration by both the Houses. The Parliament may reconsider and as per, revise the bill or it may not reconsider and can send the bill back to the President without any changes in the same form, as earlier. Therein, sent for the second time, the President gives the assent.

CONTROL OVER FINANCES

The financial system consists of two branches-revenue and expenditure.

- 1) As regards revenue, Art.265 specifies that no tax shall be levied or collected except by authority of law. The result is that the executive cannot impose any tax without legislative sanction. If any tax is imposed without legislative authority, the aggrieved person can obtain relief from the courts of law.
- 2) As regards expenditure, the Consolidated Fund of India is the reservoir of revenues of the GOI. Also, all loans raised by the government are paid from it. The Constitution provides that no moneys shall be appropriated out of the Consolidated Fund of India except in accordance with law.

The following are the financial committees of the Parliament to monitor the fiscal prudence of expenditure done by various ministries and departments.

to begin with is the Estimates committee.

- **Estimates Committee**

The government has the sole initiative in formulating its policies and in presenting its demands for carrying out those policies. Parliament can hardly refuse such demands or make drastic cuts in such demands without reflecting on the policy and responsibility of the government in power. It is also not expedient to suggest economies on different items of the expenditure proposed by the Government, owing to the shortage of time at the disposal of the House. Herein, the scrutiny of the expenditure proposed by the Government is, therefore done by a Committee, known as the Estimates Committee. After the Annual Financial Statement, that is the budget, is presented before the lower house, this Committee (annually constituted) examines the estimates.

Though the report of the Estimates Committee is not debated in the House, the fact that the Committee carries on its examination on two scales of economy and efficiency throughout the year and places its views before the members of the House, as a whole, exerts a salutary influence in checking governmental extravagance in making demands for the coming year and, as per, in moulding its policies.

- **Public Accounts Committee**

The expenditure sanctioned by Parliament has to be spent in accordance with the provisions of the Appropriation Act. The Comptroller and Auditor General(C&AG) is the guardian of the public purse and it is his/her duty to

watch that not a single paisa is spent without the authority of Parliament. The C&AG submits the audit report relating to the accounts of the Union Government to the President, who lays the same before the Houses of Parliament.

After the report of the C&AG is laid before the Parliament, it is examined by the Public Accounts Committee (PAC). Though this is a Committee of the House of the People, it has 15 members from the lower house and seven members of the upper house. The Chairperson of the Committee is generally a member of the Lok Sabha, who is not a member of the ruling party.

In scrutinizing the Appropriation Accounts of the GoI and the report of the C&AG thereon, it shall be the duty of the Committee on Public Accounts to satisfy:

- 1) That the moneys shown in the accounts, as having been legally disbursed, were actually available and applicable to the services or purposes for which they were applied for.
- 2) That the expenditure conforms to the authority, which governs it.
- 3) That every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority.

The Committee, in short, scrutinizes the report of the C&AG in detail and submits its report to the House of the People, so that the irregularities noticed can be discussed and effective steps can be taken thereof.

Activity

How do you find government's concern over the financial irregularities brought forth by the Committees of the Parliament in recent years?

CONCLUSION

In a Parliamentary democracy, sovereignty of the people is upheld through the legislature. In India, the legislature at the Union level is called Parliament. The Indian Constitution provides for a bicameral Parliament, which consists of the President and two houses known, as Rajya Sabha and Lok Sabha. Each house of Parliament has its own Presiding officer and secretarial staff. The Parliament, as a legislative body performs different functions like those of exercising control over finances, ensuring the accountability of the government to the lower house, passage of bills etc.

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UNIT 5 (B) EXECUTIVE

INTRODUCTION

A basic feature that characterizes the Parliamentary model is the presence of dual executives. The President of India is the constitutional head of the state whereas the Prime Minister (PM) and his/her Cabinet are the real executive. The PM and Council of Ministers are chosen from the majority party in the Parliament and are responsible to it for their policies and actions. They remain in office, as long as, they enjoy the confidence of the latter.

At the head of the central executive is the President of India. Article 53 of the Constitution formally vests in the President the executive powers of the Union, which are exercised by him/her either directly or through officers subordinate to him/her, in accordance with the Constitution. In practice, he/she is aided and advised by the Cabinet which is headed by the PM. Therefore, the executive at the centre consists of the President, the PM, and Cabinet.

In this Unit, we will discuss about political executive at the central level in detail. To begin with, is a discussion on President of India.

PRESIDENT

The President is a Constitutional head of the State in the sense that he/she represents the nation. All actions of the Government are carried out in his name but he is not the ultimate deciding, directing, or determining factor. Article 52 of the Indian Constitution states ‘there shall be a President of India,’ and, as per Article 53(1) in him/her shall be vested the executive powers of the Union, which are exercised by him/her either directly or through officers subordinate to him in accordance with the Constitution.’ In practice he/she is aided and advised by the Council of Ministers headed by the PM.

Election

The post of the President is the highest executive post in the country. The qualifications for the post are mentioned in Article 58 of the Constitution. The qualifications are that he/she should be:

- 1) A citizen of India
- 2) Above 35 year of age
- 3) Qualified for election to the lower house of the Parliament
- 4) Not holding any office of profit under the Union or State Governments.

The President is elected by indirect election, that is, by an Electoral College, in accordance with the system of proportional representation by means of a single transferable vote system. The Electoral College shall consist of elected members of both houses of Parliament, the elected members of the legislative assemblies of the states, and the elected members of the legislative assemblies of Union

Term of Office and Impeachment Procedure

The term of office is of five years from the date on, which he/she assumes the office. He/She is eligible for re-election to the post for only one time. The President may/ have to leave his/her office before completion of the five years term on two grounds:

- 1) By resignation in writing under his/her hand addressed to the Vice-President of India.
- 2) By the process of impeachment for violation of the Constitution.

An impeachment is a quasi-judicial procedure in Parliament. Either of the houses may refer a charge against the President of violation of the Constitution before the other house, which shall then either investigate the charge itself or cause the charge to be investigated. For the charges to be leveled, it is required that a resolution containing the proposal is moved after a 14 days' notice in writing signed by not less than $\frac{1}{4}$ of the total number of members of that House; and the resolution is then passed by a majority of not less than $\frac{2}{3}$ of the total membership of the House.

The President shall have a right to appear and be represented in such an investigation. If, as a result of the investigation, a resolution is passed by not less than $\frac{2}{3}$ of the total membership of the House (before, which the charge has been referred to) declaring that the charge has been sustained, such resolution shall have the effect of removing the President from his/her office with effect from the date on, which such resolution is passed.

Till a new President is elected, the Vice President will be incharge of the office of the President.

We will now discuss the powers of the President.

POWERS

The following are the powers of the President:

1) Executive powers

Executive power may be defined, as the power of carrying on the business of government or the administration of the affairs of the state, excepting functions, which are vested by the Constitution in any other authority.

The list of executive powers is given below:

- 1) All executive actions of the GoI are formally carried out in the President's name.
- 2) He/She Makes rules specifying the manner in, which the orders and other instruments made and executed in his name, shall be authenticated.
- 3) Appoints the PM and the other ministers. They all hold office at his/her pleasure.

- 4) Appoints the Attorney-General of India, Comptroller and Auditor-General of India, the Chief Election Commissioner and other Elections Commissioners, the Chairperson and members of the Union Public Service Commission, Governors states, and the Chairperson and members of Finance Commission. They all hold office at his/her pleasure.
- 5) Can seek any information from the PM on matters relating to the administration of affairs at the Union level.
- 6) Can appoint a commission to investigate into the conditions of SCs, STs, and OBCs.
- 7) Appoints inter-state councils to promote relations between the Centre and states and also inter-state.
- 8) Administers the union territories through administrators appointed by him/her.
- 9) Can declare any area, as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.

2) Legislative Powers

The President of India enjoys the following legislative powers on the advice of the PM and Cabinet. The President.

- 1) Can summon or prorogue the Parliament and even dissolve the lower house. He/she can summon a joint sitting of both the houses of Parliament, to be presided over by the Speaker of the Lok Sabha.
- 2) Addresses the Parliament at the commencement of the first session after each general election and the first session of each year.
- 3) Can send messages to the houses of parliament with respect to a bill that is pending.
- 4) Can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both, the Speaker and the Deputy Speaker are vacant. Similarly, he/she can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both, the Chairman and the Deputy Chairman are vacant.
- 5) Nominates 12 members to the Rajya Sabha from amongst the persons of eminence in fields of literature, science, art, and social service.
- 6) Nominates two members to the Lok Sabha from the Anglo-Indian community, if the community is not represented.
- 7) Decides on the disqualification of members of Parliament in consultation with the Election Commission.
- 8) Gives his/her prior recommendation or permission to introduce certain types of bills in the Parliament. These bills pertain to expenditure from the Consolidated Fund of India and alteration of boundaries of states

or creation of a new state.

- 9) When a bill is sent to the President, after it has been passed by the Parliament,
 - a) gives assent to the bill, or
 - b) withhold his/her assent to the bill, or
 - c) return the bill (if it is not a money bill) for reconsideration of the Parliament.

However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his/her assent to the bill. It should be noted here that the President has no veto power in respect of a constitutional amendment bill. The 24th Amendment Act (1971) made it obligatory upon the President to give his/her assent to a constitutional amendment bill.

- 10) When a bill passed by a state legislature is reserved by the Governor for consideration of the President, the President can:
 - a) give his/her assent to the bill, or
 - b) withhold his/her assent to the bill,
 - c) direct the governor to return the bill (if it is not a money bill) for reconsideration of the state legislature. It should be noted here that it is not obligatory for the President to give his/her assent, even if the bill is again passed by the state legislature and sent again to him for his re-consideration. Thus, the President enjoys absolute veto power over state bills.
- 11) He/She can promulgate ordinances, when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. H/She can also withdraw an ordinance at any time.
- 12) He/She calls for reports of the C&AG, UPSC, Finance Commission, and others to be laid before the houses of the Parliament.
- 13) He/She can make regulations for governance of the Union Territories.

3) Financial Powers

The financial powers are, as follows:

- 1) Money bills can be introduced in the Parliament only with his/her prior permission.
- 2) No demand for a grant can be made except on his/her recommendation.
- 3) He/She can make advances out of the Contingency Fund of India to meet any unforeseen expenditure.
- 4) He/She constitutes a Finance Commission in every five years to recommend the distribution of taxes between the Centre and states.

4) Judicial Powers

The judicial powers are given, as follows:

- 1) He/She can appoint the chief justice and the Judges of Supreme Court and High Courts.
- 3) He/She has the power to pardon, reprieve, respite, and remission of punishment; or suspend, remit, or commute¹ the sentence of any person, where the punishment or sentence is by a court martial

5) Emergency Powers

The President can declare three types of emergencies.

- 1) National Emergency (Article 352)
- 2) State Emergency (Article 356 & 365)
- 3) Financial Emergency (Article 360) -

• National Emergency

Under Article 352 the President can declare a national emergency on the basis of a written request by the Cabinet. The proclamation of emergency must be approved by the Parliament (both houses) within one month. If approved, the emergency shall continue for six months. It can also be extended for every six months with approval of the Parliament. A national emergency has been proclaimed three times so far-in 1962, 1971, and 1975.

The President acquires the following powers during a national emergency:

- 1) He/she can give directions to any state with regard to the manner in which its executive power has to be exercised.
- 2) He can modify the pattern of the distribution of financial resources between the Union and the states.
- 3) He can suspend the Fundamental Rights of citizens except the right to life and personal liberty (Article 21) and the right to protection in respect of conviction for offenses (Article 20). Moreover, the right to six freedoms (Article 19) can only be suspended in case of an external emergency (i.e. on the grounds of war or external aggression) and not in case of internal emergency owing to failure Constitution.

Parliament retains certain powers during a national emergency:

- 1) It can make laws on any subject mentioned in the state list. Such laws cannot continue beyond six months after the emergency is over.
- 2) It can extend the normal tenure (five years) of the Lok Sabha as well as State Legislative Assembly by one year. Such extensions cannot continue beyond six months after the emergency is over.

• State Emergency

¹ Pardon sets free a person from all punishment imposed on him by a court of law for some offence. Reprieve implies a stay of the execution of a sentence for a temporary period. Respite denotes awarding of a lesser sentence instead of the penalty otherwise prescribed by law. Remission implies reducing the amount of sentence without changing its character. Commutation denotes the substitution of one form of punishment for another form, which is of a lighter character.

If the President is not fully satisfied on the basis of a report of the Governor of a concerned state or from other sources that the governance in a state cannot be carried out according to the provisions of the Constitution, he can proclaim an emergency under Article 356. Such an emergency must be approved by the Parliament within a period of 2 months. By Article 365, if the state is not working, according to the direction of the Union government an emergency can be proclaimed. Such an emergency must be approved by the Parliament within a period of 2 months and can last up to maximum of three years via extensions after every 6 months period.

When the President's rule is imposed in a state, the President dismisses the state's council of ministers headed by the chief minister. The state governor, on behalf of the President, carries out the state administration activities with the help of chief secretary of the state or the advisors appointed for the purpose. When the state legislative assembly is dissolved or suspended, it is the Parliament that passes the state legislative bills and state budget. It needs to be mentioned here that the constitutional status, position, powers, and functions of the state's High Court are not affected by such a proclamation. In other words, the President cannot interfere in the jurisdiction of the state's High Court.

- **Financial Emergency**

Under Article 360 the President can proclaim financial emergency, if he is satisfied that the financial stability of the country or any part thereof is financially threatened. Such a proclamation must be approved by the Parliament within two months of its coming into force by a simple majority. The President can then give direction to the states to observe financial propriety. He/She can issue directions for reduction of salaries and allowances of all or any particular class serving under the state. This applies to levels serving in connection with the affairs of the union, including the judges of the Supreme Court and High Courts. He/She can require all money bills and other financial bills be reserved for his/her consideration.

This type of emergency has never ever been declared.

6) **Diplomatic Powers**

Diplomatic power is spoken, as identical with foreign or external affairs that bring the Union into a relation with a foreign country. International treaties and agreements are negotiated and concluded on behalf of the President. subject to Parliaments approval of the Parliament. He/She represents India in international forums and sends and receives diplomats like ambassadors and high commissioners.

7) **Military Powers**

He is the supreme commander of the defence forces of India. In this capacity, he appoints the chiefs of the army, navy, and air force. He can declare a war or conclude a peace treaty subject to Parliament's approval.

Now, we will take up with a discussion on the Prime Minister of India in the

PRIME MINISTER

The Indian Parliamentary democracy provides for a nominal and real political executive. These are the President and the PM respectively. The real executive is the PM and Council of Ministers. Articles 74, 75, and 78 broadly govern the relationship between the PM and President. The function of the PM, as per Article 74 is that of rendering aid and advice to the President. Article 75(1) of the Indian Constitution provides that PM shall be appointed by the President and other ministers shall be appointed by the President on the advice of the PM. Article 75(2) governs that ministers shall hold office at the pleasure of the President of India. Article 78 places an obligation on the PM to inform the President about all decisions relating to administration of affairs of the Union and also proposals pertaining to future legislations.

Roles

The PM enjoys power and influence, both in the executive and legislature. He/She is the key person in the government. The structure of the Cabinet is built around him/her. According to Gladstone (former PM of the UK) PM is the keystone of the Cabinet 'arch.' Ivor Jennings (British Lawyer) describes him/her as 'the sun around, which planets revolve'. According to Peter G. Richard 'Prime Minister is Primus Inter Pares first among equals, As per Ramsay Muir² "Cabinet is the steering wheel of the state and Prime Minister is the steersman (person)."

The PM, by virtue of being the leader of the majority party in the Lok Sabha, is the head of the Council of Ministers. He/She is also the leader in the Parliament. He/She serves, as a channel of communication between the President and the Council of the Ministers. He/She is a spokesperson of the country on all matters of foreign policy. Besides, he/she distributes the portfolios and can go in for a reshuffle of the same among ministers. He/She can ask a minister to resign.

In the following Section, we will take up a discussion of the Office of the PM of India, known, as Prime Minister's Office-PMO.

PRIME MINISTER'S OFFICE

The Prime Minister's office (PMO) provides secretarial assistance to the PM. It is headed by a Principal Secretary. Earlier known, as the PM's Secretariat when it came into existence on August 15, 1947, since 1977 it is known, as the PM's Office'. The Office was created with an aim to render all aid and assistance to the PM in performance of his/her duties.

Organization

The PMO is headed by a Principal Secretary to the PM. The organizational hierarchy of the office is, as follows:

² John Ramsay Bryce Muir was a British historian, Liberal Party politician and thinker, who made significant contribution to the development of liberal political philosophy in the 1920s and 1930s through his work on domestic industrial policy and promotion of international policy of interdependency.

- 1) Principal Secretary: He/She heads the hierarchy at the PMO and deals with all governmental files in the office. He/She also looks into the affairs of the various ministries that the PM may ask him/her to handle.
- 2) Additional Secretary: He/She looks after the personnel and policy matters of the ministries that the PM may ask him/her to look into.
- 3) Joint Secretary (I): He/She looks after Home Affairs, and Law and Justice.
- 4) Joint Secretary (II): He/She handles the administration of the PMO and the Ministries of Surface Transport, Communications, Railways, and Civil Aviation.
- 5) Joint Secretary (III): He/She looks after the Ministries of External Affairs, Defence, and Department of Atomic Energy.
- 6) Director (I): He/She is an Officer on Special Duty, who looks after rural development and civil supplies.
- 7) Director (II): He/She is incharge of Home Affairs.
- 8) Director (III): He/She performs jobs that are given by the PM.
- 9) Director (IV): He/She is assigned with the matters concerning the States of North-East.

This nature of job assigned to the officials is subject to the discretion of the PM.

Besides the above, there are functionaries, belonging to Class I, II, III, and IV Services.

Functions

Broadly, the jurisdiction of the PMO covers all such subjects and activities that have not been allocated to any of the departments. These pertain to:

- 1) Deal with all references pertaining to Rules of Business that come to the PM.
- 2) Help the PM in the discharge of his/her overall responsibilities, as the head of the government. Also, it maintains liaison with the Union ministries and state governments.
- 3) Deal with the matters relating to public relations of PMO.
- 4) Render assistance in assessment of cases that are submitted to the PM for action.
- 5) Handles the correspondence of the PM.

Increasing importance of PMO

The idea behind its creation was to process all proposals so as to leave the PM with enough time to concentrate on major policy decisions. In contemporary times, it has become a think tank of the PM. Major policies of the country like foreign policy, defence policy are worked out together with PMO and respective ministries. For instance, the formulation of foreign policy of the country is worked out together by both the Ministry of External Affairs and PM in consultation with his office.

When we discuss about the role of PMO, we can find that PMO has evolved to the present form owing to its working under different PMs. Under Nehru the size of the office was limited, so was its role. Under his tenure, there was a great reliance on the Ministries.

It was Nehru's successor PM Shastri, who took the first step towards establishment of a powerful Secretariat in the PMO. This led to a formidable influence of PMO in making decisions in future regimes that became a trend. Gradually, the PMO's Secretariat became an executive force. Much of the domestic and foreign policy started taking shape here and gradually it assumed lot of authority. Imposition of emergency in 1975-1977 ushered in concentration of more authority in the Office that all ministries, departments, and other executive agencies were to adhere to its strictures. PMO's Secretariat became a national policy formulation body and the Cabinet Secretariat its enforcement arm.

During the Janata Party regime, the existing concentration of power was diffused and it started performing functions that were secretarial in nature. The Secretariat was divested of its various policy making cells. However during the UPA regime, policy making power again started getting reinstalled in the Secretariat and the same continues today.

Hence, PMO seems like a 'mini Cabinet,' as it attempts to supplant the Cabinet in all major policy making functions.

COUNCIL OF MINISTERS

The Council of Ministers includes the Cabinet ministers, state ministers, and deputy ministers with PM, as its head. Sub-clause 1A has been inserted to Article 75, which provides the total number of ministers along with the Prime Minister shall not exceed 15% of the total number of the members of the House of People w.e.f. 1.1.2004.

It is the prerogative of the PM that governs the selection of ministers. The Constitution lays down that a person joining the Council of Ministers must be a Member of Parliament. The PM can take in a person, who is not a Member of Parliament, but in such cases, the person has to contest and win election to a parliamentary seat within six months of assumption of office.

The Prime Minister takes note of several factors when selecting the ministers, such as: a) geographical representation, b) political base of a member, c) representation of a social mix of the electorate, d) individual capacity and capability, e) reward for loyalty, f) representation of backward classes, g) adequate representation to states in terms of population, and (h) a member's earlier performance, as a minister, if he had been one.

The PM is at the apex, followed by Cabinet rank minister, who wields an independent charge of a ministry. Ministers of State usually are accorded second rank within the portfolios assigned to the Cabinet Ministers. Sometimes, rather than having a minister of Cabinet rank, the PM may assign an independent charge of a portfolio to a minister of State. The Deputy Ministers are within the portfolio in the third rank and may look after various functions³. Parliamentary secretaries are also there to render aid and assistance to the Council of Ministers.

The entire Council of Minister work according to the principle of collective responsibility. They all swim and sink together. If a no-confidence motion gets passed the entire government has to resign.

Roles of Cabinet

The Cabinet performs the following roles:

- **As Prime Policy Maker**

The Cabinet is the prime policy making body of the government. It looks into the areas that require formulation of new policies or incremental modifications to an existing policy/programme. The initiative in this regard is taken by the minister in charge of the department or ministry. The provisions in the proposed policy or a programme are reviewed in detail by the department/ministry concerned and once finalized it is placed before the Cabinet for approval.

- **As Prime Legislative Body**

It is an integral part of the legislative system. Although the Parliament is the supreme law making body of the nation, legislation is essentially the handiwork of the Cabinet. It is the Cabinet that gives final shape to all government bills. It prepares the legislative agenda at the very start of every parliamentary session and decides upon the bills to be put forth. The inaugural speech of the President is also prepared by Cabinet. The President summons, prorogues, and dissolves the House on the advice of the Cabinet headed by the PM. All ordinances issued by the President are also prepared by the Cabinet. Thus, we see that Cabinet not only executes the policies but also provides leadership in most of the matters pertaining to legislation.

- **As an Advisory Body**

The Cabinet is an advisory body to the President of India. Its advice is binding on the President in matters pertaining to his/her assent on a bill. It is the sole decision-making body on all policy matters and these decisions are conveyed to the President, who endorses them.

- **As a Coordinating Agency**

The Cabinet is the coordinating agency for all ministries. All ministries/ departments do work in a harmonious and coordinating environment.

- **As Chief Executive Organ**

Each Cabinet minister is the political head of his/her department. The principal aide is the Secretary, who functions, as the administrative head of the department. The Secretary is responsible for carrying out the policies. Though the minister does not interfere in the day-to-day working of the department, the secretary must keep him posted of all major developments, as the ultimate responsibility rests on the minister.

- **As Coordinator of Foreign and Defence Policies**

Conduct of foreign relations, reception of diplomats, appointment of diplomats, and recognition or non-recognition of new states are done with 3. It is not necessary to have Deputy Ministers.

approval of the Cabinet. Treaties are negotiated and signed and Parliament is duly informed about these. The Cabinet also controls the foreign tours of the President and other ministers.

The Department, which is concerned with the defence of the country, is called the Defence Department. It is responsible for the organization of the entire forces and in making key appointments to the Army, Navy, and Air Force. It is this Department which, in consultation with the Cabinet, can take action on matters such as declaration of war, mobilization of troops, and calling off wars.

- **As Crisis Manager**

Emergencies whether pertaining to external aggression or failure of constitutional machinery in any state, its declaration is based on the recommendation of the Cabinet.

Activity

Highlight the grounds that make India a Republic.

CONCLUSION

A basic feature that characterizes the Parliamentary model is the presence of dual executives. The President of India is the constitutional head of the Indian State whereas the PM and his Cabinet are the real executive. The real executive remains in office, as long as it enjoys the confidence of the legislature. The PMO provides secretarial assistance to the Prime Minister. It is headed by the Principal Secretary. The role of PMO has evolved and varied under different Prime Ministers.

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UNIT 5(C) JUDICIARY

INTRODUCTION

Within the framework of parliamentary democracy and federalism, judiciary plays an important role in the governance of the country. Judiciary, the institution for delivering justice to the people and government, occupies a significant position among the three organs of the state¹. Justice is considered, as a logical requirement of any society for it is a part of human nature to expect justice and being intolerant to injustice. Justice enjoins upon everybody to preserve the basic order of society.

Judiciary is an indispensable part of governance. An efficient and independent judiciary is an assurance of well being of a society. The Indian Constitution provides the judiciary with the power of judicial review of legislative and administrative actions, on one hand; and entrusts it with the task of enforcement of the Fundamental Rights guaranteed under the Constitution to the citizens of India, on the other. The framers of the Indian Constitution conceived of a single and unified system of judiciary with Supreme Court at its apex, keeping it free from the control of the executive and legislature.

This Unit discusses the judicial system in India. To begin with, are the role and functions, as performed by judiciary in the country.

JUDICIARY IN INDIA

The Government of India Act, 1935 had created a court system for upholding the federal principle. It was called the Federal Court of India. This court continued to be the highest court in India till the Supreme Court of India was established under the present Constitution in 1950.

The Constitution of India contains a number of provisions that deal with the structure, functions, and powers of the judiciary. It introduced a unified judicial system in the entire country. It introduces a three tier judicial system namely, Supreme Court of India, designated, as the highest court of the land; High Court, the highest Courts in States and Union Territories; and a subordinate judiciary in every State and Union Territory. However, the Constitution contains specific provisions relating to the Supreme Court and High Courts of India and leaves the subordinate judiciary to the jurisdiction of the States.

Each collegium is composed of five people with the Chief Justice of the relevant court and four senior most judges of that court.

The judges in lower courts below the High Court are appointed by the respective HC collegium.

Besides, the Constitution has made the following provisions to enable an independent, unbiased, and an able judiciary.

- 1) Supreme Court or High Court collegium selects and recommends to the Chief Justice of India the name of judges to be appointed or transferred.
- 2) Appointment of judges by collegiums.
- 3) Provision of security of tenure. Once appointed, they can stay in office till they attain the age of 65 and 62 (Supreme Court and High court respectively).
- 4) The Supreme Court judges have been prohibited from practicing law before any court of law after retirement.
- 5) Payment of first-class salaries and other allowances and privileges.
- 6) The actions and decisions of the judges in their official capacity are immune from any judgment in any court of law.
- 7) The Supreme Court has been authorized to have its own establishment and a complete control over it.

The judiciary generally performs the following functions in constitutional democracies.

- 1) Interpreting the Constitution with due deference to the wishes of the framers of the Constitution.
- 2) Upholding the federal principle of maintaining the balance between the various organs of government and also the centre and the states.
- 3) Guarding and protecting the fundamental rights of the citizens.
- 4) Ensuring the constitutional validity of legislative, quasi-legislative, executive, or quasi-judicial actions of the state.
- 5) Interpreting the laws made by the government.

SUPREME COURT

As per the Constitution of India, the Supreme Court is the apex court. It is the final arbiter, as to upholding the federal principle, the validity of a law or executive action, and enforcement of fundamental rights of citizens. The Supreme Court, as the apex court of the nation exercises three kinds of jurisdiction that include original, appellate, and advisory. Under the constitutional scheme the decision of the Supreme, Court is final and binding on all the other courts in India including the High Courts and the subordinate ones.

The Supreme Court of India is endowed not only with legal authority, but in addition, it is bestowed with a vast reservoir of judicial powers to enforce the fundamental rights of the citizens when violated and also adjudication between governments.

Role and Functions

Judiciary is the guardian of the Constitution and ensures that everything is

¹ The other two organs are the Legislature and Executive.

functioning, as per the constitutional provisions. Under Article 131 the Supreme Court has been vested with jurisdiction to uphold the federal principle of the Constitution. The Supreme Court is the highest appellate Court and it exercises its appellate jurisdiction in all civil, criminal, and constitutional matters. The Supreme Court has been vested with advisory jurisdiction to advise the President on any question of fact or law that may be referred to it. The Supreme Court has rule making power under Articles 142 and 145. It has the power to punish any person for its contempt under Article 129.

We will now discuss the role and functions of the Supreme Court.

- **Original Jurisdiction (Article 131)**

This refers to the cases that directly originate in the Supreme Court. It has original jurisdiction in cases of a dispute between (a) the Government of India and one or more states; or (b) the Government of India and any state or states on one side and one or more states on the other; or (c) two or more states.

- **Appellate Jurisdiction (Article 132 to 136)**

This refers to the power of reviewing and revising the orders of lower courts and tribunals. This jurisdiction extends to both the civil and the criminal appeals from the High Courts under certification from these courts or in its absence, permitted by the Supreme Court itself. Normally, these appeals are in cases involving substantial questions of law or interpretation of the Constitution or death penalty awarded by a High Court.

- **Advisory Jurisdiction (Article 143)**

Under Article 143, the Supreme Court has been vested with the power of advisory jurisdiction. The President can consult the Supreme Court on matters of public importance, wherein the latter gives its opinion to the President. The Supreme Court may also decline to give its opinion to the President. The advice is not binding on the President.

- **Appeal by Special Leave (Article 136)**

This power has been conferred upon the Supreme Court under Article 136. It may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any case or matter passed or made by any court or tribunal in the territory of India.

- **Writ Jurisdiction**

The Supreme Court is the guardian of the individual liberties and fundamental rights. It can declare a law passed by the legislature, as null and void, if it encroaches upon the fundamental rights guaranteed to the people by the Constitution. For the enforcement of fundamental rights, it can issue writs in the nature of Habeas Corpus², Mandamus³, Certiorari⁴, Prohibition⁵ and Quo-Warranto⁶.

- **Judicial Review**

Judicial review of Supreme court implies the power to review and determine the validity of a law or an order. It refers to the power of a court to inquire whether a law, executive order, or other official action conflicts with the written Constitution, and if the court concludes that it does, to declare it unconstitutional and void.

There are specific articles in the Constitution, which guarantee judicial review of legislation. These are Articles 13, 32, 131-136, 143, 145, 226, 246, 251, 254, and 372. Apart from these Articles, the power of judicial review is derived from the position of Supreme Court, as the guardian of Constitution.

Activity

In recent times, one can see interventions of the Supreme Court in areas of executive action. You can examine some of such cases in the current context.

JUDICIAL ACTIVISM

An eminent Indian jurist defines judicial activism in the following words:

“Judicial activism is the use of judicial power to articulate and enforce counter-ideologies, which when effective initiates significant re-codifications of power relations within the institutions of governance. Justification for judicial activism comes from the near collapse of responsible government and the pressures on the judiciary to step in to respond and to make political or policy judgements. ‘Judicial Activism’ and ‘Judicial Restraint’ are the terms used to describe the assertiveness of judicial power.

When the political organs of the state fail to discharge their constitutional obligations effectively or they remain indifferent to the values of social and economic justice, therein the judiciary may assume the role of a policy maker, legislator, and even the role of a monitor to oversee the implementation of its directions to achieve social and economic goals. In recent decades, the apex court has transcended from being an interpreter of law to that of a law maker.

Reasons for Judicial Activism

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- ² Habeas Corpus is recourse in law through, which a person can report an unlawful detention or imprisonment to a court and request that the court order the custodian of the person, usually a prison official, to bring the prisoner to court, to determine whether the detention is lawful.
 - ³ Mandamus is a judicial remedy in the form of an order from a court to any government, subordinate court, corporation, or public authority, to do some specific act, which that body is obliged under law to do, and which is in the nature of public duty, and in certain cases one of a statutory duty.
 - ⁴ Certiorari is a court process to seek judicial review of a decision of a lower court or administrative agency. It is issued by a superior court to direct that the record of the lower court be sent to superior court for review.
 - ⁵ Prohibition is a writ directing a subordinate to stop doing something the law prohibits. This writ is often issued by a superior court to a lower court directing it not to proceed with a case, which does not fall under its jurisdiction.
 - ⁶ Quo-Warranto is a prerogative writ requiring the person to whom it is directed to show what authority they have for exercising some right, power, or franchise they claim to hold.

1) Failure to have a responsible government

When the political organs of the state fail to discharge their constitutional obligations effectively or they remain indifferent to the values of social and economic justice, therein the judiciary may assume the role of a policy maker, legislator, and even the role of a monitor to oversee the implementation of its directions to achieve social and economic goals.

2) Fundamental rights to be restored to the citizens

If the government or any of its agencies look down on the fundamental rights of the citizens, the citizens can approach the High Court/ Supreme Court to step in to protect their fundamental rights.

3) Judicial enthusiasm to participate in social reform and change

The courts take corrective actions against social discrimination by taking up cases *sumoto*.

4) The Constitutional scheme for judicial intervention

The Indian Constitution has Article 13, wherein the judiciary is implicitly empowered to review the validity of any law on the touchstone of fundamental rights and to declare the same void, if it contravenes with any of these rights. Under Article 32, any person whose fundamental rights are violated by the state can approach the Supreme Court for their enforcement. Further the right to approach the Supreme Court under Article 32 has in itself been made a fundamental right namely 'right to constitutional remedies.'

PUBLIC INTEREST LITIGATION (PIL)

Many of the citizens are still ignorant of their rights, hence they get exploited by the elite and classes. Herein the Supreme Court of India intervened and the result of this led to the emergence of the Public Interest Litigation (PIL) in India. PIL is primarily concerned with the remedies sought under Article 32/⁷Article 226⁸ of the Constitution of India. There are many reasons that helped in the emergence of PIL in India. These include the right of socially and economically disadvantaged citizens, the taxpayers and their rights, public interest violations, the rights of prisoners, workers, pensioners, consumers, victims of environmental pollution, and others that displayed the courts' willingness to innovate and the guarantee the right to free legal aid.

Public Interest Litigation⁹ (PIL) is an institutional innovation of the Supreme Court of India. The Supreme Court has played a vital role in the institutionalization

⁷ Article 32 gives the right to individuals to move to the Supreme Court to seek justice when they feel that their right has been unduly deprived. Unless, there is some Constitutional Amendment, the rights guaranteed by this Article cannot be suspended.

⁸ Article 226 empowers High courts to issue directions, orders, or writs for enforcement of fundamental rights or for any other purpose.

of this new 'tool' by liberalizing the rigid rule of locus standi. This concept was introduced by a very concerned and willing judiciary in India in the early 1980's to help the socially and economically disadvantaged sections of the society, who could not approach a court for justice owing to their poverty, illiteracy, and ignorance.

The court has ushered in a new type of representative litigation in the form of PIL with the help of public spirited citizens, institutions, and judges. The court has greatly deviated from the established principle and practice in the adversarial system of justice that only an aggrieved party could approach a court of law and secure relief. It has liberalized the principle of 'locus standi' in recognizing not only the standing of the aggrieved persons but also of the public spirited individuals and institutions in enforcing the rights of the unrepresented sections of society. The PIL has essentially constituted a cooperative and collaborative effort on the part of the petitioner, the state or public authority, and the court. Herein the court has to secure the observance by the state authorities of the Constitutional privileges that have been conferred upon these sections thereby enabling these sections to get social justice.

Ever since it got institutionalized one can witness a resurgence of judicial activism principally through the device of PIL. The flexibility of jurisdiction, the easy access it provides to the litigant, and the range of issues that it permits to be dealt with, have made the Supreme Court a prominent judicial institution effectively keeping a check on the executive branch.

PIL has played an important role in ensuring that the administrators are accountable to the people, there is a rule of law in all spheres of public life, and there is an important need to have and maintain an independent judiciary. In fact, the scope of PIL has become expansive. Today we have PIL being made by people at large for maintaining the rule of law and in ensuring the proper exercise of administrative discretion by the ministers and bureaucrats. Another noteworthy contribution of PIL has been to ensure that the victims of violation of fundamental rights have been paid adequate monetary compensation.

It is clear that judiciary in India has acted with an unprecedented dynamism in expanding the scope of Article 21 of the Constitution. The Supreme Court has played an active role and delivered significant judgments on the scams, which took place during UPA-II regime such as coal mines allocation, 2G Spectrum, Common Wealth Games Scams.

From the above discussion, it becomes clear that judiciary has directed the government to act and compelled the authorities to perform their responsibilities. By judicial activism, the courts are maintaining and preserving the character of the Constitution, as guardian of citizens' rights. The judiciary, however, has been

⁹ In the 1980s, few individual judges of the Supreme Court like V.R. Krishna Iyer, P.N. Bhagwati, and O. Chinnappa Reddy took some bold and innovative initiatives that ultimately culminated into the Public Interest Litigation (PIL). The PIL is known also as 'Social Action Litigation' (SAL), and Representative Litigation (RL), aims to provide justice to the poor, illiterate, and other socially and economically disadvantaged sections of the country.

criticized for overacting and overstepping in the name of PIL and judicial activism. Herein there is a need to act in a correct manner and work towards restoration of the law and Constitution.

Activity

You can describe a judgment that is/was based on a PIL.

CONCLUSION

Judiciary is an indispensable part of governance. Judiciary, the institution for giving justice to the society, occupies a position of eminence. The framers of the Indian Constitution conceived of a judicial system, which was free from the control of the executive as well as legislature. The Constitution of India introduced a unified judicial system in all State and Union Territories. It has introduced a three tier judicial system namely. the Supreme Court of India, the highest court of the land; the High Courts, the highest Courts in States and Union Territories; and a subordinate judiciary in every State and Union Territory.

In the present day of globalization, the concept of judicial activism has an important role to play, particularly in matters relating to violation of human rights, women and child labour laws, custodial violation, environmental pollution, etc. PIL has played an important role in ensuring that there is accountability on the part of administrators and adherence to the rule of law in all spheres of public life.

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