UNIT 9 BUREAUCRACY, POLICE AND ARMY

Structure

9.1 INTRODUCTION

Police, Civil Service and Military are a part of coercive apparatus of any state. Modern state is different from the medieval state in terms of making laws which can control the activities of these forces. A democratic state is a constitutional state. Constitutional laws guide the actions of each organ. To keep a check on the misuse of power by any organ of the state, there is a balance of powers. Executive, judiciary and legislature are three organs of the state which balance each other to bring unity of purpose. If any organ goes outside the laws of the state, it can come under the scrutiny of law by another organ. It regulates the relationship between each organ and citizen. If a citizen feels that he or she is discriminated by any organ of the state, he can resort to judicial review of the state action. Check and counter check help to keep the functioning of the state within the rule of game. A democratic state has to respect the human rights of each citizen and social class and groups. The state has enough space for the movement of each social group. Each group is allowed to protest against the state actions in a peaceful manner. Laws of the state are supposed to protect the rights of a citizen and social group. Democratic state is a limited state vis a vis a citizen and social group. Each social group, be it dominant or subaltern, is protected by the state. A state is basically a limited state except in an unusual situation in a nation's life, such as emergency because of war or internal trouble. The state has laws to restrict the rights of a citizen. In such circumstances the police, civil servants and military have immense powers. These three forces are part of an Administrative State. Moreover they are a permanent part of the executive whereas the political executive is a temporary one. Though they are the subject of control by the political executive, the action of each force can come under scrutiny by the judiciary. In this unit, the relation of each of these forces with the judiciary and legislature, is being analysed.

9.2 POLICE

Police is a part of the ancient Indian history. The Mauryan empire did have a police force. During the Moghul period, the Kotwali system monitored the activities of citizens. The British rule created a modern policy by creating a Police Act of 1861. The colonial state allowed the operation of police in a legal manner. They could investigate the criminal case as per the law of the time. The colonial state created a legal framework which limited the police action. Though they served the interests of the colonial masters, at the same time, the laws of the state gave them autonomy. Even the British citizens came under their control to some extent if they committed crimes which were listed by the Police Act. It is wrong to presume that the Police Act served the interests of colonial masters only. This Act is serving the needs of the Post Independent Indian State. Some of the provisions have been amended, but in essence, the Act has been kept intact. Though the National Police Commission (NPC) has

suggested for a new police Act, the democratic government has not felt the necessity of scrapping the old Act.

9.2.1 Reasons Behind the Expansion of Police

The activities of police have got expanded with the changes introduced by the modern society of India. The Indian society is no more an agricultural society though majority of people live in the villages. But in terms of contribution to the national income, the share of agriculture has declined drastically. The contributions of industry and service sector have increased. This transition to an industrial and modern society has brought certain changes in the society. A transitional society has some peculiar problems which need to be tackled by the police. The Indian society is getting urbanised at a faster rate which creates some problems for the police. The problems of the industrial and urban society are different in nature from the rural society. The rural society has changed because of the social changes introduced by the green revolution and political democracy. The caste hierarchy has undergone a radical change. Land reforms such as the abolition of Zamindari system has changed the face of the rural society by removing the hereditary social leaders. It has led to a sharp competition among various caste groups for sharing the social power. The changing balance of social forces in rural society gets reflected in politics.

The democratic politics has brought some changes in the society. Electoral system has strengthened the democratic character of the society. This has led to sharp competition for political power among the social groups and classes of people. The entry of political parties into rural politics has strengthened the competition after leading to violence. Police intervention is sought in such a political situation, for tackling the criminal elements and gangsterism.

9.2.2 Challenges Before the Police Force

1) violent agitations by linguistic groups to redraw the political map of India, strengthening linguistic nationalism.
2) the tribal groups of the Central India and North Eastern India have organised themselves on ethnic lines.
3) movement for land distribution very often leads to violence between the rich and the poor in rural India.
4) agitations organised by the political parties to protest the displacement of people due to major environmental projects by the government or by a private party.
5) terrorism and militant movements.
6) growth of religious fundamentalism leading to violent conflicts.

7) caste clashes between the upper and the lower castes on such issues as access to common property or self respect movement.
8) violent conflicts between the rural rich and landless labour, on the issues of wages.
9) violent conflicts between the upper caste and lower caste in towns on the question of reservation of jobs on caste lines.
10) while social legislations are made by the state, the responsibility to execute those laws is given to the police. The tackling of crimes against children and women are a major responsibility of the present police.
11) introduction of IT has brought in cyber crimes which need to be tackled by the police.
12) the growth of underworld in metropolis has created problems for the police.

9.2.3 The Police Response

India is a federal state and the powers are distributed between the Centre and the States. The police administration comes under the purview of the state government. The problems affecting the state need special attention of the police administration. Very often, unable to handle such a situation, they depend on the Central government for help to maintain the public order. The Central government has Central Reserve Police Force and Border Security Force to aid the state governments. These central forces have specific duties but at the same time, they aid the state governments in the case of law and order situation. There are three groups of states that need special central help: (i) states like Jammu & Kashmir which have terrorist problems, need the assistance of the central police force. (ii) The other group of states is infested with Naxalism which also demand the central help for tackling the situation. (iii) The third group of states where a large-scale communal problem can cause an alarming situation necessitating the intervention of central forces. The central government has created a Rapid Action Force (RAF) within the Central Reserve Police Force. The RAF is an emergency force that is normally airlifted to trouble spots so that quick action can be initiated to contain an explosive situation. Often the central police help in maintaining order during the elections times to the State Assemblies and Parliament. The Election Commission has a close interaction with the Home Ministry to call for the central forces to conduct free and fair elections. As there are some areas which are declared as disturbed, the state police try to handle the situation with the cooperation of the central forces. In a competitive political system, there is a large number of political leaders whose life is threatened by the terrorists and need protection by the state. The State has created a Special Security Force drawing from both BSF and CRPF to take care of the VIP movement.

9.2.4 Crime Records

From 1860 onwards, the Police Commission has been keeping the records on the reported crimes. In 1953, the central government introduced an annual publication *Crime in India*, with comprehensive statistics on all crime reported to the police in all States and Union Territories. Tackling crime in India is now, the responsibility of the National Crime Records Bureau of the central government. The study assesses crime rate i.e., offences per 100,000 people. The post independent state has recorded more crimes against women; infact rapes have doubled between 1985-1995. There is a manifold increase in the number of crimes.

9.2.5 The Police Role in Government

The use of police in India has been frequent and extensive. Very often their non partisan behaviour is questioned. The police is used by a political party or a coalition of parties against their political opponents. Often the police is accused of showing their communal bias while controlling the riot. Majority of them allegedly have caste and class bias and this has led to a negative public perception of the police administration. Various surveys conducted by some independent organisations found that the public do not consider the police as a friendly organ of the state. This perception affects the investigation of crimes. Criticism of the police by the executive, legislature and citizens is very common.

9.2.6 Relations with the Executive

During the emergency it has been observed by the Shah Commission that the executive, for its political ends, has used the police. This has led to the constituting of a National Police Commission under the chairmanship of Dharma Vira. The Commission has suggested measures seeking an autonomous status of the police. Two recommendations made in this connection - a fixed tenure of four years for the police chief and the constitution of a state security commission headed by the state minister in charge of the police also remain to be implemented. The political executive has to formulate public policy regarding the law and order situation. The transfer of the police officials must be decided by the state security council. This helps in reducing the day-to-day interference in the police administration and checking unfair practices at the time of transfer and posting. A level of transparency should be maintained in the above mentioned process.

9.2.7 Relations with the Legislature

The legislature is the supreme authority in a democratic system. It is endowed with certain privileges and facilities which need to be respected by the police force, without which the legislative committee of privileges can question and punish the latter. The police need to show due respect and honour to the MLAs and MPs during their visits

to the Police Stations. The police administration's perception of undue demands from the legislative members, affects their reputation in the eyes of public. The countrywide police agitation in 1979 was triggered by a trivial altercation between a Haryana traffic policeman and a legislator. The relationship between the police and MLAs and MPs is extremely delicate, calling for great restraint on both sides.

9.2.8 Relations with the Judiciary

The police has a tenuous relation with the judiciary. The police feels that the courts lack faith in them. For example, the Indian Evidence Act lays down that no confession made to a police officer shall be admissible in evidence. This is a major source of discontent for police officers at all levels. There are many restrictions imposed by the judiciary on the police. No person can be arrested without a warrant and shall be held in police custody for longer than twenty four hours: he has to be produced before the concerned magistrate within this stipulated time. The Supreme Court and High Courts have imposed many restrictions on the power of the arrest vested in police officers. In Joginder Singh v. State of UP (1994), the Supreme Court stated that an arrest should be made merely because it was lawful to do so. The officer concerned should actually be able to justify such action. The judiciary is very much sensitive to the complaints of the human rights violations by the police. The formation of National Human Rights Commission headed by a former Chief Justice of India is in the process of making the police more sensitive to the human rights violations. The NHRC takes a very proactive position with regard to human rights violation by the police.

9.2.9 Relations with the Public

Democracy demands that the police needs to respect the citizens. They have to be helpful to them whenever they come to the police station for filing any complaint. This is the age of citizen friendly police administration. But there are many complaints against the police that an ordinary citizen may not be able to file FIR without offering a bribe to the police officer at the Police Station. The investigating officers use the force in dealing with crime suspects. The public often view the police with suspicion. To quote David Bayley, "the survey results demonstrate forcefully what many close observers of police-public relations in India have long thought namely that the Indian public is deeply suspicious of the activities of the police. A considerable proportion except the police to be rude, brutal, corrupt, sometimes in collusion with criminals and very frequetly dealing unevenly with their clients." (The Police and Political Development in India, p. 203) This opinion is supported by the NPC report that the Commission expressed its anxiety over the poor state of police- public relations. (Vol. 5, p. 48) The police administration needs to be citizen friendly for bringing back its credibility before the public. In a democracy, the public evaluates the performance of each service. The police administration needs to reform its organisation by which the

police officer are aware of the citizen's charter and they provide quick and honest services to them. Credibility in democracy will be the biggest asset of the police.

9.3 CIVIL SERVICE IN DEMOCRACY

9.3.1 Pre Independence Era

The civil service in India has a long history. There was an organised administration during the pre British rule. It is interesting to note that the civil service for the public works started during the middle of 19th century. This was the time when the colonial state went for a permanent civil service based on merit. The modern education system, introduced by the colonial state, enabled the educated people to compete for various jobs of the state.

The Government of India Act of 1858 provided for a multi-tier bureaucratic authority which continued to exist upto 1947. These were:

1) the secretary of the state assisted by India office;
2) the viceroy and his executive council which constituted central government assisted by the central secretariat.
3) The Governor and his Council at the provincial level assisted by the Provincial Secretariat and
4) The District Collector assisted by other district officers.

Services were divided into three levels- the superior services (All India and Central Services), the provincial services, and the subordinate services. All India services were recruited by the Secretary of State to work in any part of India; as a rule, officers were assigned a particular province. By the Government of India Act 1919, other services were abolished but the India Civil Service and the Indian Police Service remained. These services were monopolised by the Britishers and gradually got Indianised. In 1923, the Government of India established Public Service Commission for the recruitment of persons with appropriate qualification. The Government of India Act of 1935 undertook some modifications.

9.3.2 Post Independence Era

There were several debates in the Constituent Assembly regarding the retention of the civil service. The Constitution has made specific provisions regarding the responsibilities of the civil servants. In a democratic system the political executive is the highest body assisted by the civil servants.

9.3.3 Civil Service and Legislature

The Distinctive Features of the Administrative Framework of the Country are:

1) The supremacy of the parliament over the executive and the right of Parliament to seek, receive and apprise information about governmental actions with a view to reviewing the working of the administrative machinery.
2) The pre-eminence of the position of the Prime Minister in the Council of Ministers and in administration.
3) The collective responsibility of the Council of Ministers to the Parliament
4) The individual responsibility of each minister holding a portfolio to formulate the departmental policies. It is his or her responsibility of supervising the administration of these policies and other departmental works.
5) The obligation on the part of ministers and civil servants to uphold the Constitution and rule of law.
6) The obligation of every public servant to implement faithfully all policies and decisions of the Ministers even if these are contrary to the advice tendered by them.
7) The right of public servants to express themselves frankly in tendering advice to their superiors including the ministers.
8) The observance by public servants of the principles of political neutrality and impartiality and anonymity. (Administrative Reforms Commission (ARC), Report on Machinery of Government of India, p. 3).

Most of the posts below the level of Ministers in the Secretariat and in the field organization are manned by the civil servants. Their work consists of assisting the political executive in policy formulation, programme implementation and administration of the laws of the land. They did contribute in policy making process actively as they are taken as the professionals who are competent to provide the inputs in the policy making process. The final touches are supposed to be given by the minister followed by the Council of Ministers. It is wrong to presume that the policy making is done by the political masters and the implementing agency is the civil service. They are responsible for implementing the policies. At the same time, they are not accountable to the Parliament. It is the ministers who are accountable to the Parliament and answer the questions related to the issues regarding the implementation of policies.

9.3.4 Constitution of India

The provisions of the Constitution have made it clear that they cannot be removed by the politicians. They retain their independence in the democratic system. Art 311 says that they cannot be removed from the job without a proper enquiry duly constituted by the President of India. This explains the peculiar position of the civil servants in our democracy. The reasons are given by some of the scholars that at the time of Independence there were violent conflicts between the Hindus and Muslims on one side and between the landlords and peasants on the other. The framers of the constitution realised the need for the independence of the civil servants from these social groups and made specific provisions for the civil service. The Constitutional Review Committee has suggested the removal of the provision. They can be controlled and managed by the Civil Service Commission like the French system. Art 309 gives powers to the central government to regulate the service conditions and recruitment through an Act made by the appropriate authority. They are regulated by the Central Civil Service Conduct Rules, 1964. The Official Secrecy Act, 1923 provides for strigent action for unauthorised disclosure of information prejudicial to the interests of the State. They have been provided adequate security as they handle some of the important works of the government. If they shirk responsibilities they can be persecuted by the state under the various Acts of a State.

Often there is a complaint that they are prone to corruption and abuse of power and it is not easy to bring them under the Prevention of Corruption Act, 1947, as one needs the permission of higher authority for filing charges against the civil servants at the joint secretaries level and above.

9.3.5 Reforms are Overdue

The civil servants are assigned responsibilities in a particular state where the government of the state cannot persecute them. Often, they function as the representatives of the central government which goes against the spirit of federalism. A professional outlook, knowledge and management skills are required. The Administrative Reforms Committee (ARC) suggests that those departments in which technical qualifications are required, the IAS may not be posted there. Most of these suggestions have remained on the paper. Modern state and economy demand knowledge managers. With the introduction of IT, there is a demand for e-governance. This is the demand raised by Kurien who has managed successfully a biggest cooperative dairy development project.

The Alagh Committee suggests that the method of recruitment needs to be changed with an emphasis on knowledge.

9.3.6 Relations with Judiciary

The relations between the Judiciary and civil service have not been cordial. Some of the senior civil servants including the Chief Secretaries have already faced contempt of court cases and duly punished. They have to upgrade their knowledge of law and Constitution by which they can be friendly to Judiciary. They have to be sentitive to various issues and conduct themselves accordingly. They have to be citizen friendly and responsive to the needs of the public. The right to information has been passed by the state governments and the civil servants have to deliver the services in a quick and effective manner by which they are accountable to the public. With the introduction of management of Public Services, the Civil Service is accountable to both Public and Parliament.

9.3.7 Decentralisation

With the 73rd and 74th Constitutional Amendments the Panchayati Raj system has been strengthened. The government has accepted a three-tier administrative system. At every level there are public representatives who can help in making the public policies and supervise the administration of these policies. They have the powers of the District Collectors. They are known as the chief executive to the District Development Councils. This has changed the face of the District Collectors (DCs) and District Magistrates (DMs). In a democracy, the civil service has to modify its behaviour and style of functioning to complement the needs of democracy.

As P.K. Mattoo says, “the establishment of the Panchayati Raj institutions on a country-wide basis and the transfer of some of the traditional functions of the civil service system to these newly established institutions constitute a new policy trend in the civil service system. The Government, as a rule, is committed to the principles of democratic decentralisation. Consequently, considerable stress is now being given to the introduction of a rural bias in administration” (p. 112).

9.3.8 Civil Service/Political Environment

The civil service system gets its nourishment from its political environment. It is not independent of the political executive. Their performance depends on the quality of the political executive. With a decline in the quality of political leadership, the democracy has suffered. The performance of civil service had declined. A reform in civil service is a continuous process. Evaluation of their performance needs to be measured both by the political executive and civil society. The public is recognising good and competent officers. This recognition motivates them to work better. They are also accountable to the political leadership. They have to perform in a neutral and objective manner. In an era of coalition politics, their non partisan role is going to

strengthen democracy. They are getting pressurised by some vested interests in the name of politics. This nexus between the politicians and criminals and civil servants has been studied by the Vohra committee. This is a warning for both the democratic leadership and civil service. There is a demand by the civil service association for scrapping the Official Secrecy Act which can help them to be bold and fearless. With the introduction of citizen's charter, there is a demand that their notings should be made to the public where their work can be evaluated in terms of value addition. These changes can help them to perform better in a democracy.

9.3.9 Relations with Political Leadership

Civil service and political leadership has a definite relationship in a democracy as they play an active role in the making of public policy. They give a clear direction to the civil administration for implementing the public policy and also make them accountable to the failures in implementing the policy. In the Indian democracy, one can find a high quality of leadership during Nehru and Indira Gandhi's period, except during the emergency. During Nehru's period India entered into a path of planned development. Any planned development demands that civil service has to fulfill the target fixed by each plan. This was possible because of the energetic leadership of Nehru and a high intellectual content in each plan which is based on ground reality. Mrs. Gandhi took the initiative to implement the policy of green revolution with the help of civil servants and scientists. She succeeded in making India a food surplus state. These are some examples which show the quality of leadership who can motivate the civil service to work with a passion and desire to serve the nation. The equation between the political leadership and the civil service has changed subsequently. Civil service is virtually dominating in these relationships. This does not augur well for the Indian democracy. In an era of globalisation, it has been found that the civil service is much more prone to implementing World Bank policies than follow the political leaders. It seems that in first decade of liberalisation from 1991 to 2000, the civil servants in some of the ministries who had a close association with the World Bank, have played a key role in making public policies. It affects the sovereignty of a nation.

9.4 MILITARY IN DEMOCRACY

In the post colonial world, the Military is playing a decisive role in politics. Between 1960 and 1980 three quarters of the Latin American states, one third of Asian states and over a half of the African states experienced coups. The 1980s saw the trend continue strongly. It is a moot point of history that there has been a coup or an attempted coup in some parts of the world. From a World Bank study, one finds that since 1948 there has been at least one coup attempt per developing country every five years. (World Bank, 1991, p. 128).

9.4.1 Theories Behind Military Coups

The role of military in politics has been a subject of debate among the social scientists, especially the political scientists. Their classical theory says that military has no role in democratic politics. They maintain a distance from the civilian leadership. They do not directly take interest in politics. This is a medieval phenomenon. During the feudal period weak kings have been replaced by their Military Commanders. This does not happen in modern politics. Military has a constitutional role in a democracy. They are supposed to obey the civilian political leader. Facts disapprove the above hypothesis. There are various political theories in support of the Military taking over political power. The theory of modernisation says that in a traditional society, the military is a modernising force. They are educated people with a modern outlook. They know how to modernise a traditional society. This helps them to come to political power. Furthermore, they are organised people who have control over the weapons and military trained personnel. They got motivated to capture power against the civilian leaders. The civilian leaders do not always have the required modern organising skills nor do they have modern educated youths with them to compete for power. A group of political economists float a theory that a developing country, due to its meagre sources, cannot waste such precious resources in instituting political democracy. For them political democracy is luxury for the poor. The poor is more interested in bread and not freedom. The third group of social scientists provide a cultural theory that most of the third world countries do not have the cultural tradition of democracy. They have an authoritarian approach to life. Their family is authoritarian in structure which supports the military rule. Very often a single religious group who is dominating a nation uses cultural nationalism to rule over a nation. The military represents the cultural nationalism of a dominant community. Further some of the political scientists feel that when a country experiences too much political instability because of fragmentation of political parties, this leads to intervention of military in the name of political stability. These societies feel that social and political order is more important than the political stability. Constitutional niceties such as parliamentary procedures, popular consent or political representation are ignored, because elected assembly is dissolved soon after the takeover of power by the military. Elections get suspended and political parties get banned.

9.4.2 Military in Indian Politics

India being a third world country is having a stable political democracy. “Civil-military relations in post colonial India have been something of a model for the third world in that military capacity has been greatly increased without a major threat to civilian rule. The 50 years of postcolonial history reveal considerable tension between civil and military authority and policy debates during this period display a variety of conflicting views on the appropriate role for the military in Indian life.” (Glynn L.

Wood and Daniel Vaagenes, “Indian Defense Policy: A New Phase’ Asian Survey, vol. Xxiv, no. 7, July, 1984).

9.4.3 Relations with Political Leaders

Civil-military relations developed during Nehru’s Prime Ministership. He gave more priority to economic and human resource development of a society. He maintained India’s relationship with most of the foreign countries through an effective foreign policy strategy. His defence Minister VK Krishna Menon was able to handle the affairs in a competent manner. Menon became the “symbol of civilian control of the military during the Nehru years and a symbol of political intrusion into the military’s professional business.” (Wood and Vaagenes).

The Sino-Indian War of 1962 was clearly the watershed for the Indian military. The India Government of has started the modernisation of the Indian military, both in terms of the supply of arms and ammunition and training of the personnel. India has established its defense relations with both the USA and Soviet Russia. Its military process came to the fore at the time of the creation of Bangladesh when Mrs. Gandhi was the Prime Minister. The Indian military has played a decisive role in framing the defense policy. India has entered into the nuclear club as the sixth member with the testing of a nuclear device in 1974. India is pursuing its autonomous policy in nuclear development and has developed its own nuclear weapon.

9.4.4 Military Strength

The Indian Army is the fourth largest in the world after China, Russia and the US. The Air Force has acquired some of the sophisticated fighter planes. The Army and Air Force appear to have an integrated plan for India’s defence. During 1980s and 1990s, the Indian Navy also tread the path of modernisation along with its counterparts. The Indian Navy has got more than 100 ships, 150 air craft and thousands of highly trained man-power. Indian defence budget has increased since 1971, and touched almost 3 percent of its GDP. India’s strategic objectives and its inter-service ratio for defence expenditures have been relatively stable.

9.4.5 The Role of Military in the Decision Making Process

India is a regional power in Asia and is aspiring to be a permanent member in the UN Security Council. The Heads of the Army, Air Force and Navy have been playing an active role in formulating an effective defence policy. They are represented, in the cabinet meeting, by the Defence Minister. A concise policy draft is prepared by them with the help of the defence Secretary who is usually an IAS officer. They are members of the National Security Council. The Indian military is rarely used in

internal politics except at the time of a large scale communal riot or ethnic conflict. They are not allowed to play an active role in the democratic politics. They are performing their constitutional role which is strengthening the Indian democracy.

9.5 SUMMARY

The coercive apparatus of the state is a part of ancient Indian History. In the modern state, constitutional laws guide the actions of each and every institution/organ, for an effective functioning of the state. Police, civil service and military constitute the core of the coercive apparatus. In this unit, these three organs are studied in detail. In the contemporary era, the state is infested with many a problem and the police force is faced with a number of challenges. Its relations with the legislature, executive, judiciary and public are studied in detail.

The civil service in India has a distinct record right from the pre-British era. Their work consists of assisting the political executive in policy formulation, programme implementation and administration thus contributing actively to the policy making process. Nevertheless, reforms are overdue with regard to this administrative machinery. Military, in the post colonial world, has been playing a decisive role. They have control over the weapons and military trained personnel. They are instrumental in formulating an effective defence policy. The above three have been playing an important role in strengthening the Indian democracy.

9.6 EXERCISES

1) What are the challenges the police face in balancing the social changes?
2) Summarise the role of police in its relations with the legislature, executive and judiciary.
3) What are the constitutional provisions enumerated for the civil services? What, in your opinion, will be the impact of reforms on this administrative system?
4) ‘The classical theory says that military has no role in democratic politics’. Analyse briefly.
5) How does the coercive apparatus of the state ensure democracy?

UNIT 10 LEGAL SYSTEM AND JUDICIARY

Structure

10.1 INTRODUCTION

Modern nation-state functions through a set of institutions. Parliament, the judiciary executive apparatus such as bureaucracy and the police, and the formal structures of union -state relations as well as the electoral system are the set of institutions constituted by the idea of constitutionalism. Their arrangements, dependencies and inter-dependencies are directly shaped by the meta politico-legal document- i.e., Constitution.

The legal system derives its authority from the Constitution and is deeply embedded in the political systen-1; the presence of judiciary substantiates the theory of separation of power wherein the other two organs. viz. legislature and executive stand relatively apart from it. Parliamentary democracy works on the principle of 'fusion of power.' and in the making of law, there is direct participation of the legislature and the executive, it is the judiciary that remains independent and strong safeguarding the interests of the citizens by not allowing the other organs to go beyond the Constitution. It acts, therefore, as a check on the arbitrariness and unconstitutionality of the legislature and the executive. Judiciary is the final arbiter in interpreting

constitutional arrangements. It is in fact the guardian and conscience keeper of the normative values that are 'authoritatively allocated by the state.' The nature of the democracy and development depends much on how the legal system conducts itself to sustain the overall socio-economic and political environment.

10.2 GENESIS OF JUDICIARY IN INDIA

Indian judiciary is a single integrated system of courts for the union as well as the slates. which administers both the union and state laws, and at the head of the entire system stands the Supreme Court of India. The development of the judicial system can be traced to the growth of modem-nation states and constitutionalism.

During ancient times, the concept of justice was inextricably linked with religion and was embedded in the as criptive norms of socially stratified caste groups. Caste panchayats performed the role of judiciary at the local level, which was tied up with the religious laws made by the monarchs. Most of the Kings' courts dispensed justice according to *'dharma* ', a set of eternal laws rested upon the individual duty to be performed in four stages of life *(ashrama)* and status of the individual according to his status *(varna).* The King's power to make laws depended on the religious texts and the King had virtually no power to legislate 'on his own initiative and pleasure'. Ancient state laws were largely customary laws and any deviation from it or contradiction from *dharma* was rejected by the community.

In medieval times, the dictum 'King can do no wrong' was applied and the King arrogated to himself an important role in administering justice. He became the apostle Of justice and so the highest judge in the kingdom. Perhaps, the theory of institutionalism guided justice, manifesting gross arbitrariness and authoritarianism.

10.2.1 Modern Judiciary in India

With the advent of the British colonial administration, India witnessed a judicial system introduced on the basis of Anglo-Saxon jurisprudence. The Royal Charter of Charles II of the year 1661 gave the Governor and Council the power to adjudicate both civil and criminal cases according to the laws of England. However, the Regulating Act of 1773 established for the first time the Supreme Court of India in Calcutta, consisting of the Chief Justice and three judges (later reduced to two) appointed by the Crown acting as King's court and not East India Company's court. Later, Supreme Courts were established in Madras and Bombay. The Court held jurisdiction over "His Majesty's subjects". In this period the judicial system had two distinct systems of courts, the English system of Royal Courts, which followed the English law and procedure in the presidencies and the Indian system of Adalat/Sadr courts, which followed the Regulation laws and Personal laws in the provinces. Under

the High Court Act of 1861, these two systems were merged, replacing the Supreme Courts and the native courts (Sadr Dewani Adalat and Sadr Nizamat Adalat) in the presidency towns of Calcutta, Bombay and Madras with High Courts. However, the highest court of appeal was the judicial committee of the Privy Council. British efforts were made to develop the Indian legal system as a unified court system. Indians had neither laws nor courts of their own, and both the courts and laws had been designed to meet the needs of the colonial power.

The Government of India Act of 1935 (section 200) set up the Federal Court of India to act as an intermediate appellant between High courts and the Privy Council in regard to matters involving the interpretation of the Indian Constitution. It was not to 'pronounce any judgement other than a declaratory judgement which meant that it could declare what the law was but did not have authority to exact compliance with its decisions. The federal court's power of 'judicial review' was largely a paper work and therefore a body with very limited power. Despite the restrictions placed on it, the Federal Court continued to function till 26th January 1950, when independent India's Constitution came into force. In the meantime, the Constituent Assembly became busy drafting the basic framework of the legal system and judiciary.

10.2.2 Constituent Assembly: the Background

The members of the Constituent Assembly envisaged the judiciary as the bastion of rights and justice. They wanted to insulate the courts from attempted coercion from forces within and outside the government. Sapru Committee Report on judiciary and the Constituent Assembly's ad hoc committee on the Supreme Court report formed the bulk of the guidelines for judiciary. A.K.Ayyar, K.Santhanam, M.A.Ayyangar, Tej Bahadur Sapn, B.N.Rau, K.M. Munshi, Saadulla and B.R.Ambedkar played important roles in shaping the judicial system of India. The unitary judicial system seems to have been accepted with the least questioning. The Supreme Court was to have a special countrywide responsibility for the protection of individual rights. Ambedkar was perhaps the greatest apostle in the Assembly of what he described as 'one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the Constitutional law, the Civil, or the criminal law, essential to maintain the unity of the country'.

10.3 STRUCTURE OF JUDICIARY

Under our Constitution there is a single integrated system of courts for the Union as well as the States, which administer both union and state laws, and at the head of the system stands the Supreme Court of India. Below the Supreme Court are the High Courts of different states and under each high court there are 'subordinate courts', i.e., courts subordinate to and under the control of the High Courts.

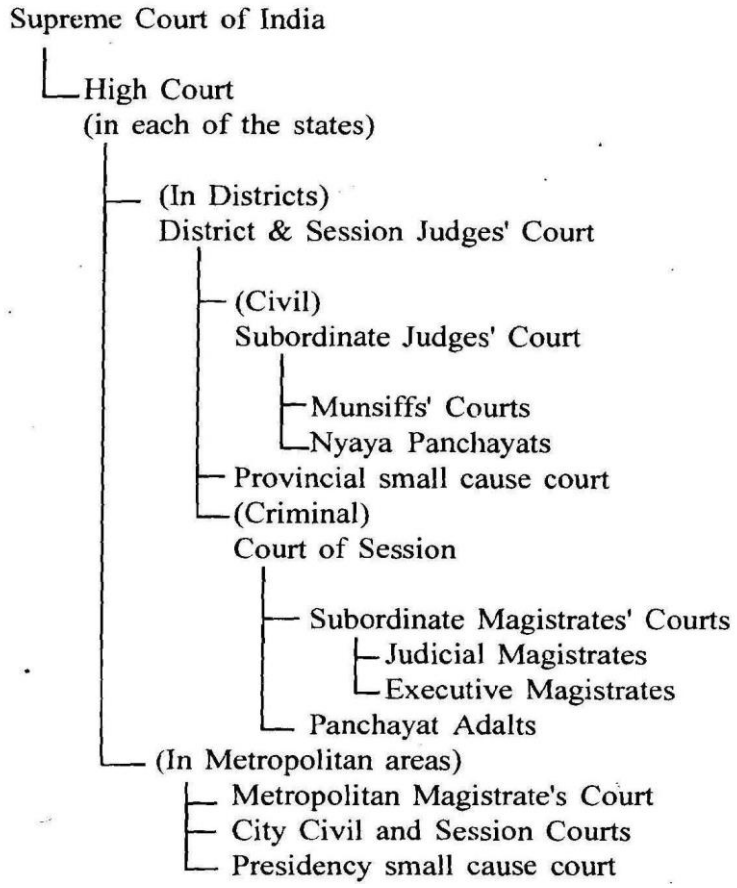
10.3.1 The Supreme Court

The Supreme Court is the highest court of law in India. It has appellate jurisdiction over the high courts and is the highest tribunal of the land. The law declared by the Supreme Court is binding on all small courts within the territory of India. It has the final authority to interpret the Constitution. Thus, independence and integrity the powers and functions and judicial review are the issues of utmost importance concerned with the Supreme Court.

10.3.1.1 Composition and Appointments

The Supreme Court consists of the Chief Justice of India and not more than twenty-five other judges. There can be ad hoc judges for a temporary period due to lack of quorum of the permanent judges. However, Parliament has the power to make laws regulating the constitution, organisation, jurisdiction and powers of the Supreme Court. 'The Constitution makes it clear that the President shall appoint the Chief Justice of India after consultation with such judges of the Supreme Court and of High Courts as he may deem necessary. And in the case of the appointment of other judges of the Supreme Court, consultation with the Chief Justice, in addition to judges is obligatory.

THE JUDICIARY



A person shall not be qualified for appointment as a judge of the Supreme Court unless he is:

a) a citizen of India, and
b) either
   i. a distinguished jurist; or
   ii. has been a High Court judge for at least 5 years, or
   iii. has been an Advocate of a High Court for at least 10 years.

Once appointed, a judge holds office until he attains *65* years of age. He may resign his office by writing addressed to the President or he may be removed by the President upon an address to that effect being passed by a special majority of each House of the Parliament on grounds of 'proved misbehaviour' and 'incapacity'. The salaries and allowances of the judges are fixed high in order to secure their independence, efficiency and impartiality. The Constitution also provides that the salaries of the judges cannot be changed to their disadvantage, except in times of a financial emergency. The administrative expenses of the Supreme Court, the salaries, allowances, etc, of the judges are charged on the Consolidated Fund of India.

In order to shield the judges from political controversie2, the Constitution empowers the, court to initiate contempt proceedings against those who impute motives to the judge in the discharge of their official duties. Even the Parliament cannot discuss the conduct of a judge except when a resolution for his removal is before it.

10.3.1.2 Jurisdiction of the Supreme Court

The Supreme Court has vast jurisdiction and its position is strengthened by the fact that it acts **as** a court of appeal, as a guardian of the Constitution i d as a reviewer of is own judgements. Article 141 declares that the law laid down by the Supreme Court shall be binding on all courts within the territory of India. Its jurisdiction is divided into four categories:

a) Original Jurisdiction and Writ Jurisdiction

Article 131 gives the Supreme Court exclusive and original jurisdiction in a dispute between the Union and a State, or between one State and another, or between group of states and others. It acts, therefore as a Federal Court, i.e., the parties to the dispute should be units of a federation. No other court in India has the power to entertain such disputes.

Supreme Court is the guardian of Fundamental Rights and thus has non-exclusive original jurisdiction as the protector of Fundamental Rights. It has the power to issue writs, such as Habeas Corpus, Quo Warranto, Prohibition, Certiorari and Mandamus.

In addition to issuing these writs, the Supreme Court is empowered to issue appropriate directions and orders to the executive. Article 32 of the Constitution gives citizens the, right to move to the Supreme Court directly for the enforcement of any of the Fundamental Rights enumerated in part in of the Constitution.

b) Advisory Jurisdiction

Article 143 of the Constitution vests the President the power to seek advice regarding any question of law or fact of public importance, or cases belonging to the disputes arising out pre-constitution treaties and agreements which are excluded from its original jurisdiction. This jurisdiction does not involve a *lis*, the advisory opinion is not binding on the government, it is not executable as a judgement of the court and the court may reserve its opinion in controversial political cases as in the Babri Masjid case.

c) Appellate Jurisdiction

The Supreme Court is the highest court of appeal from all courts. Its appellate jurisdiction may be divided into

i) cases involving interpretation of the Constitution - civil, criminal or otherwise
ii) civil cases, irrespective of any Constitutional question, and
iii) Criminal cases, irrespective of any Constitutional question.

Article 132 provides for an appeal to the Supreme Court by the High Court certification, the Supreme Court may grant special leave to the appeal. Article 133 provides for an appeal in civil cases, and article 134 provides the Supreme Court with appellate jurisdiction in criminal matters. However, the Supreme Court has the special appellate jurisdiction to grant, in its discretion, special leave appeal from any judgement, decree sentence or order in any case or matter passed or made by any court or tribunal.

d) Review Jurisdiction

The Supreme Court has the power to review any judgement pronounced or order made by it. Article 137 provides for review of judgement or orders by the Supreme Court wherein, subject to the provisions of any law made by the Parliament or any rules made under Article 145, the Supreme Court shall have the power to review any judgement pronounced or made by it.

However, the Supreme Court jurisdiction may be enlarged with respect to any of the matters in the Union List as Parliament may by law confer. Parliament may, by law,

also enlarge or can impose limitations on the powers and functions exercised by the Supreme Court. Since Parliament and the Judiciary are created by the Constitution, such aforesaid acts must lead to harmonious relationship between the two, and must not lead to altering the basic structure of the Constitution. Moreover, all these powers can also be suspended or superceded whenever there is a declaration of emergency in the country.

10.3.2 High Courts

There shall be High Court for each state (Article 214), and every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself (Article 2 15). However, Parliament may, by law, establish a common High Court for two or more states and a Union Territory (Article 23 1). Every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint. Provisions for additional judges and acting judges being appointed by the President are also given in the Constitution. The ,President, while appointing the judges shall consult the Chief Justice of India, the Governor of the State and also the Chief Justice of that High Court in the matter of appointment of a judge other than the Chief Justice. A judge of a High Court shall hold office until the age of 62 years. A judge can vacate the seat by resigning, by being appointed a judge of the Supreme Court or by being transferred to any other High Court by the President. A judge can be removed by the President on grounds of misbehavior or incapacity in the same manner in which a judge of the Supreme Court is removed.

10.3.2.1 Jurisdiction of High Courts

The jurisdiction of the High Court of a state is co-terminus with the territorial limits of that state. The original jurisdiction of High court includes the enforcement of the Fundamental Rights, settlement of disputes relating to the election to the Union and State legislatures and jurisdiction over revenue matters. Its appellate jurisdiction extends to both civil and criminal matters. On the civil side, an appeal to the High Court is either a first appeal or second appeal. The criminal appellate jurisdiction consists of appeals from the decisions of:

a) a session judge, or an additional session judge where the sentence is of imprisonment exceeding 7 years
b) an assistant session judge, metropolitan Magistrate of other judicial Magistrate in certain certified cases other than 'petty7 cases.

The writ jurisdiction of High Court means issuance of writs/orders for the enforcement of Fundamental Rights and also in cases of ordinary legal rights. High

Court also his the power to superintend all other courts and tribunals, except those dealing with armed forces. It can also frame rules and issue instructions for guidance from time to time with directions for speedier and effective judicial remedy. High Court also has the power to transfer cases to itself from subordinate courts concerning the interpretation of the Constitution. However; the Parliament, by law, may extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union Territory. High Courts7 power of original and appellate jurisdiction is also circumscribed by the creation of Central Administrative Tribunals. with respect to services under the Union and it has no power to invalidate a Central Act, rule, notification or order made by any administrative authority of the Union.

10.3.3 Subordinate Courts

The hierarchy of courts that lie subordinate to High Courts are referred to as subordinate courts. It is for the state governments to enact for the creation of subordinate courts. The nomenclature of these subordinate courts differs from state to state but broadly there is uniformity in terms of the organisational structure.

Below the High Courts, there are District Courts for each district, and has appellate jurisdiction in the district. Under the district courts, there are the lower courts such **as** the Additional District Court, Sub Court, Munsiff Magistrate Court, Court of Special Judicial Magistrate of I1 class, Court of Special Judicial Magistrate of I class, Court of Special Munsiff Magistrate for Factories Act and labour laws, etc. Below the subordinate courts, at the grass root level are the Panchayat Courts (Nyaya Panchayat, Gram Panchayat, Panchayat Adalat, etc.). These are, however, not considered as courts under the purview of the criminal courts jurisdiction.

District Courts can take cognisance of original matters under special status. The Governor, in consultation with the High Court, makes appointments pertaining to the district courts. Appointment of persons other than the District Judges to the judicial + service of a state is made by the Governor in accordance with the rules made by him in that behalf after consultation with the High Court and the State Public Service Commission. The High Court exercises administrative control over the district courts and the courts subordinate to them, in matters as posting, promotions and granting of leave to all persons belonging to the state judicial service. –

10.4 JUDICIAL REVEW AND PUBLIC INTEREST LITIGATION (PIL)

Judicial Review means the power of the judiciary to pronounce upon the Constitutional validity of the acts of public authorities, both executive and legislature. In any democratic society, judicial review is the soul of the system because without it democracy and the rule of law cannot be maintained. Judicial review in India is an

integral part of the Constitution and constitutes the 'basic structure' of the Constitution. The whole law of judicial review has been developed by judges on a case to case basis. Consequently, the right of seeking judicial review depends on the facts of each individual case; however, there cannot be a review of an abstract proposition of law.

Though 'judicial review' does not find mention in our Constitution, this power has been derived by the judiciary from various provisions. Firstly, judiciary power to interpret the constitution and especially the limits on Fundamental Rights vis-a-vis Article 13(2) that suggests that any law contravening the Fundamental Rights would be declared void. It is the duty of the Supreme Court to safeguard and protect the Fundamental Rights of people and thus it is invested with the power of judicial review under Article 32 and to interpret the Constitution. '

The Supreme Court's power of judicial review extends to Constitutional Amendments. However, Constitutional Amendment review by judiciary in relation to Fundamental Rights and its legal validity has been a contentious political issue. Parliament can ' amend the Constitution under Article 368 but such amendments should not take away or violate Fundamental Rights and any law made in contravention with this rule shall be void. (Article 13)

Before Golakhnath case (1967) the courts held that a Constitutional Amendment is not law within the meaning of Article 13 and hence, would not be held void if it violated any fundamental right. In Golakhnath case it was settled that

i) all amendments be law [13(3)]
ii) Fundamental Rights are transcendenial and immutable, so cannot be amended, nonetheless to amend Fundamental Rights a new Constituent Assembly needs to be convened, and
iii) Constitutional Amendment is an ordinary legislative power.

In 1971, Parliament, by the 24t h Constitutional Amendment, reversed the Golakhnath judgements by declaring Constitutional Amendments made under Article 368, not to be 'as 'law' within the meaning of Article 13 and the validity of the Constitutional Amendment Act shall not be open to question on the ground that it takes away or affects Fundamental Rights [Art.368 (3)].

In 1972, the Parliament passed the 2sth Constitutional Amendment Act allowing the legislature to encroach on Fundamental Rights if it was said to be done pursuant to giving effect to the Directive Principles of State Policy. The 28t k Amendment Act ended the recognition granted to former rulers of Indian states and their privy purses were abolished.

In the famous Keshavnanda Bharati case, 1973, the court held that the Parliament could amend even the Fundamental Rights, but it was of competent to alter the 'basic structure' or 'framework' of the Constitution. The 42 n8 Amendment Act (1976) declared that Article 368 was not subject to judicial review by inserting clause (4) and (5) in Article 368. However, in 1980 in Minerva Mills case, court struck down clause (4) and (5) from Article 368 and maintained that 'judicial review' is the basic feature of the Indian Constitutional system which cannot be taken away even by amending the constitution. The Supreme Court, since then, has been defining the 'basic structure' case by case.

Public Interest Litigation (PIL) is a socio-economic movement generated by the judiciary to reach justice specially to the weaker sections of the society. The idea came from *'atio popularis* ' of the Roman jurisprudence, which allowed court access to every citizen in matters of public wrongs. The purpose of PIL is not the enforcement of the right of one person against the other but to reach justice to the deprived sections of the society. The court is not exercising any extra-constitutional jurisdiction and is now firmly rooted in Article 14, i.e., protection against all arbitrariness and lawlessness in administrative actions, and Article 21 that provides for protection of *life* embodying everything that goes for a dignified living, including rightful concern for others and Directive Principles applying to weaker sections.

The granting of the right to PIL has led to plethora of litigations in the courts, indicative of the development of democratic rights by the judiciary. S.P.Sathe has suggested that the Supreme Court has been working under these patterns:

i) Interpretational thrusts with a view to extending judicial control over other organs of the state to ensure liberty, dignity, equality and justice to the individual arid greater accountability of the governing institutions.
ii) Interpretational strategies with a view to facilitate social change, which would promote greater protection of the minorities, weaker sections of the society and political and religious dissenters.
iii) Innovating new methods for increasing access to justice (like PIL and Lok Adalats)

10.5 JUDICIAL REFORMS - AGENDA

The judiciary must find ways and means to clear burgeoning pending cases. In this judiciary, as an organisation, needs specialisation and differentiation in order to solve the cases Lok Adalats and tribunals must be made more effective. Judiciary must appoint judges on merit basis and all adhocism must go. As the Tenth Law Commission has suggested, Constitutional Courts and the zonal courts of appeals may

be constituted. A working democracy requires an independent judiciary well co-ordinated by an effective executive and a responsible legislature.

10.6 SUMMARY -

In a democracy, the legal system and the judiciary are important constituents within the larger political milieu. The modern judiciary in India derives its sources from the Constitution, and acts as a check on the arbitrary decisions of the legislature and the executive. The Constituent Assembly foresaw the significance of Judiciary as a guardian of rights and justice. While the Supreme Court is the highest court of law in India, whose decisions are equally binding on all, the High Courts and the Subordinate Courts ensure justice at the state and district levels respectively. The provision for judicial review and public interest litigation ensure that the rule of law is maintained, thereby providing for daignified living and rightful concern for all. Thus, the unit broadly analyses the structure, process, behaviour and interaction of the judiciary within a broad framework to achieve the goals of development and democracy.

10.7 EXERCISES

1) Briefly explain the origin and evolution of judiciary in India.
2) Why is the Supreme Court considered as the highest court of law in India? Explain its purview of jurisdiction.
3) Write short notes on:
    a) Jurisdiction of High Courts
    b) Subordinate Courts
    c) Judicial Review
4) "Judiciary is the most effective organ for safeguarding the rights and interests of the citizens". Do you agree?

UNIT 11 FEDERALISM

Structure

11.1 INTRODUCTION

Federalism is a dynamic theory of nation and state building. It is primarily a theory about institutionalised political cooperation and collective co-existence. In other works, federalism is a grand design of 'living together' in the matrix arrangement of, what Daniel Elazar conceptually terms as 'self rule plus shared rule'. Its hallmark is, to tide Rasheeduddin Khan, 'unity of polity and plurality of society'. As a theory of nation building, federalism seeks to define state-society relationships in such a manner as to allow autonomy of identity of social groups to flourish in the constitutionally secured and mandated institutional and political space. The federal constitution recognises the special cultural rights of the people, especially the minorities. In this sense, it is very close to the theory of multiculturalism, yet different because the niceties of federalism lie in its fundamental stress on institutionalisation of diversities and facilitating sociopolitical cooperation between two sets of identities through various structural mechanisms of 'shared rule'. ,

As a state-building theory, federalism has three essential components: (i) formation of states and territorialisation of federal-local administration in such a manner as to promote closer contact between people and government; (ii) distribution of federal powers on a noncentralised basis; and (iii) creation of the institutions of shared rule. The first, component essentially means creation of the institutions of 'self rule'. The

institutions of self-rule at the macro level means creation of states, and at micro level, it refers to the institutions of local self-governance. States or regional units of administration are usually formed on the basis of relative continuity or discontinuity of spatial interaction pattern between people, culture and territory. This, in other words, means formation of states on the principle of "homogeneity with viability". The state system may include several sub-state arrangements like regional councils or district councils to cater to the specific cultural and administrative requirements of the people living in geo-ethnic enclaves. The second component refers to the division of federal powers and functions on a relatively autonomous basis, where each unit has sufficient legislative competence, executive authority and financial resources to perform its function in the allotted domain efficiently and effectively.

In recent years, the notion of competence division and distribution has come into being. Competence refers to the functionally elaborated and constitutionally protected capacity of the various units of federal-regional administration. Fernandez Segado, following the Spanish example, has classified different kinds of competences into the following five categories:

(a) *Integral Competences:* those in which a single authority-usually the state-has attributed all kinds of public functions regarding a particular matter;
(b) *Exclusive but limited Competences:* those in which one authority enjoys full competence, but only to a certain extent in a particular matter. Hence, it is not the function, but the matter that is fragmented; (c) *Shared Competences:* those in which both the state and autonomous community [council] are entitled to exercise complementary parts of the same function over the same matter. This would be the case - rather frequently in matters in which the state has reserved for itself basic legislation, and the autonomous community has taken up legislative development; (d) *Concurring Competences:* those in which the competences of the state and those of the autonomous community are distinct, but converge on the same physical object; (e) *Indistinct Competences:* those awarded both to the state and to the autonomous community without any sort of distinction, and which enable them to deal with a matter in different ways.

What follows from above is the fact that competence distribution is a manifold exercise of identification and distribution of subjects on the basis of territorial import and community significance of the subject either for exclusive or shared control of policy making and its execution. In the arena of shared competence, contents of the policy over a subject are divided and distributed. This, in other words, means jurisdictional partitioning of the subject. In the realm of allotted capacity each unit enjoys almost complete autonomy of decision and execution. One may here like to mention the fact that federalism has, aver the years, evolved as ***policy science,*** where basic objectives of the discipline seem to be efficiency and achievement of targeted

goals and policies. This is a step further growth of federal theory where it draws its critical resources from the disciplines of Public Administration and Management.

As a devolutionary theory of administration and governance, federalism and federal system may follow either one or combination of the following arrangements like noncentralisation, decentralisation and deconcentration. Noncentralisation refers to a non-hierarchical allocation of competence. Decentralisation means conditional-hierarchical distribution of competence from one federal structure to other subordinate authority and- - structures. And deconcentration means a partial 'off-loading' of, usually executive authority and finctions, from one authority to subordinate authority. An essential attribute of federalism is the creation of a federal political culture in which differences are sorted out through mutual negotiation, and consensus is built on matters of common concern and national importance.

The third component relates to the institutions of shared rule. This takes out federalism from being only a system of self-governance to collective governance on matters of trans local importance and mutual concern. Shared rule institutions may take variety of institutional shapes like zonal council, ministerial council, inter-state council, independent constitutional authorities like boards, commissions, planning and other regulatory bodies. The institutions of shared rule has important objective of laying down the policy norms, and developing uniformity of outlook on matters of interregional and national significance and resolving inter-state disputes.

Interestingly, there is not a$ exclusive and universal model of federalism. Two federal polities share some characterisdcs in common, but differ widely in the structure process of governance. Federal polity, builds its exclusive 'federal union' and 'federal nation' according to its own distinct social composition, cultural differentiation among the social groups, regional or subregional variation of identity and development, and desired objectives and specifications of its constitutionalism and nationalism. It is precisely the reason that each federal polity constitutes a distinct class of federalism, so is the case with Indian federalism.

11.2 CHARACTERISING INDIAN FEDERALISM: THE ESSENCE OF A FEDERAL UNION

Traditional-legal scholarship has characterised Indian federalism as 'quasi-federal'-" unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles" (K.C. Wheare). Such characterisation probably fails to take into account a totalistic perspective of Indian federalism, its formation, growth and evolution. It is true that Indian federalism has an in-built tendency to centralise under certain circumstances, this nonetheless makes it quasi-federal. Within the allotted domain, the state is as sovereign as the union. In this regard, B.R. Ambedkar's

speeches in the Constituent Assembly are worth recalling. During a discussion on the Emergency Provisions on 3 August 1949, he said:

> I think it is agreed that our constitution, notwithstanding the many provisions which are captained in it whereby the centre has been given powers to override the provinces, nonetheless is a federal constitution and when we say that the constitution is a federal constitution it means this, that the provinces are as sovereign in their field which is left to them by the constitution as the centre is in the field which is assigned to it. In other words, barring the provisions, which permit the centre to override any legislation that may be passed by the provinces, the provinces have a plenary authority to make any law for the - - peace, order and good government of that province. Now, when once the Constitution makes the provinces sovereign and gives them plenary powers. the intervention of the centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition, which . . . we must accept that we have a federal constitution. (emphasis added)

Refuting the charge of centralism as essential and only feature of Indian Constitution, Ambedkar in the Assembly on 25 November 1949 said:

> The basic principle of federalism is that the legislative and executive authority is partitioned between the centre and states not by any law to be made by the centre, but by the constitution itself. This is what constitution does. The states under our constitution are in no way dependent upon the centre for their legislative or executive authority. The centre and the states are co-equal in this matter. It is difficult to see how such a constitution can be called centralism. It may be that the constitution assigns to the centre too large field for the operation of its legislative and executive authority than is to be found in any other federal constitution. It may be that the residuary powers are given to the centre and not to the states. But these features do not form the essence of federalism. The chief mark of federalism lies....in the partition of the legislative and executive authority between the centre and the units by the constitution. There can be no mistake about it. It is therefore, wrong to say that the states have been placed under the centre. Centre cannot by its own will alter the boundary of that position. Nor can the Judiciary.

This is the principle embodied in our constitution. There can be no mistake about it. It is therefore, wrong to say that the states have been placed under the centre. Centre cannot by its own will alter the boundary of that position. Nor can the Judiciary. The principle on which the founding fathers divided powers between the centre and the states was that the division of powers must be in consonance with the distribution of

responsibilities. The centre has been assigned the 'important roles of: (i) nation-building and nation preserving; (ii) maintaining and protecting national unity and integrity; and (iii) maintaining constitutional political order throughout the union of India. The states have been assigned only those subjects which are purely local in nature. Besides, having autonomy of legislation, regulation and execution of the subjects assigned to it, the states are expected to coordinate, cooperate and execute the policies of union specially with regard to those belonging to the nation-building aspect.

Federal union as envisaged by the framers of the constitution, would essentially have following three components: (i) At the societal level, it seeks to build a social union, permitting pluralism (of group life) to flourish within the broader framework of secularism. A social union has to function through the instrumentality of local self-government. (ii) At the national-political level, it seeks to establish a political union, functioning through a synthesised construct of parliamentary democracy and federalism. The emerging model is that of the parliamentary federalism seeking to achieve the three basic objectives of federal nation building namely, accountability, autonomy and integration. (iii) The federal union also seeks to establish an economic union through planned national economic development. The national economy is expected to remove graded inequality among the regions and the classes through various measures of capacity building and prevention of polar accumulation of wealth, resources, industry and technology. The economic union is expected to provide a minimum level playing field to each unit of the federation.

In this context, it may be mentioned that the founding fathers had specifically perceived federalism as instrument of nation-building, therefore made the political system adequately resilient adaptable to the vagaries of national development. It is in accordance with the imperatives of national development and the maintenance of national unity and -integrity that the degree of federalism may vary from time to time. Indian federalism is complex enough to defy any singular generalisation and characterisation. At best, one can characterise it as Union type federal polity. Such a polity usually combines the features of a dual federalism (i,e., divided sovereignty); cooperative-collaborative federalism (a model of collectivism, where union and states collectively resolve and take decision on the issues of common concern); and the interdependent federalism (a model of reciprocal dependence, if states depend heavily on union government for fiscal help, so the union government on the states for execution of its policies and programmes).

11.3 SALIENT FEATURES OF INDIAN FEDERALISM

The union type federal polity presupposes the essential balancing of two inherent tendencies namely, *unionisation and regionalisation.* The unionisation process allows

Indian federalism to assume unitarian features (popularly referred to as centralized federalism) when there is a perceived threat (internal or external) to the maintenance of national unity, integrity and territorial sovereignty of India on the one hand, and the maintenance of constitutional-political order in the states on the other. However, union's prerogative of perception and definition of 'threat' is not absolute. This is subject to review by the Apex Court. This has become evidently clear from the Supreme Court's ruling in the S.R. Bommai case. It is only in the abnomal times (as the spirit of the Emergency Provision suggests) that the Indian federalism assumes the characteristics of a unitarian polity. However, more than this, the unionisation process constitutionally bestows upon the union government with added responsibility of securing balanced economic growth and social change across the regions &d social segments through means and measures of mixed economy and state regulated welfare planning. In this endeavour, the constitution envisages the role of the states as coordinating partners to the union government. Beyond this, the unionisation process has no more politiciil meaning and relevance.

Alongwith the unionisation principles, the constitution of India also. Recognizes 'regionalism and regionalisation' as valid principles of nation-building and state formation. A close scrutiny of the constitutional provisions reveals that the constitution of India acknowledges and recommends the formation of a multilevel or multilayered federation with multiple modes of power distribution. The multilayered federation may consist of a union, the states, the substate institutional arrangements like regional development autonomous councils, and the units of local self-government at the lower levels. While the union and the state constitute the federal superstructure, the remaining two constitutes the federal substructure. Each level has constitutionally specified federal functions, which they perform almost independently of each other. However, the superstructure exercises certain fiscal and political control over the substructures. Developmental funds to the substructure are released by the two superstructures. Many of the decisions of the regional councils are subjected to the approval by the concerned states.

As a matter of fact, the constitution of India promotes both the symmetrical and asymmetrical distribution of competence. This variegated system first lays down the general principle of power distribution, having symmetrical application to all states of the union. Then, there is provision for special distribution of competence and power sharing arrangements between the union and the select states. There are many provisions like Article 370, 371, 371A-H, fifth and sixth schedules which allow for a special type of union-state relations. To put succinctly, these provisions restrict the application of many union laws; delimit the territorial extent of the application of the parliamentary acts having bearing upon the law making power of parliament and the concerned state legislatures; and, bestows upon the office of Governor with special powers and responsibility in some states like Arunachal Pradesh, Sikkim, Assam,

Manipur, Nagaland, Jammu & Kashmir, Maharashtra and Gujarat. If we closely examine the above mentioned constitutional provisions, it appears that the federalism in India has been fine tuned to accommodate ethnic diversity and ethnic demands like application of customary law in the administration of civil and criminal justice etc. It is for reasons of accommodating ethnic features in the formation of polities that the constitution permits for the ethnic self-governance through specially created institutions like autonomous regional or district councils. A few dozen such councils exist in the northeast regions and other parts of India. These councils seek to protect and promote the indigenous identity and development.

At the fourth level exist the units of local self-governance with the passage of 73rd and 74th Constitution Amendment Acts, the constitution of India further federalises its powers and authority at the village and municipal levels. The Panchayati Raj Institutions (PRIs) are mainly developmental in functioning. Constituted through direct election, the Panchayats and Municipal bodies are expected to: (i) build infrastructure of development like road, transport etc.; (ii) build and maintain community assets; (iii) promote agricultural development through management and control of minor irrigation and water management; soil conservation and land improvement; (iii) promote social forestry and animal husbandry, dairy and poultry; (iv) promote the development of village industry; and (v) manage and control of education and health at the local level. In nutshell, the PRIs are institutions of empowering people for self-government. From the federal point of view, the relationship between PRIs, the state and the centre exist on the *one-to-one* basis. While many of the developmental schemes of the centre are implemented by the Panchayats without any interference by the state, the state government allocates a certain percentage of its development plans and budget to the Panchayats.

What has been shown above is the fact that Union type federalism of India essentially functions on the basis of territorial decentralisation, which combines both the centreperiphery and noncentralisation models of federalism. If federalism in India deviates from the classical reference to American federalism, it is only for the purpose of accommodating diversity and to serve its national interests. But in no way it alters the. participatory features of federal governance. It is because of its being multilayered that one finds both the symmetrical and asymmetrical systems of power distribution.

11.4 THE MEANING AND IMPLICATION OF THE WORD 'UNION'

The Article 1 of the Indian Constitution declares India as the Union of States, thereby implying the indestructibleness of the union and the unity of India. By implication, no unit possesses the right to secede. It is the sole prerogative of the union to form the states by way of division, merger and alteration of the existing internal boundaries of India. The union also possesses the right to admit any new territory in the union of

India. Today India consists of 28 states and seven union territories. By and large, the union of India has reorganised its units on the four structural principles of state formation. These principles, as laid down by the States Reorganisation Commission (1955) include: (i) preservation and strengthening of the unity and security of India; (ii) linguistic and cultural homogeneity; (iii) financial, economic and administrative considerations; and (iv) successful working of the national plan. As far as possible, the Union of India has attempted to reorganise its units on the relative congruence of 'identity boundary' and 'administrative boundary'. Language, culture and ecology have decisive impact on the ongoing process of reorganisation. Though union has sole prerogative of state formation, it does so only on the basis of resolution passed by the Legislative Assembly of the affected states.

Another implication of the word 'Union' is that Indian federalism is not a compacted federalism between two preexisting sovereign entities. The union has come out in existence only through the unified will of the people of India, nourished during the national movement. This is probably the reason that the Upper Chamber (Rajya Sabha), expected to represent the interests of the units of federation, does not have symmetrical (equal) representation. It is composed on the basis of proportionality of population size. According to the population size each state has been allocated respective number of seats in the Rajya Sabha. Thus, while Uttar Pradesh has got 31 seats, the smaller states like Manipur, Goa, etc., have been allocated only one seat.

As a logical consequence of the word 'Union', the union and its constituent units are governed by single constitution. Each unit draws its authority from the same constitution.

Interestingly, the union and the states do not have the constitutive authority to amend the essential or basic features of the constitution. The legislative authority of the union and states are expected to mend the ways for the achievement of constitutional goals and to facilitate the harmonious administrative functioning of the union and the state,$. Though Union has power to amend the Constitution, the same cannot be exercised unilaterally. There are many provisions like revision of the entries in the three lists of the seventh schedule; representation of states in Parliament; the amendment provision and procedure as laid down in the Article 368; the provision related to Union Judiciary and the High Courts in the states, legislative relations between the union and states; election to the President and Vice President; extent of the executive power of the union and the states; provisions related to the High Courts for union territories, which cannot be amended by the union Parliament without ratification and approval by not less than half of the states of the federation. This places the states on equal federal footing with the union.

An integral federal union creates a federal nation based on the principle of equality of status and opportunity. Therefore, one does not find double citizenship in the Indian constitution. Culturally people of India may be plural and diverse, but politically they constitute one nation-a civic-political nation. Such a nation has one common all India framework of administration and Justice. This does not mean that constituent units cannot have its own administrative setup. The all India services are common to the union and state. Their basic function is to secure the interests of the union as a whole across the regions of India. Article 312 of the constitution provides "if the Council of states has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest to do so, Parliament may by law provide for the creation of one or more all India services common to the Union and the states". These are some of the general features of union type federalism.

In Indian federalism, we find two broad types of centralisation of federal powers circumstantial and consensual. As mentioned above, the constitution entrusts centre with important powers of protecting the Union from 'internal disturbances' and 'external threat' suck as war and aggression. The internal disturbances include physical breakdown in case of natural calamities, political and constitutional breakdown, and financial- economic crisis. The articles from 352 to 360 deal with certain emergency situations and its impact on the working of the federal system. The constitution, here subscribes to the theory of 'safety valve', whose objectives include:

i) To protect the units of the federation from external aggression, internal aggression, subversive terrorist activities and armed rebellion against the state.

ii) To maintain the Constitution: By virtue of this, the constitutional political order is restored, which otherwise gets disturbed because of the mal-administration, ministerial crisis (emerging in the event of unclear electoral verdict or hung assembly or governmental instability caused by the frequent defection and breakdown of party system) natural calamities and other such physical and political disorder.

iii) 70 protect the unity and integrity of the federal nation: The union can assume to itself the power of the state government when a particular state government itself goes against the territorial integrity of India or subverts the constitutional process in the state.

iv) To take out the union and the provinces from financial crises and economic disorder. The essence of the financial emergency lies in the "realization of one supreme fact that the economic structure of the country is one and indivisible. If a province breaks financially, it will affect the finances of the centre; if the centre suffers, all the provinces will break. Therefore, the

interdependence of the provinces and the centre is so great that the whole financial integrity of the country is one and a time might arise when unitary control may be absolutely necessary", said K.M. Munshi in the Constituent Assembly on 16 October 1949.

Circumstantial centralisation has another dimension too. On a resolution of the Council of States (Rajya Sabha), the union Parliament can make laws with respect to any matter enumerated in the state list and as specified in the resolution for the whole or any part of the territory of India (Art. 249).

Another feature of Indian federalism is the centralisation by consent or consensual centralisation which Article 252 provides. "If it appears to the Legislatures of two or more states to be desirable that any of the matters with respect to which Parliament has no powers to make laws for the states except as provided in articles 245' and 250 should be regulated in such states by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those states, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly ..." This provision has intended objective of regulating issues of common concern between two states, which otherwise is not possible due to diversity of law and diverse perception of the issues. Consensual centralisation allows centre to arbitrate and frame common policy approach to those subjects in the state list, which have assumed national or translocal importance. This enabling provision provides for the better coordination of inter-state issues.

11.5 INTER-STATE COORDINATION

For coordinating inter-state and union-state relations and for consensual working of federal system, the constitution expressly provides for the constitution of inter-state council or other such subject and territory specific councils. The first ever inter-state council was constituted on 28 May 1990. Principally being a recommendatory body, the council is expected to perform the following duties.

a) investigating and discussing such subjects, in which some or all of the state, or the state, or the union and one or more of the states have a common interest, as may be brought up before it;

b) making recommendations upon any subject and in particular recommendations for the better coordination of policy and action with respect to that subject; and

c) deliberating upon such other matters of general interest to the states as may be referred by the chairman to council.

In this context one may like to reiterate the fact that constitutional provisions relating

to federalism avoid exclusionary characteristics of dual federalism. The basic ethos of Indian federalism is coordinated and cooperative functioning of the union, where centre and states are equal partners in making the union a success. Even the overwhelmingness of centre to centralise federal powers and curtail states' autonomy is mostly circumstances. The centre cannot exercise these powers arbitrarily. It has been sufficiently subjected to the principles of parliamentary accountability, scrutiny and approval and due process of law.

11.6 DISTRIBUTION OF COMPETENCE

Distribution of federal powers is essentially based on the notion of territoriality and specification of subjects accordingly. Thus, matters of local interests or those subjects which do not have trans-boundary implications have been put together under the state lists. The list comprises 62 items or entries over which the state legislature has exclusive competence of legislation and execution. The list includes such subjects like public order and police, local government, public health and sanitation, agriculture, forests, fisheries, sales tax and other duties. The union list enumerating 96 items empowers union Parliament to legislate on matters of foreign affairs, defence, currency, citizenship, communication, banking, union duties, taxes, etc.

However, there are subjects like industry, mines and minerals, which find place in both the lists. To find an explainable answer to this, one has to look into the types of competence available in the federal scheme of India. Broadly, there are three types of competence: one, on which the respective sets of government has exclusive and distinct competence. It is rarely that on item like defence, foreign affair etc., delegation of authority is made by the union government. Two, on items like industry, mines and minerals, the state government has exclusive but limited competence. On these subjects, its competence is subjected to the regulation by the union government in order to serve the larger public and national interests. Lastly, there are items of concurrent jurisdiction (List three) on which each unit of the federation enjoys exclusive but concurring competence. In the event of conflict, it is usually the union law that prevails over states' laws. On matters of nonenumerated item, the union government has been vested with residuary powers of legislation.

So far as the distribution of executive authority is concerned, it generally follows the scheme of distribution of the legislative powers. In other words, executive powers of the union and state governments are co-extensive with their respective legislative competence. In the case of state government, its executive authority over a legislative field has been subjected to the qualificatory restriction of 'doctrine of territorial nexus'. However, as D.D. Basu observes, it is in the concurrent sphere where some novelty has been introduced. "As regards matters included in the concurrent Legislative List (i.e. List III), the executive function shall *ordinarily* remain with the states, but subject

to the provisions of the constitution or of any law of Parliament conferring such function expressly upon the union". Thus, under the Land Acquisition Act 1894; and Industrial Disputes Act, 1947 [Provision to Article 73], the centre has assigned to itself all the executive functions pertaining to these two acts. However, of importance are some of the exclusive executive powers of the union, defiance or noncognisance of the same by the states may attract plenary action as it amounts to the violation of the constitution. This includes union's powers to give directions to the state governments; ensuring due compliance with union laws; ensuring exercise of executive power of the state in such a manner as not to interfere with the union's executive power; "to ensure the construction and maintenance of the means of communication of national or military importance by the state; to ensure protection of railways within the state, to ensure drawing and execution of schemes specified in the directions to be essential for the welfare of the Scheduled Tribes in the states, securing adequate provision by the state for instruction in mother tongue at the primary stage; ensuring development of Hindi language in the state, and above all, "to ensure that the government of a state is carried on in accordance with the provisions of the constitution". Also, during emergency of any type, the union government may regulate through its power of issuing directions the manner in which the executive power of the state has to be exercised. In other words, the state has been assigned certain obligatory duties under the federal constitution of India.

The centre-state administrative relationship is based on the principle of division [Jurisdictional partitioning of control and execution of decisions over a subject matter], coordination and cooperation in policy and planning. In many areas, while centre retains its exclusive legislative competence, it, however, delegates powers of ancillary legislation and exclusive executive competence to take decisions independently to the states. The centre administers directly only on the matters pertaining to defence, foreign affairs including passports, communications (post and telegraphs, telephones), the union list taxes, and industrial regulation. On rest of the enumeration in the union lists, the administrative function is exercised by the states 'under statutory or executive delegation'. It has been rightly pointed out in one of the commentaries on Indian constitution that "there seems to be no element of subordination, although cooperation is occasionally made compulsory. The constitution details the essential features of the union-stale administrative relations, and raises no walls of separation between them. There is no rigid pattern of allocation of responsibilities. The union Parliament may confer power:;, and may impose duties under laws pertaining to the union list matters. The President may entrust functions to the state governments "in relation to any matter, to which the executive power of the Union extends ... The state executive functions can, notwithstanding anything, be entrusted either conditionally or unconditionally" to the central government. In actual practice the states exercises a large measure of executive authority even within the

administrative field of the union government.. ." (Kagzi's The Constitution of India, Vol. I , 2001).

The financial relation between the union and state is based on the principle of sharing and equitable distribution of resources. The constitution also makes "distinction between the legislative power to levy a tax and the power to appropriate the proceeds of a tax so levied". The centre and the states have been assigned certain items to impose ant1 levy taxes. There is no concurrent power to either of the units of the federalism to impose and levy taxes. Provisions have also been made to extend financial help in the form of grants and loans to the states. The amount of grant-in-aid has to be decided by Parliament. Also, any development project initiated by the state with the prior approval of the centre for the purpose of promoting the welfare of the Scheduled Tribes in that state or raising the level of administration of the scheduled areas has to be funded by the centre as grants-in-aid charged on the Consolidated fund of India.

In the distribution of financial competence, each unit has been granted exclusive taxes The list of exclusive taxes to the union include custom, corporation tax, taxes on capital value of assets of individuals and companies, surcharge on income tax etc. Similarly exclusive taxes to the states include land revenue, stamp duty, succession and estate duty, income tax on agricultural land, sales tax [This is now being supplemented by a new system of Value Added Tax] etc. Given the fact that the volume of revenue raised from different tax sources by the state may not be adequate enough to meet its budgetary and plan proposals, the constitution provides for the sharing of proceeds of taxes earned by the union. The modalities of collection, appropriation and sharing vary from case to case. Thus while some duties such as stamp duties and duties of excise on medicinal and toilet preparations as are in the union list are levied by the union but collected and appropriated by the states (Article 268). Taxes on the sales or purchase of goods and taxes on the consignment of goods are levied and collected by the union, but the proceeds are then assigned by the union to those states within which they have been levied. Also certain taxes, such as taxes on non-agricultural income, duties of excise as are included in the union list, except the medicinal and toilet preparations are levied and collected by the union and they are then divided between union and states in certain proportion. Further, the union and the states have been assigned separately the non-tax revenues. The principal sources of non-tax revenues of the union are the receipts from Railways, Post and Telegraph, Industrial and Commercial undertakings at union such as Air India, Indian Airlines etc. Similarly the non-tax revenue of states include receipts from forests, irrigation and commercial enterprises like electricity, road transport and industrial undertakings such as soap, sandalwood, Iron and steel in Karnataka, Paper in Madhya Pradesh, Milk supply in Mumbai, Deep-sea fishing and Silk in West Bengal.

It is true that the tax base of the state is not adequate enough to meet all the expenses and developmental requirements of the state. This is so because of the overall nature of Indian economy. As stated above, federal union seeks to establish a closely integrated economic union, where union has been assigned the important responsibility of socioeconomic reconstruction of the nation. Economy is national, where regional development is taken care of by the union. Federal finance is directed to achieve this objective. Usually, federal grant to state follows certain objective parameters laid down from time to time by an autonomous body known as Finance Commission of the India. However, adequate care is always being taken to remove economic imbalances across community, class and regions. Special care is also being taken up for the development of backward segments of the society through different special assistance programmes of the Union.

11.7 WORKING OF FEDERAL SYSTEM

During the first four decades of the working of the constitution, the federalism in India exhibited a strong centralising tendency wherein the union government accumulated powers beyond its constitutional competence. It is true that the constitution permits for the circumstantial concentration of federal powers in the union, but it nowhere means suspension of federal autonomy and powers of the states even during normal times. How the centre has encroached upon the autonomy of states? The union government adopted several methods of encroachment: the foremost being its exclusive power of defining what is national and public interest. This prerogative has been used frequently to enlarge its legislative competence and to encroach upon legislative authority of the state on the matters of state lists. The seventh schedule makes entries of main subjects only. Over the years, the centre has evolved the practice of legislating upon the subsidiary matters/subjects either to give effect to main subjects, or to seek national uniformity on a particular item in the larger public interest. As a consequence, the centre has encroached even upon the subjects, originally assigned to the states. To illustrate, "Acts passed by Parliament by virtue of entries 52 [Industries] and 54 [Regulation of mines and mineral development] of the union List are typical examples. Under entry 52, Parliament has passed the (Industries Development and Regulation) Act, 1951. As a result, the union now controls a very large number of industries mentioned in schedule 1 of the Act. The constitutional effect is that to the extent of the control taken over by the union by virtue of this act, the power of the state Legislatures with respect to the subject of 'Industries' under entry 24 of the state list has been curtailed. This Act also brings under central regulation agricultural products such as tea, coffee, etc. Similarly, Parliament has, by making the requisite declaration of public interest under entry 54 of the union list, enacted the Mines and Minerals (Development and Regulation) Act, 1957. The effect is that to the extent covered by this Act, "the legislative powers of the state legislatures under 23 [Regulation of Mines and Mineral Development] of the state list have been ousted,"

observes Sarkaria Commission on Centre State Relations. As a consequence, approximately about 93 percent of the organised industries fall directly under the control of the union.

By way of omission, addition and transfer, the union government through different amendment acts has brought changes in the distribution of competences as under seventh schedule of the constitution, between centre and states. Thus forty-second amendment act omitted entries 11 (education). I9 (forest), 20 (protection of wild life). 29 (weights and measures) and seventh amendment act omitted entry 36 (acquisition or requisitioning of property) from the state list. As a result, the state list now contains only 61 subject instead of 66 subjects as originally provided. On the other hand, forty-second amendment act by way of transfer added four new entries in the concurrent list. They include 11A (administration of justice), 17A (forest), 17R (Protection of wild animals and birds), 20A (population control and family planning), and 33A (weights and measures), besides important substitution made in the entries 25 (education) and 33 (trade and commerce). As a result, we have 51 entries in the concurrent list. In the union list. We find three important inclusions: 2A (deployment of armed forces), 92A (taxes on sale or purchase of goods in the course of inter state trade or commerce), and 92B (taxes on the consignment of goods).

Besides, through substitution method the centre has enhanced the ambit of its 'eminent domain'. Along with it, "centralized planning through the Planning Commission is a conspicuous example of how, through an executive process, the role of the union has extended into areas, such as agriculture fisheries soil and water conservation, minor irrigation area development, rural construction and housing etc. which lie within the exclusive state field." It has been rightly pointed out by D. D. Basu that the activities of the Planning Commission "have gradually been extended over the entire sphere of the administration excluding only defence and foreign affairs, so much so, that a critic has described it as "the economic cabinet of the country as a whole ...." In spite of being an advisory body, its political and bureaucratic clout has gone to the extent of verticalising the nature of federal grants to the states. It now appears more as a regulatory body attenuating the politicisation of transfer of resources at the command of the union to the states.

Contrary to the wisdom of founding fathers, Article 356 has been used, abused, misused and overused for more than 100 times. On an objective estimation it has been used for about 30 times to 'maintain the constitution' and rest of the times abused to settle political score, usually dictated by the ruling party at the centre. The most detrimental aspect of its abuse is that in most of the cases it has negated the basic premises of parliamentary democracy and federalism. This article requires a thorough laying down of norms as to prevent its misuse. Besides Sarkaria Commission's recommendation in this regard, Judicial pronouncements (of Supreme Court) in the

famous case, S, R. Bommai vs. Union of India (1994) are here worth mentioning. The Court held that the Presidents' satisfaction though subjective in nature, is the essence of this article. However, President's satisfaction must be based on some relavant and objective material. President's the power is conditional, and not absolute in nature. If Court strikes down the Presidential proclamation, 'it has power to restore the dismissed government to office and to revive and reactivate the Legislative Assembly. Till the proclamation is approved by both the Houses of Parliament, the Legislative Assembly should not be dissolved but be kept under suspended animation. On parliamentary disapproval of the proclamation, the dismissed government should be revived in the state. However, of far reaching significance is the Court's observation about the secularity of the state. The Court held: "secularism is one of the basic features of the constitution. While freedom of religion is guaranteed to all persons in India, from the point of view of state the religion, faith or belief of a person is immaterial. To the state, all are equal and are entitled to be treated equally. In matters of states, religion cannot be mixed. Any state government which pursues unsecular policies or unsecular course of action acts contrary to the constitutional mandate and renders itself amenable to action under Article 356." What is required in order to prevent its abuse is a two-fold exercise of: (i) ensuring. by rule and convention, the maximum objectivity and transparency in the exercise of this power by the President and Governor and; (ii) to codify the stipulated grounds on which this article can be invoked. While ensuring its restrictive use, the basic object under this article should be to restore the constitutional order in the state.

There are many other critical areas, such as reservation of state bills by the Governor, financial allocation of resources between union and state, growing politicisation and subjectivity of the institution of Governor, directives from union, deployment of para military forces etc., which have affected the smooth working of union-state relations. The net affect has been the excessive concentration of power in the union. Thus, what is now required is the 'off loading' and deconcentration or devolution' of powers from centre to states; and from states to the panchayats and municipal bodies. In fact, what is required is the redistribution of competences among three schedules-7, 11 and 12 of the constitution. The federal restructuring, without disturbing the basic scheme of the constitution, is required to make the principle of autonomy a reality. In the changing context of state-society relationship, redistribution of competences would, in all probability, facilitate the attainment of three basic objectives of the constitution: unity, social revolution and democracy. Being mutually dependent, 'inattention to or over attention to as Granville Austin warns, any one of them will disturb the stability of the *Indian Nation.* And exercise for stability should not be the sole prerogative of the centre. It is a collective exercise of union, state and the people.

11.8 DECONCENTRATION INITIATIVE TAKEN BY THE UNION

As of today, the *Report of* the Sarkaria Commission is considered as piecemeal effort to provide resilience to the successful working of federal system. The Commission, by and large, has found the union type federal polity, not only suitable but essential to build the federal nation of India. However, it recommended for the 'off loading' of the some of the union's function to the states, and it further underlined the need for evolving transparent procedural norms in implementing some of the controversial federal provisions such as Article *356* etc. It also stressed the need for evolving the cooperative-collaborative federal culture in which both the union and the states would work as equal partner in building an integral federal union. Altogether, the commission made 230 specific recommendations. In a further development, the Government of India constituted Inter- State Council in 1990. The Council has been entrusted with the task of examining the reports of the Sarkaria Commission in the first instance, and to evolve consensus on the possible change in the structure and process of inter-state relationship. Out of the 230 recommendations of the Sarkaria Commission on which Council took decision, altogether 108 recommendations have so far been implemented, 35 have been rejected and 87 are under implementation. The remaining 17 recommendations of the Sarkaria Commission pertaining to Article 356, deployment of paramilitary forces in the states, comp1ianc:e with union's directions and laws made by Parliament (Article 256 and 257), and effect of the failure to comply with, or to give effect to, directions given by the union government etc. have been considered by the subcommittee of the Council. The Council has rejected six recommendations pertaining to the role of Governor and 18 on All India Services. Out of 44 recommendations on financial relations the Council has accepted 40 arid rejected the remaining 4. So is the case with 'Reservation of Bills'. There seems to be no disagreement between the centre and states on 33 recommendations belonging to the head 'Economic and Social Planning'. Divergence of views still prevail on issues like role of Governor, industries, mines and minerals etc.

Some of the consensus decisions of the Council include: (i) residuary powers of legislation should be transferred from union list (entry 97) to concurrent list; (ii) as a matter of convention, states must be actively consulted by the centre while legislating on concurrent list. "This is because laws enacted by the Union, particularly those relating to matters in the concurrent list, are enforced through the machinery of the states and consultation is essential to secure uniformity", (iii) consultation with states by the centre should be made obligatory in the matters of appointment and selection of the Governor. To give effect to, the constitution may be suitably amended. To ensure impartiality and neutrality of the office of Governor, the person so appointed should not be intimately connected with the active politics. "Persons belonging to the minority communities should also be considered for gubernatorial posts". Also, the

Governor, as a matter of convention, should not "return to active partisan politics after relinquishing office, even though he or she would be eligible for a second term or for election to the office of Vice President or President of India. This was [is] necessary to ensure the functioning of a Governor in an independent and impartial manner". Further, the special powers given to the Governor in some states have to be exercised by him in his discretion. When a no-confidence motion is pending against a Chief Minister, the Governor may not concede his request for proroguing the House, rather the Governor may summon the Assembly on his own. Instead of head rolling at the Governor's place (Raj Bhawan), the majority must be tested on the floor of the House; (iv) time bound clearance of state bills referred to the President by the Governor. The state bills should not generally be reserved for presidential consideration, except for the constitutional specification and for the purposes referred to by the Sarkaria Commission in its report: (v) approved the alternative scheme of devolution of share in central taxes to the states and the transfer of taxation from the union list to the concurrent list; (vi) amending Article 356 [proclamation of emergency in a state on the grounds of breakdown of constitutional machinery] as to provide material grounds on which this provision may be proclaimed; (vii) delegation of powers the to the state governments for diversion of forest land for developmental use; (viii) revision of royalty rates under Mines and Minerals (Regulation and Development) Act every two years, instead of four years; (ix) formulation of a uniform policy on the creation or abolition of the Legislative Council in the states; (x) formulation of a comprehensive central legislation on taxes imposed by the local bodies of the states on the commercial operation of central undertakings, etc. Much of these decisions of the Council are in the form of laying down the political-executive norms of federal practice. This does not require a major revision of the constitution.

11.9 CONCLUDING REMARKS

Over the years, the Indian federalism has shown enough resilience to adapt and to accommodate structurally and politically the various pressures of federal state formation. It has accommodated the various identity-linked demands for statehood. It has also, as mentioned above, attended to the institutionalisation of societal autonomy as it gets reflected in the northeastern regions of India. The federal democracy has decentralized itself to the level of village self-governance. As a matter of fact, federalism in India is publicly perceived, as an instrument of people’s empowerment, and to that extent federal, democracy seems to be working successfully. Similarly, in the arena of union-state relationships one finds almost total unanimity among political parties and the units of federation to follow the recommendations of Sarkaria Commission in building a cooperative-collaborative model of Indian federalism. It is precisely the reason that today one does not find such demands of yesteryears like scrapping of Art 356 etc. The growing salience of regional parties in the national

decision making process in the present era of coalition governance show the participatory strength of Indian federalism.

Another interesting development that one witnesses is the growth of competitive federalism among the states. In the present liberalised market economy of India, the centre is withdrawing itself from many crucial sectors of socio-economic development. The state is allowed [of course, under the rules and regulations framed by the centre] to negotiate for foreign direct investment. This does not mean that states have treaty making power. The competitive federalism has another dimension too. The developed or developing and performing states like Andhra Pradesh, Karnataka, etc, are demanding greater shares in the financial allocation made by the centre. They argue that central allocation should be linked to the performance level of the state. Thus rule for minimum level playing field should be relaxed. This nonetheless may have adverse impact of the undeveloped states like Bihar, Uttar Pradesh, etc. We should never forget that the basic objective of an economic union is to maintain minimum regional balance in term of growth and development. Here the role of centre assumes critical federal significance. As a means of nation-building, federalism in India has largely succeeded in building a federal union and a federal nation.

11.10 SUMMARY

This unit introduces the concept of federalism-its meaning and essence focussing on the characteristics and salient features of Indian federalism. Federalism implies collective governance through: (i) formation of states and territorialisation of federal-local administration in such a manner as to promote closer contact between people and government; (ii) distribution of federal powers on a noncentralised basis; and (iii) creation of the institutions of shared rule. Indian federalism is characterized as 'quasi-federal' with an in-built tendency to centralise under certain circumstances. The legislative and executive authority is partitioned between the states and the centre by the Indian Institution Though India is a union of states, no unit possesses the right to secede and are governed by a single constitution. It is only under unusual circumstances (like an emergency) that Indian federalism assumes the characteristics of a unitarian polity. There are two broad types of centralisation of federal powers circumstantial and ' consensual in order to protect the units of the federation from external aggression, maintain the Constitution, protect the integrity of the nation and take the union out of financial crises. Federal powers are distributed between the states and the union on the basis of territoriality and specification of subjects with matters of local interest like public disorder, police, agriculture, sanitation, fisheries, sales tax being put under the state list. Subjects like foreign affairs, defence, currency etc are put in the union list.

Over the years, federalism in India did exhibit a strong centralising tendency, encroaching upon the subjects originally assigned to the states enhancing its domain through various means. The Report of the Sarkaria Commission is considered an effort to provide resilience to the successful working of the federal system. The union type federal polity is considered essential for India but the Commission recommended transferring some of the union's functions to the state and evolving transparent norms to implement some of the controversial federal provisions. Federalism in India is perceived as an instrument of peoples' empowerment and to that extent and as a means of nation building it has been functioning successfully in building a federal union.

11.11 EXERCISES

1) Do you agree with the view that India is "a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles"?
2) Discuss the circumstantial and consensual centralisation of federal powers in India.
3) Discuss the working of the federal system in India.

UNIT 12 DEVOLUTION OF POWERS AND LOCAL SELF-GOVERNMENT

Structure

12.1 INTRODUCTION

The idea of local self-government had existed in India even in ancient times. Even if we accept its beginning as an organisational concept with the Ripon's resolution it is more than a century and two decades old. In its tumultuous career it has seen many ups and downs. In spite of a formal inauguration by the Prime Minister Jawaharlal Nehru in 1059, after the Balvant Rai Mehta committee recommendation in 1957, these institutions could not take proper roots in the country. Some of the scholars even declared that Panchayati Raj Institutions (PRI) were like failed God. The Janata Government appointed the Ashok Mehta committee to rejuvenate the PRIs. But the 73rd and 74th amendment, which were passed in 1992 and came into force in April 1994, have virtually revolutionised the idea of local self-government - both rural and urban - by bestowing constitutional status on them. These amendments were passed in the light of the experience of the Local-Self Governing Institutions in India. They have made a sincere attempt to overcome the limitations faced by these institutions.

The beginning of the idea of decentralisation in India as an organisational concept can be traced to Ripon's Resolution in 1882 which aimed at involving the 'intelligent class of public -spirited men in the management of rural areas under the British rule. In the years to come district boards and taluka boards were set up with nominated members to look after health, roads and education. But this effort did not succeed in making villages as basic unit of local self-government. A resolution of 1918 restated that the

objective of self-government is to train people in the management of their own local affairs. The District Board Act of 1922 led to the reconstitution of the Boards. They were entrusted with the responsibilities of road maintenance, tree planting, hospitals, schools and drainage etc.

12.2 PANCHAYATI RAJ SYSTEM

Panchayat Act of 1920 was conceived as local courts and was completely judicial in character. As there was hardly any devolution of finances and responsibilities, .its role as the local unit of administration, development and rural upliftment remained nonfunctional.

Among the Indian leaders, Mahatma Gandhi made very strong plea for village republics. Articles 40 under the Directive Principles of State Policy included in the part IV of the constitution, advised the government to take steps to organise village panchayats and endow them with such powers and authority which would enable them to function as units of self-government. State governments were supposed to enact appropriate legislation for this purpose.

The Indian planners and policy makers launched a multipurpose Community Development Programme (CDPs) with the objective of improving the conditions of the rural masses. This programme aimed at training and sending development personnel Block Development Officers (BDO), Extension Officers and Village Level Workers (VLW!;) into villages. This group of officers were supposed to act as agents of change. They were expected to galvanise rural masses by encouragement, demonstration and offer of material assistance. The CDPs failed to achieve the desired objectives. The Planning Commission requested a committee under the chairmanship of Balvant Rai Mehta 1.0 develop the ideas for a system of democratic decentralisation which would anchor the rural developmental efforts. The Balvant Rai Mehta Committee Report came up with a number of recommendations that were incorporated in the panchayat legislation of the various states in the following years. This committee recommended democratic decentralisation with a provision of a three-tier structure [village-block- district]. It is recommended for transfer of resources and responsibilities and channelisation of funds for various developmental programmes through the three- tier system. This report generated opportunity for launching block planning in states like Andhra Pradesh and Tamil Nadu and district planning in others like Maharashtra and Gujarat.

In the 1960s Panchayati Raj Institutions were portrayed as a God that failed. One of the main reasons of failure was the sabotage by state politicians who were not enthusiastic about devolving powers to the district level or below. They were apprehensive that Panchayati Raj Institutions with real powers may pose a threat to

their power and influence. Towards the end of the 1960s when Indira Gandhi was donning a progressive garb and wished to implement land reforms, it was argued that Panchayati Raj Institutions could not be involved as they were dominated by the upper caste and landed elements. The 1960s also witnessed the advent of the Green Revolution that necessitated centralized planning and came in conflict with the ideals of decentralisation on which PRIs were based. Since rural areas in many parts of the country were still under the hands of feudal landed interest, government sponsored inputs for ushering the Green Revolution could have been monopolised by them. Both central and state government had started bypassing and thus undermining the authority and significance of the PRIs during this period. Central government created its own administrative machinery for implementing many of Indira Government programmes such as Small Farmers' Development Agency, Drought Prone Area Programme, Integrated Rural Development Programme and National Rural Employment Programme, aiming at economic justice. The lack of resources, absence of coordination, dependence on district development staff, lack of delegation of effective on district authority, domination by the higher castes and better off sections of society had rendered the PRIs ineffective and purposeless as institutions of decentralisation and development. By the middle of 1970s governments both at the center and in the states had become indifferent to the PRIs. They had become defunct; elections to these institutions were not being held and at most of the places the sitting councils were either dissolved or suspended.

12.3 RECONSTITUTION OF PANCHAYAT SYSTEM

The process of rejuvenation started with the reconstitution of the panchayats in West Bengal and by the appointment of the Ashok Mehta committee by the Janta Party government in the late 1970s. The mid-seventies also marked a discernible shift of opinion in favour of conceding larger political space to local communities in the governing process. Local self-governing institutions were supposed to play an important role in reordering societal power equations. As the Janata Party Government had pledged its commitment to the Gandhian philosophy, the overall atmosphere seemed to be conducive for the resurgence of the Panchayati Raj Institutions. Another plausible reason seems to be the fact that by the late 1970s the Green Revolution had become a decade old and it had given birth to rich peasant class that had benefited from the Green Revolution. The rich and middle peasants were fully aware of the importance of the direct access to decentralised government machinery more particularly its delivery system. Capturing village councils was very much in tune with the newly acquired economic power of this class and their motivation to count politically. The central place of the Panchayati Raj Institutions was restored.

The Ashok Mehta Committee Report mentioned rooting of developmental programme through official bureaucracy, inelastic finance, dominance of local institutions by

economically and socially privileged sections of society as reasons for the failure of the Panchayati Raj Institutions. Ashok Mehta Committee report refused to accept the view that Panchayati Raj was a failed God. In fact he credited these institutions for starting the process of democratic seed drilling in the Indian soil and making the citizens more consciousness of their rights than before. Among other positive fallouts was the bridging of gap between bureaucratic elite and the people. It also gave birth to a young dynamic leadership with a modernistic vision and social change oriented outlook. Mehta also averred that it helped rural people to develop a development psyche.

The Ashok Mehta Committee was innovative in many ways. The participation of political parties in Panchayati Raj election was pleaded to make them more accountable and link them with the political process at the higher level. Mehta hoped that elections would translate into political powers in the hands of poor because of their numerical strength and organisation. It also made a powerful plea for women's participation in the Panchayati Raj Institutions. This report had also proposed reservation of seats for both women and weaker sections of society. The decline of the Janta government created a hostile climate for the implementation of the Mehta report. In spite of this, the non-Congress state governments of Karnataka, Andhra and West Bengal took concrete measures to reactivate the PRIs. In Karnataka the PRIs that came into existence incorporated most of the recommendations made by the Mehta report. While non-Congress state governments were busy implementing the recommendations of the Ashok Mehta committee, the new congress government at the center appointed other commissions. C.H. Hanumantharao's working group of 1983 and GVK Rao Committee report of 1985 emphasised the need of integration of the panchayati raj system with development programmes and administration. The concept paper on Panchayati Raj prepared by the L. M. Singhvi Cormnittee Report of 1986 suggested that Panchayati Raj institutions should be closely involved in the planning and implementation of the rural development programmes. Both Singhvi and Ashok Mehta Committees recommended democratic decentralization on constitutional basis.

The Sarkaria Commission constituted to go into dynamics of center state relations: made a mention of the dysfunctional PR institutions and suggested legal provisions for the regular elections and sessions of Zilla Parishads and Municipal Corporations for their resurgence. The P.K. Thungon Committee set up in 1988 to suggest the type of political and administrative structure in district for district planning, advocate constitutional status for panchayati raj institutions. The Thungon Committee also favoured constitutional provisions to ensure timely and regular elections to the PRIs. According to this committee, Zilla Parishad should be the only development agency in a district.

12.4 DECENTRALISATION

Devolution is a form of decentralization which seeks to create independent level of authority of government with functions and responsibilities. It is an arrangement for central or state governments to relinquish some of its functions to the new units of government that are outside its control. This can be achieved by providing for it in the Constitution itself or by ordinary law of the land. One of the major reasons for the failure of the local self-government institutions in India has been half-hearted devolution of powers to them. The 73rd and 74th amendments also contained provisions for the devolution of powers and responsibilities to rural (Panchayati Raj Institutions) and urban (Nagarpalikas) local self- government institutions. These amendments respectively provided that the panchayats at village, block and district levels would have 29 subjects of rural importance as listed in the 11th schedule and municipalities would have 18 subjects of urban importance as listed in the 12th schedule. These amendments bestowed upon the local self- government bodies - both rural and urban - the responsibility to prepare and implement a number of development plans based on the needs of local people. They operationalise the concepts of spatial planning and micro level planning to facilitate decentralised socio economic development in India. With the help of these powers the local self-government institutions are supposed to promote agricultural, industrial, infrastructural and ecological development, poverty alleviation and development of women, children, scheduled and backward castes. These development functions are in addition to the obligatory functions such as ensuring the supply of drinking water, street lighting, maintenance of schools and hospitals etc.

There seem to be plethora of debates involving the concept, utility and effectiveness of the local self- government institutions. In early village councils an arrangement of government by consent and an active sense of community prevailed over caste divisions. Since beginning, these features of the PRIs have been used to legitimise them. According to Listen and Srivastava, the village panchayats were established as units of local self government and focal points of development in country at large more often than not captured by autocratic and invariably corrupt leaders from among the male elite. As argued by some other scholars, the institutions were used by the rural powerful for their benefits. Paul Brass was of the view that PRIs were made to fail because of the reluctance of state politicians to devolve much powers to the district level or below because they feared that if such local institutions acquired real powers they would become alternative source of influence and patronage. Rajani Kothari argued that village councils were nothing but catchy slogans and false that promises had enabled the rulers to contain the forces of revolt and resistance and prevent public discontent from getting organised. Ashok Mehta who headed the second Committee on Panchayati Raj refused to be pessimistic about the PRIs. He

thought that the process of democratic seed drilling in the Indian soil made people conscious of their rights and also cultivated in them a developmental psyche. He was of the opinion that these institutions had failed because development programmes were channelised through official state bureaucracy, finance had been inelastic and these institutions were dominated by privileged sections of society. Noorjahan Baba argues that centralised planning and administration were considered necessary to guide and control the economy and to integrate and unify new nations emerging from long periods of colonial rules. This might have been possible because as Lieten and Srivastava think, the Indian state was reputed to have an enlightened vision and a developmental mission. According to Baba in the 1960s there was great disillusionment with centralised planning because it failed to achieve equitable distribution of the benefits of economic growth among regions and groups within developing countries. Henry Madd is of the view that there exists a triangular relationship between democracy, decentralisation and development.

The experience of the PRIs in different states of the country has not been the same. The formal beginning was made when Jawaharlal Nehru inaugurated PRIs at in Nagaur in Rajasthan October 1959. The Rajasthan model of PRIs revolved around the three tier, village panchayat, panchayat samiti and zilla parishad. The panchayat samiti at the block level was the kingpin of the Rajasthan model. In contrast to the executive role of the panchayat samiti, the zilla parishads were advisory bodies. Maharashtra and Gujarat followed a model in which zilla parishads were nodal point of action as main units of planning, development and administration. In Maharashtra, the zilla parishad executed not only the schemes under Community Development Programme but also a large portion of progammes of various government departments. In Karnataka, after the introduction of panchayat reform act of 1985, all functions and functionaries of development departments were transferred to panchayati raj institutions. The District Rural Development Agencies were merged with the Panchayati Raj Institutions. To give substance to the idea of decentralisation, the state budget of Karnataka was split into two providing a separate budget for PRIs. The-plans and budgets prepared by Mandal Panchayats could not be altered by Zilla Parishad or state government in Karnataka. Similarly district plans of the zilla parishad could not be touched by the state government. In Andhra Pradesh, the Zilla Parishads endowed with limited functions have shown encouraging results in the field of education. Even in Tamil Nadu PRIs have done a commendable job in the fields of education, water supply, roads and nutrition.

The PRIs had been functioning in West Bengal, Karnataka, Kerala, Maharashtra, Gujarat and Andhra Pradesh with varying degree of success. But the experience in the field of local self- governing institutions is qualitatively different after the 73rd and 74^{th} amendments became acts because they made parliamentary democracy in or country participatory in the real sense. These amendments gave substance and

meaning to the local self- governing institutions. These amendments removed the bottlenecks from the: paths of empowerment of the weaker sections of society like the dalits, tribals and the women. Consequent upon the enactment of the act almost all the states and union territories; have enacted their legislation. Election to the PRIs have been held all over the country. The elections to PRIs in different parts of the country have brought out some encouraging facts. Karnataka sends maximum number of women to the PRIs followed by Kerala and Manipur. Uttar Pradesh ranks the lowest in this regard. Empowerment of women has not been a very smooth affair. There are instances of women members being accompanied by their husbands or a male member of the family. Maharashtra and Madhya Pradesh, have earned the distinction of electing all women panchayats. The provision of reservation of seats for Scheduled Castes and Scheduled Tribes has ensured greater representation to people from these sections.

In many of the states local level functionaries of government departments have been placed under the control of panchayats. The governments of Gujarat, Karnataka mid Kerala have passed orders to this effect. In Madhya Pradesh recruitment of school teachers have started at the block level and the powers of evaluating their performance and confirmation have been transferred to the PRIs at the block level. Rajasthan and Haryma witnessed strikes by the staffs of veterinary and education departments against the move of the state governments to transfer their services under the control and supervision of panchayats. The Apex district level development agency District Rural Development Agency [DRDA] is in the stage of its merger with the PRIs in Orissa, MP and Maharashtra. In Karnataka the merger was achieved way back in 1987. The government of Rajasthan has not been in favour of the merger. Instead it aims at securing effective coordination between DRDA and Zilla Parishad.

12.5 CONSTITUTIONAL AMENDMENTS

Towards the end of his tenure as Prime Minister, Rajiv Gandhi evinced keen interest in the panchayati raj institutions. The Congress had lost elections in some of the states. The whole idea of conferring power on people through PRIs was more a slogan to influence the people before the election. He held five workshops on responsive administration in which he interacted with district magistrate and collectors of all the districts in the country. These workshops unambiguously favoured constitutional provision and mandatory regular elections to the PRIs. The Rajiv Gandhi government introduced the 64th Constitutional Amendment Bill in 1989. The main problem with this amendment was that it sought to establish direct links with PRIs bypassing states. As local government was a state subject, it was seen as a threat to federalism because this bill proposed to take panchayati raj from state list and include it in the concurrent list. Similarly the idea of holding elections to the PRIs under the supervision of the Central Election Commission and also the idea of providing finance to these

institutions by the Central Finance Commission aroused misgivings about the intentions of the Rajiv Gandhi government. The 73rd and 74th amendments in many ways, appeared to be a modified version of the proposals of Ashok Mehta Report. These amendments bestowed constitutional status on Panchayati Raj and Nagarpalika institutions. They added part IX and part IXA to the constitution while part IX containing articles 243 to 2430 relates to the panchayats while part IXA containing articles 243P to 24326 relates to the municipalities. They provided for 33% reservation for women in both panchayat and nagarpalika institutions as well as for the position of chairpersons of these bodies. Provisions were also made for reservation of seats in these bodies for SCs and STs according to their proportion in population in that panchayat. One third of the total seats reserved for SCs a d STs shall be reserved for women belonging to SCs and STs. Article 243K provides for State Election Commission. The Governor of the concerned state has powers to appoint the State Election Commissioner and assign the responsibility of preparing the electoral rolls and conducting the elections to the panchayats. Sufficient care has been taken to ensure the impartiality of the Election Commission. Once appointed, the Election Commissioner cannot be removed from the office except in like manners and on like grounds as a High Court Judge. The terms and conditions of his office cannot be changed to his advantage after his appointment. Regular elections to the local bodies after the completion of five years term and within six months of their dissolution is the responsibility of the State Election Commission. Article 243-1 of Constitution provides for state level Finance Commission to review the finances. The constitution also requires the Central Finance Commission to recommend measures to augment Consolidated Fund of a State to supplement' the resources of the panchayats.

12.5.1 The 73rd Amendment

The 73rd Amendment Act provides for a three-tier Panchayati Raj system at the village, intermediate (block or taluka) and district levels. Small states with population below twenty lakh have been given the option of not constituting panchayat at the intermediate level. This Act acknowledged the role of Gram Sabha (the assembly of people) in the empowerment of the rural people and provided for the strengthening of the Gram Sabhas for the successful functioning of the PRIs. The Act intended to make it a powerful body, the ultimate source of democratic power and an epitome of people's power at the gram panchayat level. The Gram Sabha consists of all the residents of a village, and those above 18 years of age are on the electoral rolls of a village. Almost all the State Acts mention the nations of the Gram Sabha. These functions of Gram Sabha include discussion on the annual statement of accounts, administration, reports selection of beneficiaries of anti poverty programmes. The State Acts of Haryana, Punjab and Tamil Nadu give power of approval of budget to the Gram Sabha. A Gram Pradhan is elected by the Gram Sabha. It also elects other members of the Gram Panchayat. The number of members varies from state to state,

and some of them have been reserved for SCs and STs according to their population and one third of the total seats have been reserved for the women. The obligatory functions of the Gram Panchayat include provision of safe drinking water, maintenance of public wells, ponds, dispensaries, primary and secondary schools, etc. Now the Gram Panchayats have been assigned developmental functions like minor irrigation schemes, rural electrification, cottage and small industries and poverty alleviation programmes also. The Block level PRI institution is known by different names in different parts of the country. In Gujarat they are called Taluka Panchayat, in UP Kshetra Samiti and in MP they are known as Janapada Panchayat. They include (1) the Sarpanchas of the Panchayats (2) the MPs, MLAs and MLCs from that area (3) the elected members of the Zilla Parishad (4) the Chairman of the town area committee of that area. The powers of the Panchayat Samiti include provision of improved variety of seeds and fertilizers, maintenance of schools, hospitals, roads, implementing anti- poverty programmes and supervising the functioning of the Gram Panchayats. The Zilla Parishad is the Apex body of the PRIs. It coordinates the activities of the Panchayat Samitis. It includes the Pradhans of the Panchayat Samitis of the district, MPs and MLAs from the district, one representative each from the cooperative societies of the district, and also chairmen of the municipalities of the district. The Zilla Parishad approves the budgets of the Panchayat Samitis. It maintains educational institutions, irrigation schemes, and undertakes programmes for the weaker sections.

12.5.2 The 74th Amendment

The 74th Amendments Act provides for the constitution of three types of local self-governing institutions in the urban areas. It provides for Municipal Corporations for major cities like Delhi, Mumbai, Chennai, Kolkata, Allahabad, Lucknow, Patna etc. Middle rung cities have Municipal Councils and smaller towns have Nagar Panchayats. Every Municipal Corporation has a General Council. It has members elected by the adult citizens of the city. These members are called Councillors. Apart from the elected members, the Council also has eldermen elected by the elected Councillors. The MPs and MLAs are also the members. The Mayor is elected by the members from among themselves. Some of the states provide for direct election of the Mayor. He is known as the first citizen of the city. The Municipal Commissioner is the chief executive officer of the Corporation. The Mayor may ask the Municipal commissioner to prepare and present report on any matter. The compulsory functions of a Municipal Corporation includes maintenance of hospitals, supplying safe drinking water, electricity, running schools and keeping an account of births and deaths. The developmental functions of the Municipal Corporations include launching of poverty alleviation programmes for the weaker sections. A Municipality is composed of Councillors elected by the local population. Seats have been reserved for SCs and STs according to their proportion in the population of the town and one third of the seats

have been reserved for women. 'The Presiding officer of a Municipal Board is called the Chairman who is elected by the voters of the town. In some states the Chairman of the Municipal Board has powers to appoint teachers of primary schools and even lower level staffs. An executive officer looks after the day to day administration of the Municipality. Among the compulsory functions are supplying electricity, drinking water, health facilities, schools and maintaining roads and keeping records of weaker sections of the society. The small towns have Nagar Panchayats. Its members are elected by adult citizens of the town. As in the case of other local self governing institutions, seats are reserved for SC/ST and women. Their functions include provision of drinking water, maintenance of primary schools and registration of births and deaths.

12.5.3 Limitations of the Amendments

Inspite of the revolutionary changes brought about by the 73rd Amendment it suffers from some serious limitations. Ambiguity about the national jurisdiction of panchayats is one of its serious limitations. In the absence of properly defined jurisdiction, it is dependent upon the discretion of state legislatures for being assigned the functions. This act does not mention the powers and functions of the Gram Sabha. This amendment mentions that the Gram Sabha will perform the functions which may be assigned to it by the State legislature. The provision relating to Gram Sabha in the laws enacted by most of the states reduce the Gram Sabha to a powerless body which will routinely rubber stamp the decisions taken up by the Gram Panchayat. The Chief Ministers' Conference held in August 1997 at New Delhi ruled that it would be necessary to vest in Gram Sabha the powers to sanction and disburse benefits in open meetings, to decide location of drinking water hand pumps etc. without having to refer the matter to officials or other authorities. This conference also held that it is necessary to vest the ownership of natural resources in Gram Panchayats and also the decision - making powers concerning the management of and income from such resources in the Gram Sabha. Another important limitation of the PRIs, after the amendment is that they still function in the grip of the state bureaucracy. The village Pradhan has to contact several times in a month the block office for technical and financial sanctions. Yet another omission of the act is that there is no mention of the employees of the panchayat and their administrative autonomy. Pancliayats in the past failed to deliver because they had inadequate control over people working to implement the programmes. Even when responsibilities in the field of health and primary education have been transferred, PHs have no control over the staff and budget of these departments. The power of the dissolution of the PRIs in the hands of the state government is also seen as a limitation of the post Amendment PFUs. It is argued that the power of their dissolution should rest with the electorate and not with any other authority. Even the provision for MP7s/MLA's optional membership of the Zilla Parishad and Panchayat Samiti respectively with or without voting rights is seen

as a limitation because it may restrain the powers of the PRIs. In the past, a major stumbling block in the path of the PRIs has been the resource crunch faced by them. This was due to meagre resources at the disposal of the PFUs. Even the new amendment does not evolve any source of revenue for the PFUs. It has left these to be considered by the state finance commission. The urban local governing institutions are also faced with paucity due to increase in population and with people from rural areas coming to the cities in search of jobs and better life.

12.6 SUMMARY

By way of summing up, it can be said that the 73rd and 74th Amendments have not only revived but also rejuvenated the landmark development in the evolution of democratic decentralisation and local self-government in the country. They have played an important role in the empowerment of the weaker sections of seats for them. Inspite of the salutary changes made by these amendments as the experience shows, these institutions are still faced with many problems. Their performance all over the country is not the same. For vibrant local self- government institutions what is needed is strong political will of the state government and cooperation from the bureaucracy. It's also needs a determinations on the part of the people to make them a success.

12.7 EXERCISES

1. Trace the original of the idea of decentralization in India
2. What were the proposed reforms as enunciated by the Ashok Mehta Committee Report?
3. Write an analytical note on decentralization and local self-government in India.
4. What are the main provisions of the 73rd and 74th Constitutional Amendments on Panchayati Raj System?
5. Summarise briefly the limitations of the Amendments relating to the Panchayat System.