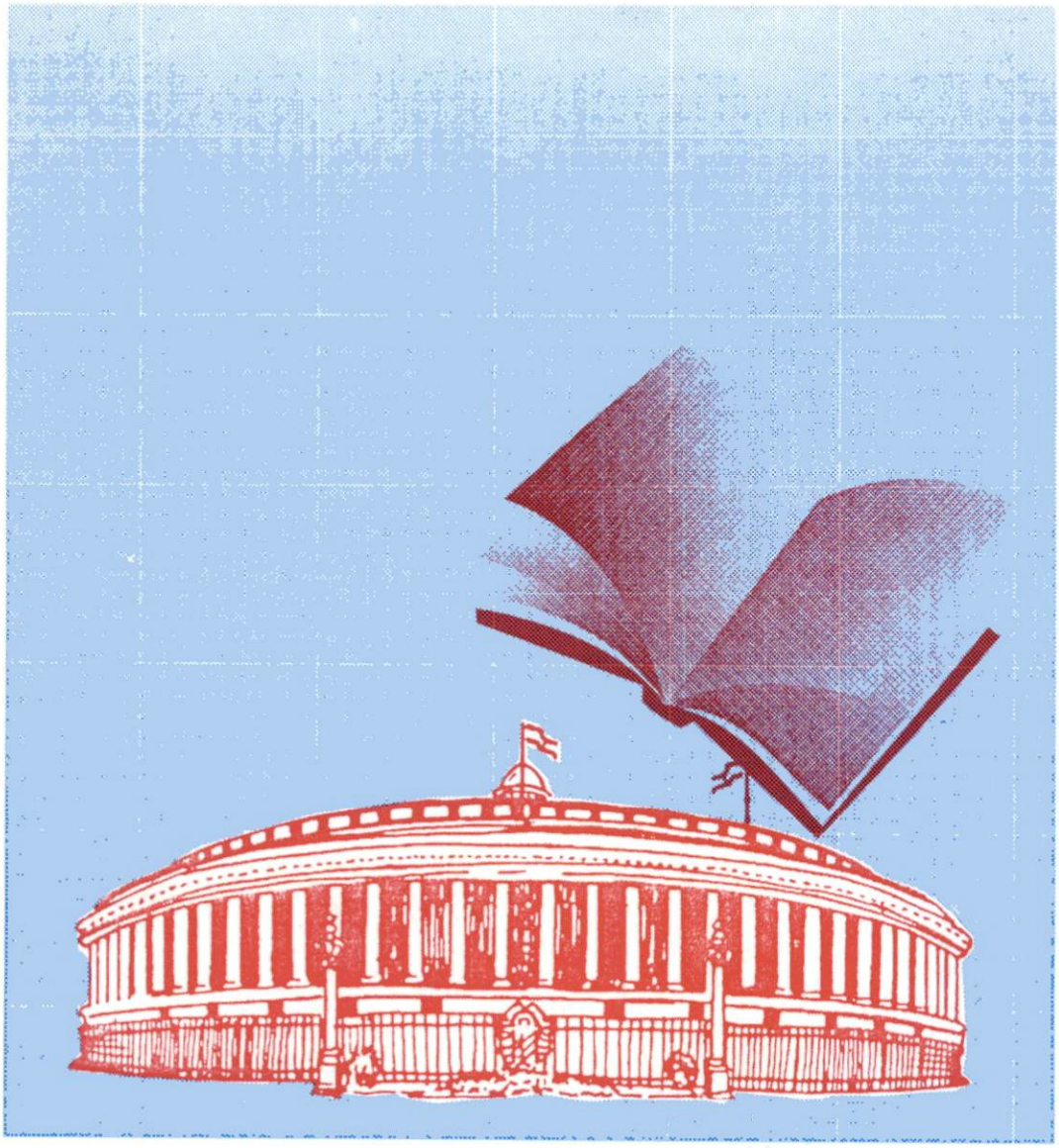
POLITICAL SCIENCE
MA [PREVIOUS]
Course III

2105



KARNATAKA STATE OPEN UNIVERSITY
Manasagangothri, Mysore - 570 006

Block - 4

ಉನ್ನತ ಶಿಕ್ಷಣಕ್ಕಾಗಿ ಇರುವ ಅವಕಾಶಗಳನ್ನು ಹೆಚ್ಚಿಸುವುದಕ್ಕೆ ಮತ್ತು ಶಿಕ್ಷಣವನ್ನು ಪ್ರಜಾತಂತ್ರೀಕರಿಸುವುದಕ್ಕೆ ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯ ವ್ಯವಸ್ಥೆಯನ್ನು ಆರಂಭಿಸಲಾಗಿದೆ.

ರಾಷ್ಟ್ರೀಯ ಶಿಕ್ಷಣ ನೀತಿ 1986

The Open University system has been initiated in order to augment opportunities for higher education and as instrument of democrating education.

National Education Policy 1986

ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯವು ದೂರಶಿಕ್ಷಣ ಪದ್ಧತಿಯಲ್ಲಿ ಬಹುಮಾಧ್ಯಮಗಳನ್ನು ಉಪಯೋಗಿಸುತ್ತದೆ.
.....ವಿದ್ಯಾಕಾಂಕ್ಷಿಗಳನ್ನು ಜ್ಞಾನ ಸಂಪಾದನೆಗಾಗಿ ಕಲಿಕಾ ಕೇಂದ್ರಕ್ಕೆ ಕೊಂಡೊಯ್ಯುವ ಬದಲು, ಜ್ಞಾನ ಸಂಪತ್ತನ್ನು ವಿದ್ಯೆ ಕಲಿಯುವವರ ಬಳಿ ಕೊಂಡೊಯ್ಯುವ ವಾಹಕವಾಗಿದೆ.

ಡಾ. ಕುಳಂದೈಸ್ವಾಮಿ

"The Open University system makes use of Multimedia in distance education system.
..... it is vehicle which transports knowledge to the place of learners rather than transport to the place of learning.

Dr. Kulandai Swamy

ವಿಶ್ವಮಾನವ ಸಂದೇಶ

ಪ್ರತಿಯೊಂದು ಮಗುವು ಹುಟ್ಟುತ್ತಲೇ - ವಿಶ್ವಮಾನವ. ಬೆಳೆಯುತ್ತಾ ನಾವು ಅದನ್ನು **'ಅಲ್ಪ ಮಾನವ'**ನನ್ನಾಗಿ ಮಾಡುತ್ತೇವೆ. ಮತ್ತೆ ಅದನ್ನು **'ವಿಶ್ವಮಾನವ'**ನನ್ನಾಗಿ ಮಾಡುವುದೇ ವಿದ್ಯೆಯ ಕರ್ತವ್ಯವಾಗಬೇಕು.

ಮನುಜ ಮತ, ವಿಶ್ವ ಪಥ, ಸರ್ವೋದಯ, ಸಮನ್ವಯ, ಪೂರ್ಣದೃಷ್ಟಿ ಈ ಪಂಚಮಂತ್ರ ಇನ್ನು ಮುಂದಿನ ದೃಷ್ಟಿಯಾಗಬೇಕಾಗಿದೆ. ಅಂದರೆ, ನಮಗೆ ಇನ್ನು ಬೇಕಾದುದು ಆ ಮತ ಈ ಮತ ಅಲ್ಲ; **ಮನುಜ ಮತ.** ಆ ಪಥ ಈ ಪಥ ಅಲ್ಲ; **ವಿಶ್ವ ಪಥ.** ಆ ಒಬ್ಬರ ಉದಯ ಮಾತ್ರವಲ್ಲ; ಸರ್ವರ ಸರ್ವಸ್ತರದ ಉದಯ. ಪರಸ್ಪರ ವಿಮುಖವಾಗಿ ಸಿಡಿದು ಹೋಗುವುದಲ್ಲ; ಸಮನ್ವಯಗೊಳ್ಳುವುದು. ಸಂಕುಚಿತ ಮತದ ಆಂಶಿಕ ದೃಷ್ಟಿ ಅಲ್ಲ; ಭೌತಿಕ ಪಾರಮಾರ್ಥಿಕ ಎಂಬ ಭಿನ್ನದೃಷ್ಟಿ ಅಲ್ಲ; ಎಲ್ಲವನ್ನು ಭಗವದ್ ದೃಷ್ಟಿಯಿಂದ ಕಾಣುವ **ಪೂರ್ಣದೃಷ್ಟಿ.**

ಕುವೆಂಪು

Gospel of Universal Man

Every Child, at birth, is the universal man. But, as it grows, we turn it into "a petty man". It should be the function of education to turn it again into the enlightened "universal man".

The Religion of Humanity, the Universal Path, the Welfare of All, Reconciliation, the Integral Vision- these ***five mantras*** should become View of the Future. In other words, what we want henceforth is not this religion or that religion, but the Religion of Humanity ; not this path or that path, but the Universal Path ; not the well-being of this individual or that individual, but the Welfare of All ; not turning away and breaking off from one another, but reconciling and uniting in concord and harmony ; and, above all, not the partial view of a narrow creed, not the dual outlook of the material and the spiritual, but the Integral Vision of seeing all things with the eye of the Divine.

Kuvempu

Karnataka State Open University

Political Science
M.A. (Previous)
Course III

Block
4

Introduction

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Block - IV

Introduction

Block IV has 5 units that is, from 10-14. Unit - 10, deals with Union Parliament, its composition and the legislative process. Unit - 11 deals with the powers and functions of the Parliament, together the relationship of two houses is explained.Unit - 12 deals with the Speaker of the Loksabha with the powers and role of the speaker. Unit - 13 explains the structure and composition of the Supreme Court of India. Last Unit - 14 deals with the independence of the judiciary and also the judicial review, which is the special power of the judiciary.

BLOCK : IV

UNIT - 10 **Union Parliament: Composition of the LokSabha and Rajya Sabha – Legislative Process in the Parliament.**

STRUCTURE

10.0. Objectives

10.1. Introduction

10.2. Composition of Lok Sabha

- 10.2.1. Direct Elections
- 10.2.2. Duration of Lok Sabha
- 10.2.3. Qualification for membership
- 10.2.4. Disqualification for membership
- 10.2.5. Sessions
- 10.2.6. Table

10.3. Composition of Rajya Sabha

- 10.3.1. Indirect Election
- 10.3.2. Term
- 10.3.3. Vacation of Seats

10.4. Legislative Process in the Parliament

- 10.4.1 Introduction
- 10.4.2 Motion for Introduction
- 10.4.3. Report by Select Committee
- 10.4.4. Passing of the Bill
- 10.4.5. Passage in the other House
- 10.4.6. Presidential Assent
- 10.4.7. Money Bill & Financial Bill
- 10.4.8. Financial Procedure

10.5. Let us Sum up

10.6. Key Words

10.7. Suggested Readings

10.8. Answers to check your progress Exercise

10.0 Objectives:

After reading this lesson, you should be able to know.

- the procedure for election to Loksabha
- the qualifications and disqualifications for membership and
- the law making procedure and process involved in it.

10.1 INTRODUCTION:

The word 'Parliament' is derived from the French word 'Parler' which means 'to talk'. The term connotes a place where people sit and discuss national and international problems and enact legislations for their country. The modern Parliamentary system owes its origin to Western countries particularly the United Kingdom. "The term 'Parliamentary' refers specially to a kind of democratic polity wherein the supreme power vests in the body of people's representatives called Parliament. The Parliamentary system is one in which the Parliament enjoys a place of primacy and pre-eminence in the governance of the State."

Under the constitution of India, the Legislature of the Union is called the Parliament. The Parliament of India consists of the President and the two houses. The Lower House is called the House of People / Lok Sabha and the Upper House is also known as the Rajya sabha /House of Elders, like the British House of Lords. The Legislative function of the President, like, the making of Ordinances while both the House are not in sitting, have been explained in the earlier chapter.

Our Constitution adopted the Parliamentary System of Government and them brought about a harmonious blending of the Legislative and the Executive organs of the State, in as much the executive power is wielded by a group of members of the Legislature and remain in power as long as they retain majority. The Parliamentary system thus lays stress on the close relationship and the interdependence of the Executive and the Legislature.

10.2 Composition of the Lok Sabha

The Lok Sabha (House of the People) is known as the 'Lower House' of Parliament and its members are elected directly by the people. Under the Constitution, not more than 530 members are to be chosen by direct election from territorial constituencies in the States, and not more than 20 members to represent the Union Territories. In addition, two members of the Anglo-Indian Community may be nominated by the President, if he is of the opinion that the Community is not adequately represented in the Lok Sabha. Thus the maximum strength of the House envisaged in the Constitution is thus 552.

The total elected strength of the Lok Sabha is distributed amoung the States in such a way that the ratio between the number of seats and the population of any State is, as far as possible, the same for all States. At present the Lok Sabha consists of 545 members.

Since the population in any given region is an ever changing factor, a way must be found of re-adjusting the representation of the electoral constituencies. This process is known as 'delimitation'. After each census, re-adjustment is done by the Delimitation Commission, which is constituted under an Act of Parliament. The work of delimitation includes determination of the number of seats in each constituency and the number of reserved seats, if any, for Scheduled Castes and Scheduled Tribes.

10.2.1. Direct Election

The election to the Lok Sabha is conducted on the basis of adult franchise; all citizens men and women who have completed the age of 18 years being eligible to vote. The Constitution provides for secret ballot. According to the present system, a candidate who secures the largest number of votes is declared elected. Some members in the Constituent Assembly had advocated the system of

proportional representation for the election of members to the Lok Sabha. This was opposed by Dr.Ambedkar as he felt that the standard of literacy in India was not ready for proportional representation. Further, proportional representation might bring about a multiplicity of political parties and a chronic instability in government, he argued.

10.2.2. Duration of The Lok Sabha

The Lok Sabha has been provided with a fixed term as in the case of the popularly elected House of Representatives in the United States of America and the House of Commons in the United Kingdom. The raison d'etre of representative democracy is that the government should obtain the mandate of the people periodically in order to continue in office legitimately. The term of the Lok Sabha in India is five years from the date appointed for its first meeting. The expiration of the period of five years operates as its dissolution. The Lok Sabha may be dissolved before the expiration of its full term under certain circumstances, when a proclamation of Emergency is in force, the term of Lok Sabha can be extended by Parliament for a period not exceeding one year at a time and not exceeding in any case a period of six months after the proclamation has ceased to operate.

10.2.3. Qualifications for Membership

There is hardly any qualification that the Constitution prescribes for a member of Lok Sabha except that he should be an Indian citizen and has completed the age of 25 years. A striking feature of the electoral law is that a candidate for election of the Lok Sabha may stand from any parliamentary constituency from any of the States in India. Such a provision, which is almost unknown in other federal States, is an incidence of the principle of single citizenship which emphasises the unity of the nation. Additional qualifications may be prescribed by Parliament by law (Article 84).

10.2.4. Disqualifications for Membership

The Constitution has laid down certain disqualifications for membership (Article 102). These are:

A person shall be disqualified – (a) if he holds any office of profit under the Government of India or the Government of any State; (b) if he is of unsound mind and stands so declared by a competent Court; (c) if he is an undischarged insolvent; (d) if he is not citizen of India, or has voluntarily acquired the citizenship of a foreign state; (e) if he is so disqualified by or under any law made by Parliament. If any question arises relating to disqualifications, the President's decision with the opinion of the Election Commission shall be final (Article 103)

10.2.5. Sessions

The Lok Sabha shall meet at least twice a year and the interval between two consecutive sessions shall be less than six months. The time and place of meeting will be decided by the President who will summon the House to meet. He has also the power to prorogue the House.

The Lok Sabha can also be summoned in a special session for disapproving the proclamation under Article 352, if a notice in writing signed by not less than one-tenth of the members of the Lok Sabha is given to the Speaker. When such a notice is given, the President must summon the session within 14 days.

TABLE – 1

10.2.6. REPRESESENTATION OF STATES AND UNION TERRITORIES IN LOK SABHA (2001)

Sl. No	States/Union Territories	Number of Seats	Sr.No No	States/Union Territories	Number of Seats
1	Andhra Pradesh	42	19	Nagaland	01
2	Arunachal Pradesh	02	20	Orissa	21
3	Assam	14	21	Punjab	13
4	Bihar	40	22	Rajasthan	25
5	Chhattisgarh	11	23	Sikkim	01
6	Goa	02	24	Tamil Nadu	39
7	Gujrat	26	25	Tripura	02
8	Haryana	10	26	Uttaranchal	05
9	Himachal Pradesh	04	27	Uttar Pradesh	80
10	Jammu & Kashmir	06	28	West Bengal	42
11	Jharkhand	14	29	Delhi	07
12	Karnataka	28	30	Dadar & Nagar Haveli	01
13	Kerala	20	31	Daman & Diu	01
14	Madhya Pradesh	29	32	Andaman & Nicobar Islands	01
15	Maharashtra	48	33	Lakshadeep	01
16	Manipur	02	34	Pondicherry	01
17	Meghalaya	02	35	Chandigarh	01
18	Mizoram	01		**Total Plus 2 nominated Anglo Indians**	**543+02 = 545**

10.3. Composition of the RAJYA SABHA

Introduction:

The Rajya Sabha (The Council of States) is the 'Upper House' of Parliament and is sometimes called the 'House of Elders'. It was the Government of India Act, 1919 which established the first second chamber – the Council of States consisting of 60 members, nominated and elected. High property qualifications were prescribed for voters to the Council of States. The Government of India Act of 1935 provided directly elected Council of States as the second Chamber consisting of 156 members from provinces and 104 members from princely states for a term of 9 years, one third replacing at the end of every three years. The Draft Constitution of India accepted the second chamber and an elaborate justification for its adoption was given by the architects of the Constitution. "The most that we expect the second chamber to do" said Sir Gopalaswamy Ayyangar, "is perhaps to hold dignified debates on important issues and to delay legislation which might be the outcome of the passions of the moment." And "to provide opportunity to seasoned people who may not be in the thickest of political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with the House of People'.

The maximum membership of the Rajya Sabha is to be not more than 250. According to Article 80 of the Constitution, the Rajya Sabha shall consist of (a) twelve members to be nominated by the President having special knowledge or practical experience in respect of literature, science, art and social service; and (b) not more than two hundred and thirty-eight representatives of the States and of the Union Territories.

10.3.1. Indirect Elections

The nominations made by the President are to be amongst persons having special knowledge or practical experience in literature, Science, art and social service. The representatives of

States shall be elected by the respective M.L.A.'s of the State in accordance with the system of proportional representations by means of single transferable vote. The same system is followed by the Union Territories, but instead of the M.L.A's these members are elected indirectly by the electoral college of that Territory.

The Council of State i.e. the Rajya Sabha thus reflects the federal character by representing the units of the federation except that we do not follow the American principle of equality of state representation in the second chamber.

The Present strength of the Rajya Sabha is 245. Of these, 233 are elected by the various States Legislative Assemblies, thus making the Rajya Sabha predominantly an indirectly elected body.

Term

Unlike the Lok Sabha which has a fixed term of five years, the Rajya Sabha enjoys a continuity of life. Under the Constitution, the Rajya Sabha cannot be dissolved. There is also no provision in the Constitution for the abolition of the Rajya Sabha like that for a State Legislative Council. The term of the members of the Rajya Sabha is six years and in this respect it resembles the Senate of the United States whose members are also chosen for six years. In fact, the Rajya Sabha is a permanent body like the American Senate. As, nearly as possible one-third of the members of the Rajya Sabha like the members of the American Senate retire after every two years. In other words, at the end of every second year, one-third of the members are re-elected. This provision enables the Rajya Sabha to retain its political complexion in a more stable manner than the Lok Sabha which after every election is a completely new House.

10.3.3. Vacation of Seats by members:

A members of the Parliament, whether of Lok Sabha or Rajya Sabha shall vacate his seat in case of (a) Dual membership of either at Union level or at Union and state level, (b) if a member is

disqualified as per Art.102, (c) if a member resigns, (d) member absents himself for 60 days without the permission of the House from attending the meetings of the House.

Under the Salaries and Allowances Act, 1954, as amended by Act 16 of 1999, a M.P. is entitled to Rs.2,500/- per mensem for the term of his office, plus an allowance of Rs.150/- each day whenever he is transacting his duties as a member of Parliament. Besides he is entitled to T.A., free transit by Railways, Steamer and other facilities as per the Act. He is entitled to a pension on a graduated scale for each five year term. The salaries and allowances of the members of parliament was revised in a big way recently.

10.4. Legislative Procedure in Parliament

10.4.1 Introduction:

The evolution of the legislative process could be traced back to 1921 with the coming of the first Legislative Assembly of India. The main source of Indian legislature has been Government of India Act 1919, which the Constituent Assembly of India adopted in 1947 after certain modifications, substantial alterations have been made later, for better fulfillment of its growing tasks .

As per the process, before the House meets for business, each member is given the list of business for the day. There has been separate time allotted to Private Members Business. The Day begins normally with the most exciting and interesting 'Question Hour' where questions relating to whole range of national and international – administrative policies and activities are raised falling in three categories. 1) Starred question where an oral answer is desired 2) Unstarred question where a written answer is expected to be laid down 3) Short notice question relates to matter of urgent public importance. The admissibility of the Question rests with the Speaker.

The stages of the legislative process relating to bills other than Money Bills are as follows.

The Passing of the laws takes up most of the time of the Parliament. A Bill has to go through a long process of preparation before it is introduced. Its initiation takes place in the Ministry dealing with its subject-matter, but it does not have the shape of a Bill at this stage. It is a mere proposal for passing a law to implement a policy. The sponsoring Ministry must, however, consult the Ministry of Law, whose function it is to give advice on the proposed legislation and its constitutional implications, if any. The final proposals are then prepared and a summary of the proposals is submitted to the Cabinet for approval.

When Cabinet's approval has been obtained, the proposals are referred to the Ministry of Law with a statement of the exact purpose and form of the legislation. The Ministry of Law is requested to draft a Bill. During the process of drafting, there are regular consultations between the Ministry of Law and the Ministry initiating the proposal. Long patience and hard work go into the preparation of a draft Bill. The final draft is then printed. It cannot, however, be introduced in Parliament unless it is accompanied by a 'Statement of Objects and Reasons' sanction or recommendation in cases where this is required by the Constitution. A financial memorandum is also necessary where expenditure is involved. Finally, if the Bill proposes delegation of legislative power, a memorandum explaining the scope of the delegation is also essential.

10.4.2. Motion for Introduction:

The first step in the introduction of a Bill is taken by the Minister concerned through a formal motion for leave to introduce it. Though, the motion for leave to introduce a Bill is not generally opposed at this stage, members have sometimes taken objection to the introduction of the Bill which is also called the first reading of the Bill.

10.4.3. Report by Select Committee:

Once leave to introduce a Bill has been obtained and the Bill introduced, there are three courses open to the House. It may take up the Bill for consideration, refer it to a Select Committee of the House or to the Joint Committee of the two Houses, or it may circulate the Bill for eliciting opinion thereon. Any of these courses may be taken by moving a motion. At this stage, the principle of the Bill and its provisions maybe discussed generally, but the details cannot be discussed further than is necessary to explain its principles. If a motion for circulation is adopted and the Bill is duly circulated, the next step is for it to be referred to a Select or Joint Committee, unless the Speaker allows a motion to be made for the Bill to be taken into consideration. It is usual for important Bills to be referred to a Select/ Joint Committee. For every Bill so referred, an ad hoc Select/Joint Committee is constituted and such committees normally consist of 20 to 45 members. The Minister for Parliamentary Affairs offers about one-fourth of the seats to the opposition parties and chooses the rest from among members of his own (ruling) party. The Chairman of the Select Committee is appointed by the Speaker in the Lok Sabha and Chairman in the Rajya Sabha as the case may be from among the members of the Committee. The proceedings of such Committees are held in Camera and are confidential till such time as the report is presented to the House.

The Select and Joint Committees consider the Bill clause-by-clause, just as the two Houses of Parliament do.

Amendments can be moved to the various clauses by members of the Committee. But before taking up the Bill for Clause-by-clause scrutiny the Committee may invite written memorandum from or take oral evidence of associations, public bodies or experts who are interested in the Bill. After the Bill has been thus considered, the Committee submits its report to the House. Members who do not agree with the majority report append their minutes of dissent to the Report.

10.4.4. Consideration by the House

On receipt of the Committee's report, the Bill as reported by the Committee is taken up for consideration. Each clause is considered and put to vote. At this stage, amendments may be moved. The Presiding Officer is empowered to decide which amendments may be moved, although he may not always exercise this power.

This is the stage when the Bill undergoes substantial changes, should they be found necessary. It is also the most time-consuming stage. Once the Clause-by-clause consideration is over and every clause is voted, the second reading of the Bill is over.

Third Reading: The final or 'third reading' stage of a Bill is reached only after the clauses (with amendments), the Schedules, if any, the enacting formula or preamble, if any, and the title of the Bill have all been put to vote (in the form that they stand part of the Bill) and agreed to by the House. The third reading is in effect a motion that the Bill be passed. The discussion is then restricted to the submission of arguments either in support of the Bill or for its rejection. No reference to details of the Bill can be made at this stage, except where it is necessary for the purpose of a Member's arguments.

10.4.5. Passage in the other House

After a Bill has been considered and passed by one House, it is sent to the other for its concurrence, where it has to pass through a similar procedure. The House may agree to it or it may sent it back with amendments for consideration. When the Bill is finally passed, it is submitted to the President for his assent.

Where a Bill is returned with amendments by Rajya Sabha to the Lok Sabha, and the latter agrees to the amendments made, the Bill is passed as amended, and a message to the effect is sent to the Rajya Sabha. In case of disagreement between the Houses on a Bill, other than Money Bill and a Constitution Amendment Bill there is a provision in the Constitution for a joint sitting of the two Houses, where the fate of the Bill is finally decided.

10.4.6 Presidential Assent

Once the Presidential assent is given to the Bill, it becomes an Act of Parliament. The President can except in the case of a Money Bill, withhold his assent to a Bill and return the Bill with his recommendations. If the Houses pass the Bill again with or without amendments the President cannot withhold assent therefrom.

10.4.7. Money Bill and Financial Bill

As per Art 110 of our Constitution a Bill is a Money Bill if it deals with

1. Imposition, abolition, remission, alteration or regulation of any tax
2. Regulations of borrowing of money by the Government.
3. The custody, payment of money or withdrawal from the contigency or consolidated fund of India.
4. The appropriation of money out of Consolidated Fund of India. (CFI)
5. Declaration of expenditure to be expenditure charged on consolidated fund of India.
6. The receipt of money on account of CFI or Public Account issues of such money or the audit of Union or of a State.

In case a question arises regarding a Bill being a money Bill under Art 110, the decision of the Speaker of House of People is final and cannot be questioned. Thus those Financial Bills are Money Bills which bear the certificate of the Speaker.

Money Bills: While Money Bills attracting the provisions of Article 117(1) of the Constitution can be introduced only in the Lok Sabha, all other Bills may originate in either House. Regarding Money Bills, the Rajya Sabha may, however, make recommendations, within 14days of the receipt of the Bill from the Lok Sabha but such recommendations are not binding on the Lok Sabha. Disagreement between the two Houses as to the amendment of a Bill other than

Money Bill is resolved at a joint sitting of both Houses, presided over by the Speaker of the Lok Sabha.

Financial Bills: are Bills which do not receive the Speaker's Certificate as per Art 117 of the Constitution which says that a Financial Bill is a Bill which contains matters specified in Art 110 but does not consists solely of those matters or any ordinary Bill containing provisions of expenditure from the Consolidated Fund of India.

10.4.8. Financial Procedure

The power to authorise the raising and spending of money rests with the Lok Sabha. The initiative must, of course, come from the executive in the form of the Budget. In the words of the Constitution, "The President shall, in respect of every financial year, cause to be laid before both the Houses of Parliament a statement of the estimated receipt and expenditure of the Government of India for that year, referred to as the 'annual financial statement'. A distinction is made between votable expenditure and expenditure charged on the Consolidated Fund of India. While the former is voted upon, the latter is not subject to voting, although it is included in the statement of expenditure laid before the House and can be discussed.

Demand for Grants

The estimates of votable expenditure are submitted to the Lok Sabha in the form of Demands for Grants. When the Grants have been voted, an Appropriation Bill is brought forward, the enactment of which alone confers the authorisation to draw money from the Consolidated Fund. The process for the presentation and passage of Supplementary, Additional and Excess Grants is the same as described above.

The Budget

The day the Budget is presented in Parliament is probably the year's most exciting day not only for the legislators but even more so for the business community and the common people all over the country. Since the Budget, with its proposals for fresh taxation or relief from it, affects the entire population, the visitor's galleries in the Lok Sabha are always packed to capacity when the Finance Minister makes his Budget Speech. The members are given copies of the Budget for study. The Budget remains a closely guarded secret till the Finance Minister presents it in Parliament. The Minister's Speech contains explanations and details of the proposals. An Explanatory Memorandum is also prepared for the benefit of Members of Parliament.

The Budget is presented in two parts – the General Budget and the Railway Budget – the procedure for both being similar. The Budget is not merely a list of proposals for taxation, it also contains a full statement of estimates of revenue and expenditure. It is discussed in a debate in which a large number of Members of the House participate. This discussion takes place a few days after the presentation of the budget and encompasses both the votable and non-votable items. This is the stage when a general appraisal of the Government's financial policy is made.

Voting of Grants

The next step after the general discussion is the voting of grants. The demands for Grants is made by each Ministry in three parts. The first contains a statement of the total estimated expenditure to be voted by the House. The second gives the sub-heads and the third provides the details of the sub-heads. The demand is made by introducing a motion.

Cut Motions

The debate at the Demand stage is narrowed down to each head and is further limited to the particular subject of the motion when cut motions are moved. A 'Cut motion' is also a device which members can employ to draw attention to specific grievances or criticise particular policies of the Government. It may be 'Disapproval of Policy Cut', the cut motion in such cases is that "the amount of the Demand be reduced to Re.1." The second type of Cut motion is known as the 'Economy Cut' and says that the Demand be reduced by a specified amount representing the economy that can be effected. A third type is for a "Token Cut". If the motion seeks to reduce the demand by a cut of Rs.100, it aims to ventilate a specific grievance which is within the sphere of the responsibility of the Government and such a motion is known as a "Token Cut". The House allots the time that may be given to each Ministry's Demands, both the opposition and the Government being consulted in the matter.

Vote on Account

The process of voting of Demand continues for a long time while day to day expenditure of the Government Departments cannot wait till the Budget is finally passed. To meet this difficulty a new device was introduced in 1950 known as the 'Vote on Account'. The passing of the Vote on Account followed by the Appropriation (Vote on Account Act) authorizes the Government to draw on the Consolidated Fund of India, generally for a period of two months. The vote on Account which is usually passed without debate, enables the House to consider the Budget at leisure.

Appropriation Bill

The Appropriation Bill constitutes the final step in financial legislation. It gives legal effect to the voted demands and authorises the supply of money from the Consolidated Fund.

The Finance Bill

The passing of the Appropriation Bill means that Parliament has authorised all expenditure. Approval of the Government's proposals for raising revenue has, however, yet to be given. It is the Finance Bill which contains these proposals and this Bill is introduced in the Lok Sabha after the Finance Minister's Budget speech. Consideration of the Bill is taken up after the Appropriation Bill has been passed. It follows the usual procedure for Bills. Passing of the Finance Bill is the final act of Parliament's financial procedure.

10.5. Let us Sum up.

The composition of the Indian Parliament consisting of the President and the two Houses, the Lok Sabha and the Rajya Sabha has been evolved to suit the changing demands of the polity. Hence the Indian Parliament differs from its British counter part in a substantial manner. The Indian Legislature is the pivot on which the political system revolves. Like most Parliaments in federal countries, the Indian Parliament's Composition is in conformity with the federal principle. It involves both direct and indirect representation, as well as nominated members representing special knowledge. Hence the Indian Parliament is the most representative assembly.

10.5. Key Words

Parliament	–	An elected sovereign body whichpasses bills and debates issue concerming the nation
Lok Sabha	-	House of people / Lower House
Rajya Sabha	-	House of Lords / Upper House
Raison'd'etre	-	Reason / Rationality.
Summon	-	Call upon / Gather up / Demand the attendance of
Prorogue	-	dismiss at the end of a Session without dissolution

Bill	-	Drafted Proposal
Motion	-	Proposal
Assent	-	Agree / Concur
Memorand	-	Informal letter

Check Your Progress - 1

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1) Discuss the Composition of Lok Sabha

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2)Discuss the Composition of Rajya Sabha.

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3)Examine the process of Legislation in the Indian Parliament.

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10.7 Suggested Reading

Basu D.D.	:	Introduction to the Constitution of India – 19th Ed. 2001.
Pylee M.V.	:	Constitutional Government in India (2000)
Granville Austin	:	The Indian Constitution: Corner Stone of a Nation.
J.C.Johari	:	Indian Government and Politics
Subhash Kashyap	:	Our Parliament.
Government of India (Pub.)	:	The Constitution of India.
B.L.Fadia	:	Indian Government and Politics.

10.8. Answer to check Your Progress Exercise

Check your progress - 1.

1) See Section - 10.1 and 10.2.

2) See Section- 10.1 and 10.3

3) See Section- 10.4 and 10.4.7.

NOTES

UNIT - 11 Powers and Functions of Parliament:Relationship between the two Houses.

STRUCTURE

11.0. Objectives

11.1. Introuction

11.2 Powers and Functions of the Parliament

- 11.2.1. Legislative Powers
- 11.2.2. Executive Powers
- 11.2.3. Financial Powers
- 11.2.4. Judicial Powers
- 11.2.5. Functions of Parliament

11.3. Relationship between the two Houses.

- 11.3.1. Financial Powers
- 11.3.2. Legislative Powers
- 11.3.3. Control over Executive
- 11.3.4. Electoral Powers
- 11.3.5. Emergency Proclamation
- 11.3.6. Special Powers

11.4. Let us Sum up

11.5. Key Words

11.6. Suggested Readings

11.7. Answers to check your progress Exercises

11.0. OBJECTIVES:

After going through this unit, you will know.

- the powers and functions of the Parliament
- the relationship between the two Houses and
- an evaluation of the importance of the two Houses.

11.1. INTRODUCTION

As the Constitution of India reposes its belief in the principles of division of power and Judicial Review, the Parliament in itself cannot be considered to be a sovereign body on it functions within the limits of the written Constitution. The important powers of the Indian Parliament could be enumerated as follows.

11.2. POWERS AND FUNCTION OF PARLIAMENT

11.2.1 Legislative Power: The function of the Parliament relates primarily to law making and Legislation. The Parliament is guided by the Constitution by classifying the subjects for legislation into three lists 1) The Union List 2) The State List and 3) The concurrent List.

The parliament has the exclusive authority to make laws on matters mentioned in the Union List. Although the state has the authority to legislate over the items of the State List, yet the Parliament in special circumstances may make laws on subjects mentioned in the State List. This could be done (a) When the Rajya Sabha resolves by a special majority in the national interest (b) in case when the Emergency is proclaimed. During emergency, the Parliament can direct the State Governments in matters of exercising executive powers (c) in case of President's rule in a State, the Parliament can make laws in case of the respective state. In case of the concurrent list, the Parliament and the State have the authority to make laws on subjects referred in the list, but is clearly laid down, that laws made by the Parliament relating to subjects in this list shall prevail, except in cases where state legislation has been reserved for President's assent.

Besides these three list, the Constitution also talks of 'Residuary Power' of the Centre relating to any matter that has not been mentioned in the three lists. The authority of Residuary Power therefore solely belongs to Parliament in the sense that, it can make laws / legislate on matters not enlisted in any of the three lists.

The Parliament has the power to legislate for implementing any treaty, agreement or convention with any country made at international conference, association or any other body on any subject even if it falls in the state list.

If two or more State Legislatures consider that a particular matters should be regulated by the Parliamentary legislation, they can do so by passing a resolution to that effect. The legislation so made are applicable to only those states which have asked for it or have voluntarily accepted it.

The Constitution empowers the Parliament to make changes in the boundaries of the State and effect changes in the name of existing States. It can create new States by uniting two or more states. It can regulate the citizenship, amend the Constitution and even the process of amending the Constitution.

11.2.2. EXECUTIVE POWERS

The real or the political Executive in India is the Council of Ministers and head of the Government is the Prime Minister. The ultimate control of the Executive by Parliament is ensured by the provisions or the Constitution that the Government is answerable for all its acts or those of its officials to Parliament.

Parliament exercises control over the Executive through questions, calling attention notice and other procedures like votes of censure, adjournment notions and numerous other procedures. It can also prevent the Executive from takings course of action by refusal to give its consent. Control is also exercised through the various Committees of Parliament, and more particularly by the Estimates

Committee, the Public Accounts Committee and the Committee on Public Undertakings.

11.2.3. FINANCIAL POWERS

The Parliament also controls the finances of the Union. It sanctions money to the Government to enable it to run the administration. It may pass, reduce or reject the demands for grant presented to it by the Government, but it cannot increase them. No taxes can be collected and no money can be spent without the authority of the Parliament and not merely expressed by a Resolution.

The two Houses of Parliament enjoy co-equal power and status in all spheres except in financial matters. Accordingly, the following limitations have been placed on the power of Rajya Sabha.

1) A Money Bill cannot be introduced in Rajya Sabha.
2) Rajya Sabha has no power either to reject or amend a Money Bill. It can only make recommendations on the Money Bill. If such a Bill is not returned to Lok Sabha within a period of 14 days, the Bill shall be deemed to have been passed by both the Houses at the expiration of the said period in the form in which it was passed by the Lok Sabha.
3) Whether a particular Bill is Money Bill or not is to be decided by the Speaker of Lok Sabha.

11.2.4. JUDICIAL POWERS

Parliament has power to make laws regulating the Constitution, organisation, jurisdiction and powers of the Courts. It was laid down in the Constitution that the number of judges other than the Chief Justice in the Supreme Court would not be more than seven. Parliament was, however, empowered to prescribe a larger number of judges by law. Under this provision, Parliament passed the Supreme Court (Number of Judges) Act, 1956, increasing the number of other judges to ten and subsequently by various amendments to this Act, to twenty-five. Under the Constitution,

Parliament may by law extend the jurisdiction of a High Court to establish a common High Court for two or more States, and constitute a High Court for a Union territory. A judge can be removed from his office by the President, if a joint address passed by both Houses of Parliament with a special majority is presented to him. Parliament may by law provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States.

Thus, the Parliament of India has important powers and functions, but it is chiefly a law making body. But the laws made by the Parliament to be valid must conform to the Constitution. It is the Courts that decide whether an enactment is constitutional or not. If it is inconsistent with the provision of the Constitution, the Court can declare the Enactment to be void. This does not mean that the Parliament is subordinate to other bodies or it is not sovereign, but we may in fact say that the Indian Parliament is 'Sovereign within its limits.'

11.2.5. FUNCTIONS OF THE PARLIAMENT

The word 'Parliament' that originally meant 'a talk', is derived from the French word parler (to speak or parley) "Parliament," Ruskin said, "is a talking shop." It is literally true as much as parliament is meant for talking. We in our Parliamentary system use the terms 'first reading', 'second reading' and 'third reading of Bills. The Bills have to be read to members of "Parliament'; they are not supposed themselves to read. When a Bill is read to members the first time, it called, the first reading and so on. The whole idea is that in the Parliament we talk and discuss, try to persuade and take decisions through discussion and persuation.

The functions of Parliament today can be described as the legislative or law-making – the traditional function; legitimising function – legitimising what the government does; representation of function which is considered to be most important function and from which

follows the grievance ventilation or grievance redressal function; the national integrational function; the conflict resolution function and so on. Parliament is the link between the Government and the constituents, between the people and the Government. It performs the function of being a communication link, of being the educator of the people, making them aware of political issue.

Parliament has the power of the purse. If the word 'control' can be used in any sense in regard to Parliament, it is in the sense of financial control. No taxes can be collected and no money can be spent without the authority of the 'Parliament'. But a Parliament in our country is a large body. It is not merely a fault-finding institution. It is not in the nature of an auditor who looks at the cents and pennies. It is concerned with the larger issues and it is engaged in the common task of serving the people of the country, to see that its power is not misused, that the policies are properly implemented and that the public money properly spent.

The Government to govern. The Government consisting of the Council of Ministers is, however, responsible and answerable to the popular House of the Parliament for all its acts of omission and commission. And, if the Government loses the confidence in Lok Sabha, it has to go.

Lastly it is the function of the Parliament to exercise supervision over administration. But Parliament is not supposed to interfere with the day to day administration. Parliamentary surveillance of administration has become effective only ex-post facto. It comes into the picture only after an Act has been done and then the administration is called to account why it was done, whether it was in accordance with the policy laid down by the Parliament.

11.3. RELATIONSHIP BETWEEN THE TWO HOUSES

In India, the Rajya Sabha in relation to Lok Sabha is nowhere closer to be as powerful as the American Senate, yet since the two Houses continue to exist, the importance of the relationship between

the two Houses is conveyed. Hence it requires us to understand the relation between the two Houses on the basis of their powers and functions.

11.3.1. FINANCIAL POWERS

In the legislative sphere, the Rajya Sabha enjoys an equal status with the Lok Sabha in all respects except in certain financial matters. A Money Bill or a Financial Bill cannot be introduced in the Rajya Sabha. It is to be introduced and transmitted to the Rajys Sabha for its recommendations. The Lok Sabha then can either accept or reject its recommendations, if any, made by the Rajya Sabha. Under the procedure established by the Constitution, however, the Rajya Sabha is not altogether prevented from scrutinizing Money Bill. But its power is only of an advisory character. Every Money Bill passed by the Lok Sabha will go to the Rajya Sabha for its consideration and within 14 days after the receipt of the Bill, the Rajya Sabha must take whatever action it deems fit. It may pass it in which case the Bill goes to the President for his assent. If the Bill is amended or rejected by the Rajya Sabha it goes back to the Lok Sabha where it is reconsidered and voted by simple majority and sent to the President. Thus, in financial matters, the Rajya Sabha has only an advisory role and the Lok Sabha has the final say. The Rajya Sabha can delay Money Bill by 14 days only. Dr.Ambedkar has said: "if the Upper House wants to express an opinion, fourteen days is more than enough period."

A mere perusal of the financial provisions in the Constitution cannot give an adequate idea of the impact of the discussion in the Rajya Sabha on the financial affairs of the country. The lengthy debates on the Budget and Financial Bill in the Rajya Sabha take in all aspects of the financial affairs of the country and the Government takes note of every suggestions put forward in course of these discussions. By discussing the budgetary proposal, the Rajya Sabha often criticises the Government's whole economic policy. The Rajya

Sabha's members in the public Accounts Committee and the Committee on Public Undertakings have done commendable work in this regard.

11.3.2. LEGISLATIVE POWERS

The Rajya Sabha enjoys so-equal powers with the Lok Sabha in the field of ordinary legislation. An ordinary bill or a non-money bill can be introduced in the Rajya Sabha and it has to approved in both the House of Parliament before it becomes an Act. The Lok Sabha has no power to overrule the Rajya Sabha.

In case of disagreement between the two House on any such bill, it has to be resolved in a joint sitting in which each member of each House has to vote. This obviously has given an advantage to the Lok Sabha which is more than twice the size of the Rajya Sabha. Those who argue that in a joint sitting, the view of the Lok Sabha will invariably prevail because of its numerical superiority, ignore the fact that a disagreements may arise on important issues. It is possible to contemplate a situation in which the decision of the Lok Sabha may be outvoted in a joint sitting of the two Houses.

With regard to the amendment of the Constitution both the Rajya Sabha and Lok Sabha have been placed at par. Though it is true that most of the Bills to amend the Constitution had been introduced in the Lok Sabha, both the Houses have got equal powers with regard to the amending process and in order to amend the Constitution, a Bill must be passed by both the Houses of parliament. The provision of Article 108 will not apply in such cases.

11.3.3. CONTROL OVER THE EXECUTIVE

The Executive is responsible to the Lok Sabha alone. The Rajya Sabha cannot make or unmake governments. A vote of no-confidence against the government, if passed by the Rajya Sabha would be a mere expression of opinion. The Lok Sabha alone can pass a vote of Censure and no-confidence against the Cabinet. The

Rajya Sabha can simply discuss the government policy. "The Confidence of Parliament means the confidence of the Lok Sabha, and responsibility of the executive means responsibility to the Lok Sabha." According to K.V.Rao, "The Rajya Sabha can only embarrass the ministry under certain circumstanes. The Council of Ministers is under no obligation to resign if it is defeated at the floor of this House." Not that the Ministers, if they so choose, can ignore the Rajya Sabha. The Rajya Sabha has every right to be fully informed of all matters connected with Government's activities which are raised on its floor.

11.3.4. ELECTORAL POWERS

The electoral powers of the Rajya Sabha are the same as the Lok Sabha. Its elected members along with the elected members of the Lok Sabha participate in the election of the President. Even the Vice-President is elected by the members of an electoral college consisting of the members of both the Houses of Parliament. Its members also elect one of its members as Deputy Chairman.

The Rajya Sabha also plays an important role in the impeachment of the President. According to Article 61 of the Constitution the resolution for the removal of the President must be passed by each House by a majority of not less than two-thirds of the total membership of each Houses separately which means without the concurrence of the Rajya Sabha, the President cannot be impeached.

11.3.5. APPROVAL OF EMERGENCY PROCLAMATION

The power of the Rajya Sabha is equal to that of the Lok Sabha so far as the approval of emergency proclamations under Articles 352, 356 and 360 is concerned.

The Constitution assigns some special powers to the Rajya Sabha in this context. It is provided that if a proclamation of emergency is issued when the Lok Sabha remains dissolved or its

dissolution takes place during the period of one month therefrom and a resolution approving the proclamation is passed by the Rajya Sabha, the proclamation would be legally effective upto a maximum of 30 days from the dates on which the Lok Sabha sits after the reconstitution. The Constitution by this provision assigns a special role to the Rajya Sabha when the Lok Sabha stands dissolved. There is similar provision n case of failure of Constitutional machinery in States. For example, in 1977 after the dissolution of Lok Sabha, the session of the Rajya Sabha was summoned for getting its approval for extension of the proclamation of President's rule in Tamil Nadu and Nagaland which was to expire on March 10 and 14, 1977 respectively.

11.3.6. SPECIAL POWERS

Besides, there are two other provisions which confer upon the Rajya Sabha, as the sole representative of the States, power in its own right and to the exclusion of the Lok Sabha. These are of considerable importance from a constitutional point of view.

Under Article 249, the Rajya Sabha may by a resolution supported by not less than two-thirds of the members present and voting declare that it is necessary or expedient in the national interest that the Parliament should make law with respect to any matter enumerated in the State List specified in the resolution. After such a declaration, it is lawful for the Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force. Such a resolution will remain in force for such period not exceeding one year as may be specified there in but its period can be extended by one year at a time by passing a further resolution. This constitutional provision specifically recognises the Rajya Sabha as the representative of the States and on the authority of the Rajya Sabha in that capacity the Parliament becomes competent to legislate on a subject exclusively reserved for the State Legislatures.

The Second exclusive power of the Rajya Sabha is connected with the setting up of All India Services. The Special characteristics of an All India Service is that it is common to the Union and the States. As such, the setting up of such a service affects the powers of the States. Therefore, here again, the Council is given the power to decide by a resolution supported by a two-thirds majority the question of setting up of an All India Service. Hence, any laws connected with such a service can be initiated only if the Rajya Sabha passes such a resolution. The Rajya Sabha passed such resolution on two occasions; one in 1961 for the creation of (I) the Indian Service of Engineers, (ii) the Indian Forest Service, and (iii) the Indian Medical and Health Service; and the other in 1965 for the creation of the Indian Agricultural Service and the Indian Educational Service.

"In both these cases, the Lok Sabha comes into the picture only after the Rajya Sabha has acted and the Lok Sabha does not share the power of the Rajya Sabha in deciding as to what action is necessary under both the contingencies".

The more important of the powers, privileges and immunities of Parliament may be enumerated as follows:

1. *Freedom of Arrest:* This privilege applies only in civil cases of a civil nature and operates during sessions of Parliament and 40 days before and after. A member cannot, however, be arrested inside Parliament, without the permission of the Speaker/Chairman, even if he is wanted in a criminal case.
2. *Powers to Summon Persons:* The House and their Committees have the right to summon any person to give evidence and information to produce documents, or to answer a charge of breach of privilege or contempt of the House, or to answer a charge or breach of privilege or contempt of the House. Disobedience is punishable by the House.
3. *Power to punish for Breach of Privilege:* This is the most effective of Parliament's powers. It can try and punish any

person for contempt or breach of Parliamentary privileges, committed whether inside or outside thes Parliament.

4. *Right to Regulate its own Internal Proceedings:* No executive or judicial authority in the land has any right to interfere in Parliament's internal matters.
5. *Right to Exclude Strangers:* The inviolability of the House by outsiders is strictly maintained. Visitors must obtain passes for entry into the public galleries. If a House so desires, outsiders can, at any time, be expelled from the public galleries of the House.

11.4. LET US SUM UP

Taking into consideration the powers, functions and the relationship between the two Houses, we see that though the Rajya Sabha is not on par with the American Senate yet it is not as inferior as that of the House of Lords. The Lok Sabha has certain special functions relating to Money Bills, while the Rajya Sabha has special powers under Act 249 and Act 312 of the Constitution, whereby it provides temporary Union Legislation with respect to State List in the national interest and to create one or more All India Services common to the Union and the States.

Not withstanding these special functions yet the theory of equality – of the two houses is not possible due to its very composition. Hence, doubts raise about the necessity of the second chamber on the basis of its performance, it has often been criticized by many to be a failure to act as a champion of the interests of the State, useless, as a revising chamber, a pale shadow of the Lok Sabha, a delaying chamber and unsure of nomination. Yet, the record of the Rajya Sabha has reflected its remarkable stature, it has played its role effectively and has proved equal to the task, as a co-partner of the Lok Sabha. Both have to function harmoniously to ensure the success of Parliamentary democracy in our country.

11.5. Key Words

1. Emergency - An extraordinary event needing prompt action
2. Impeachment - A process by which the highest political functionar's can be removed by the Parliament.
3. Legislature - Law making organ of the government
4. Executive - Law enforcing organ of the government
5. Juidiciary - Law interpreting organ of the government
6. Electoral College - Body of electors

Check Your Progress -1

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1) Examine the Legislative Power of the Parliament.

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2) Discuss the Executive powers of the Parliament.

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3) Discuss the Financial powers of the Parliament.

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4) Discuss the Judicial powers of the Parliament.

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5) Highlight the powers of the Parliament.

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6) Evaluate the relationship between the two Houses.

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11.6. SUGGESTED READINGS

Basu D.D.	:	Introduction to the Constitution of India – 19th Ed. 2001.
Pylee M.V.	:	Constitutional Government in India (2000)
Granville Austin	:	The Indian Constitution : Corner Stone of a Nation.
J.C.Johari	:	Indian Government and Politics
Subhash Kashyap	:	Our Parliament.
Government of India (Pub.)	:	The Constitution of India.
B.L.Fadia	:	Indian Government and Politics.

11.7. Answer to check Your Progress Exercise

Check your progress - 1.

1) See Section 11.1.1

2) See Section 11.1.2

3) See Section 11.1.3

4) See Section 11.1.4

5) See Section 11.1. 1 to 11.1.4 briefly

6) See Section 11.2 to 11.2.6 including 11.3

NOTES

UNIT - 12 The Speaker of the Lok Sabha : Choice,Powers and Role of Speaker.

STRUCTURE

12.0. Objectives

12.1. The Speaker of Lok Sabha – Introduction

12.2. Choice of the Speaker

12.3. Powers of the Speaker

12.4. Role of the Speaker

12.5. Let us Sum up

12.6. Key Words

12.7. Suggested Readings

12.8. Answers to Check Your Progress Exercise

12.0 Objectives :

After reading this Unit , you will know.

- the way the Speaker is chosen
- Importance of the Speaker
- the powers of the speaker, and
- the role of the speaker in the Parliamentary system.

12.1 Introduction :

Each House of the Parliament has its own Presiding Officer and Secretarial Staff –

The Lok Sabha is presided over by the Speaker who is elected by the House from among its own members. The Speaker's office is one of much dignity, honour and power. In India, it has evolved gradually and slowly. Though legislatures came into existence under the Charter Act of 1853, yet meetings of these bodies till 1920 were presided over by the Governor-General. The first elected President of the Central Assembly was Vithalbhai Patel, who held this office from 1925 to 1930. He has been characterised as an unexceptionable occupant of an office which was akin to the Speaker of the House of Commons. The Government of India Act, 1935 provided for the office of the Speaker and Deputy Speaker but due to non-implementation of the federal part of the Act, this provision could not be implemented. It was only in 1946 that G.V.Mavalankar was elected as the Speaker of the Legislative Assembly and continued to hold this high office till 1956.

12.2. Choice of the Speaker :

The House of People is to, as soon as may be after its first sitting, choose two members to be respectively the Speaker and Deputy Speaker

As per the Constitution, both the Speaker and the Deputy Speaker of the Lok Sabha are elected in accordance with the procedure laid down under Article 93 of the Constitution. This

meeting is to be presided over by a pro-tem-Speaker and a tradition was growing that the senior most member of the House shall be so nominated for the purpose. Both the Speaker and the Deputy Speaker are elected separately on motions moved and seconded by the respective party leaders. A convention is, however, gradually developed whereby a candidate sponsored by ruling party is elected unopposed to the office of the Speaker and the candidate for the post of Deputy Speaker is generally from the opposition and is supported by the ruling party to ensure his unanimous election.

Once elected, the Speaker holds office from the date of his election and shall be deemed to be Speaker until a new one is chosen by the new Lok Sabha. For whatsoever reason, if a person holding the office of the Speaker ceases to be a member of the House, he shall also cease to be Speaker as well. He can, however, be removed only by a resolution of the House for which 14 days' notice is mandatory (Article 94 ©), which shall be effective only if passed by a majority of the House. When a resolution for the removal of the Speaker is under consideration, he cannot preside over the meetings even though present in the House, till the fate of the motion has been decided, but he has the right to Speak and have a right to vote except in the case of equality of votes (Article 96) Motion of removal can be considered and discussed only when it has the support of at least 50 members.

12.3. Powers of the Speaker

The Speaker of the Lok Sabha enjoys very wide and extensive powers. Besides he also has certain previleges and immunities. Some of the powers which makes the Speaker an important functionary of the Lok Sabha are as follows:

1. His foremost duty is to see that there is decorum and discipline in the House and that the business of the House is conducted in an orderly manner and in accordance with the wishes of the House.

2. As the Presiding Officer of the House, the Speaker will not vote in the first instance but shall do so in case of equality of votes (tie). This makes his position to be impartial, and as he casts the vote only in case of a deadlock.
3. The Speaker has the final power to maintain order within the House of the People and to interpret rules and Procedures. In the absence of a quorum, the Speaker is to adjourn the House or suspend the meeting untill there is a quorum.
4. In regulating the procedure or maintaining order in the House, the Speaker is not subject to the jurisdiction of any court.
5. The Speaker is the only authority to decide who shall hold the floor and speak. Every member has to catch the eyes of the Speaker to get a chance to speak.
6. The Speaker decides about the time which should be allotted to each item on the agenda.
7. His authority in the precints of the House and over the Galleries is final.
8. As presiding officer of the House, the Speaker decides what should appear in the proceedings. He has also the right to expunge objectionable words, phrases and expressions from the proceedings.
9. He is the custodian of the rights and privileges of members of the Lok Sabha.
10. All members are supposed to address the Speaker only, while participating in the debates. He decides all points of order, raised during the course of discussion and his decision is binding.
11. His role during question hour is very important. The Speaker decides which questions should or should not be admitted. It is the Speaker who allows half-an-hour discussion and admits adjournment motions. A vote of no-confidence against the Government is also admitted by him.

12. The Speaker admits all the resolutions for discussions and decides when a discussion on a Bill should be adjourned.
13. He puts the motion to vote and announces the result of voting. In case, there is a tie, he casts his vote to decide the issue.
14. He is the head of the Lok Sabha can appear as a witness in any Court of Law.
15. He can instruct the Government to place a document on the Table of the House.
16. No arrest or any other type of warrant can be issued by any executive authority against any member of the Lok Sabha within the four walls of the House without his prior permission.
17. He accepts all resignations sent to him by members of the House.
18. The Speaker authenticates all the bills passed the House from unnecessary executive intrusion.
19. He certifies whether a particular Bill is a Money Bill or not.
20. Whenever there is a joint meetings of both the Houses of Parliament, the Speaker, and not the Chairman of the Rajya Sabha presides over such meetings.
21. Thus, the Speaker has vast powers and functions. He is the channel through which all communications between the House and the President must pass.

In the House when the Speaker is on his legs, all the members are supposed to sit down and listen to him patiently. If any member continues to stand that shall be treated as an affront to the Speaker's dignity. He is not expected to give reasons for his decisions which cannot be challenged by any member.

12.4. Role of the Speaker

Taking into consideration the vital and vast responsibilities that a Speaker has to fulfil, Prime Minister Nehru, while unveiling the portrait of Speaker Patel on March 8, 1958, said, "The Speaker represents the House. He represents the dignity of the House, the

freedom of the House and because the House represents the nation in a particular way, the Speaker becomes the symbol of nation's freedom and liberty. Therefore, it is right that his should be an honoured position, a free position and should be occupied always by men of outstanding ability and impartiality."

As said earlier, the Speaker with his vast powers is a channel between the House and the President. He plays a very important role in so far as maintaining the discipline and decorum of the House. Of late, the responsibilities of the Speaker have increased due to chaos and confusion that has been frequently witnessed in the House. Hence the Speaker has to be a strong leader to put the House into serious business. With his powers, it is definitely possible as he decides all points of order and his decision is final. His role during the 'Question Hour' is also very important, as it is he who decides as to which questions should or should not be admitted. He also allows half an hour discussion and admits adjournment motions. All this he can do keeping in mind the priority issues of national interest leading to resolve misunderstandings and conflicts.

He has power to decide when to adjourn the discussion on a certain Bill, thereby making space for more issues to be discussed. In the national interest, he also can play a important role by casting his vote in case of a tie.

The office of the Speaker has been held in great esteem and he is the representative of the House itself but an unhealthy trend is developing and Speaker is brought into active politics or offered Governorships. Speaker Dhillon was inducted in the Cabinet as Minister whereas Speaker Ayyangar and Hukam Singh were sent to States as Governors. Today, the Speaker is finding it difficult to impartially occupy the respected Chair. The Chair is not shown proper respect very often. He is also forced with the problem of non-seriousness on the part of the members, and also that of defying, disobeying of his orders and instructions.

Generally speaking, the Speaker has a role and position corresponding to that of the Speaker of the British House of Commons. He must be absolutely impartial and above party feelings in managing the business of the House. Not all the conventions surrounding the British Speaker have, however, been adopted in India in toto. While the principle of impartiality has been accepted, the Indian Speaker does not cease to be a member of his party; nor does he completely divorce himself from politics. Also in Britain, speakership is not contested; the speaker is chosen unanimously by the house of commons whereas in India it is contested and election will be held to choose the speaker.

12.5. Let us Sum up:

The Speaker's office in case of India has evolved gradually through the Charter Act 1853 and later on through the Government of India Act 1935. It is a position of much dignity, honour and powers, the Speaker has a very important role play as a channel of Communication between the House and decorum, discipline of the House, and having control over the business and procedings of the House, with control over how much discussion is to be allowed over a particular Bill. The Speaker has definitely a vital role to play in the Lok Sabha whose major function is Legislation and Law making. The Speaker being the Presiding Officer of the House actually needs to be impartial which has been principally accepted, but in fact, the Speaker does not cease to be a member of his party, nor does he totally keeps himself away from politics meaning in a situation where the integrity and impartiality of the speaker is often suspected or is in doubt.

12.6. KEY WORDS

Motion	-	Proposal
Galleries	-	Long narrow platform (raised) alongside opento interior building
Decorum	-	decency / good behaviour/good manners

12.7 Check Your Progress - 1

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Discuss the process through which the choice of the Speaker of Lok Sabha is made.

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2. Examine the powers of the Speaker

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3. Evaluate the role of Speaker of the House

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12.9. SUGGESTED READINGS

Basu D.D.	:	Introduction to the Constitution of India – 19th Ed. 2001.
Pylee M.V.	:	Constitutional Government in India (2000)
Granville Austin		The Indian Constitution : Corner Stone of a Nation.
J.C.Johari	:	Indian Government and Politics Subhash Kashyap: Our Parliament.
Government of India (Pub)	:	The Constitution of India.
B.L.Fadia	:	Indian Government and Politics.

12.8. Answers to Check Your Progress Exercise.

Check Your Progress - 1

1) See Section 12.1 and 12.2.

2) See Section 12.3.

3) See Section 12.3. and 12.4.

NOTES

UNIT - 13 The Supreme Court of India: Composition and Jurisdiction.

STUCTURE

13.0 Objectives

13.1. Introduction -The Supreme Court of India

- 13.1.1. Composition
- 13.1.2. Appointment
- 13.1.3. Qualifications
- 13.1.4. Tenure
- 13.1.5. Removal & Remuneration
- 13.1.6. Seat of Supreme Court

13.2. Jurisdiction of the Supreme Court of India

- 13.2.1. Original Jurisdiction
- 13.2.2. Writ Jurisdiction
- 13.2.3. Appellate Jurisdiction
- 13.2.4. Appeal by Special Leave
- 13.2.5. Advisory Jurisdiction
- 13.2.6. Miscellaneous Jurisdiction

13.3 Let us Sum up

13.4. Key words

13.5. Suggested Readings

13.6. Answer Check Your Progress Exercise

13.0. Objectives

After going through this unit, you will know.

- the composition appointment and qualifications tenure etc of the Supreme Court Judges;
- the various jurisdictions of the Supreme Court; and
- the importance of the Supreme Court in the Indian political system.

13.1. Introduction:

India, unlike to United States has a single judicial system and not a system of dual Courts not withstanding the adoption of the Federal System. We have a Supreme Court at the head of the judicial hierarchy, with High Courts in each of the States and with district courts and other subordinate courts in the local areas of the Government.

Under the Act of 1935, for the first time an All India Court, called the 'Federal Court of India' was set up. It consisted of one Chief Justice and such other number of Judges as His Majesty might deem necessary. With the coming into force of the Indian Constitution, the Federal Court of India was substituted by the Supreme Court. Under a Federal Constitution a Supreme Court is an essential part of the constitutional scheme. Under Article 32, it is made the protector of all the Fundamental Rights embodied in the Constitution and it has to guard these rights jealously against every infringement at the hands of either the Union Government or the State Governments.

13.1.1. Composition:

The Indian Parliament has the power to make laws regulating the Constitution, organization Jurisdiction and powers of the Supreme Court and subject to such legislation as Art.124 of the Constitution, the Supreme Court at present consists of the Chief

Justice and 25 other Judges. In 1950, when the Court was inaugurated with the new Constitution, it had only eight Judges. Parliament was, however, authorized to change the number of its Judges. On account of the increase in its work load, the strength of the Supreme Court judges has been raised from time to time. In 1956, the Parliament passed the Supreme Court Number of Judges Act, which raised the total strength to 11. In 1960, the Supreme Court Number of Judges Amendment Act was passed further raising the strength of the Court Judges to 14 including the Chief Justice. Its strength was further increased to 18 in 1977. In 1986 the Parliament enacted the Supreme Court Act and raised the number to 25.

13.1.2. Appointment

The Constitution provides that every Judge of the Supreme Court will be appointed by the President in consultation with such of the Judges of the Supreme Court and of the High Court in the States as the President may deem necessary for the purpose. In the matter of appointment of the Chief Justice of India (CJI), the President is to consult such Judges of the Supreme Court and of High Courts as he may deem necessary. A nine-Judge Bench of the Supreme Court has laid down that the senior most Judge of the Supreme Court considered fit to hold the office, should be appointed to the office of Chief Justice of India. In the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India must be consulted. In practice however the appointment of the Chief Justice of India as well as of the other Judges of the Supreme Court is recommended by the Home Ministry and after the matter has been examined by the Appointments Committee of the Indian Cabinet and Prime Minister, it is formalised by the Indian President.

13.1.2. Appointment of Ad hoc Judges

Our Constitution provides for the appointment of ad hoc judges. According to Article 127, if at any time the session of the Supreme Court cannot be held or continued for want of a quorum, the Chief Justice, with the prior consent of the President may make such appointments. An ex-judge of the Supreme Court may also be requested by the Chief Justice to act as judge of the Supreme Court. There is also a provision for the appointment of the Acting Chief Justice.

For nearly two decades now, the judiciary has been embroiled in the controversy over who should appoint or transfer judges. The issue seemed settled in 1993 when a nine-judge bench of the Supreme Court said that the Chief Justice of India (CJI) held the key in all such matters. The judgement still left a patch of gray area on whether the CJI could override his senior 'brothers' or was merely the first among equals.

Former CJI M.M.Punchhi, who retired in October 1998, resolutely defended the first view, bringing appointments to the Supreme Court and the High Courts to a standstill. However, in October, 1998, yet another nine-judge bench of the apex court headed by Justice S.P.Bhurucha, finally overturned the retired CJI's interpretation. The bench has ordered that the collegium for appointment to the Supreme Court. Judges should comprise the CJI and four senior most judges of the court. Thus the judgement makes the chief justice of India one among other judges in appointing colleagues. The CJI, although has been included, yet the members of the collegium also play an important role in the appointment. The recommendation made by the CJI without complying with the norms and requirement are not binding on the Government.

When he was the President of India Mr. K.R.Narayanana put a note on a file recommending that Scheduled Caste and Scheduled Tribe Candidates be duly considered for appointment as judges of

the Supreme Court. It is for the first time in the history of the Republic that a President has chosen to put his suggestion on record. Though the President has no constitutional power to suggest any changes in the selection process, his suggestion led to some debate over the appointment of Judges to the Supreme Court.

Upto 1973, the appointment of the Chief Justice had come to be automatic. The senior most Judges of the Supreme Court was elevated to the highest judicial office on the retirement of the incumbent. This convention was broken in April 1973 and Shri A.N.Ray was appointed Chief Justice superseding his three senior colleagues. The supersession of the three judges created an unprecedented situation and in protest against the decision the three superseded Judges resigned. The Supreme Court Bar Association in a resolution said that the action was purely a political one and had no relation whatsoever to merits of the appointment.

Defending the action of the Government on the floor of the Lok Sabha on May 2, 1973, Late Shri Mohan Kumaramangalam said. (I) It was not an essential pre-condition to the proper working of the democratic system that the Chief Justice should be appointed on the basis of seniority (ii) It would be odd to argue that a judge prior to his appointment should be innocent of political views or convictions; (iii) some knowledge of public affairs was an important qualification for his appointment to the highest Court of the land; (iv) It was entirely within the discretion of the Government of the day to appoint the person considered by it the most suitable and as having the most suitable philosophy or outlook. This raised the debate about the commitment of Judges to nor only the Philosophy orf the constitution but to that of the party in power at the centre.

13.1.3. Qualification

A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and:

a) has been for at least five years a Judge of a High Court or of two or more such courts in succession; or
b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession; or
c) is, in the opinion of the President, a distinguished jurist.

The inclusion of the last provision which would enable the President to appoint a distinguished jurist of the Supreme Court, even if he did not qualify by a specified number of years of practice at the Bar, was intended to open a wider field of choice.

13.1.4. Tenure

No minimum age is prescribed for appointment as a Judge of the Supreme Court, nor any fixed period of office. Once appointed, a Judge of the Supreme Court may cease to be so, on the happening of any one of the following contingencies (other than death): (a) on attaining the age of 65 years; (b) on resigning his office by writing addressed to the President; (c) on being removed by the President upon an address to that effect being passed by a special majority of each House of Parliament.

No person, who has held the position, once as a Judge of the Supreme Court can plead or act in any court or before any authority within the territory of India. But there is no constitutional prohibition against a retired Judge being appointed for a specialised form of work by the Government.

13.1.5. Removal and Remuneration

As per Art 124 (4) of Indian Constitution a Judge of the Supreme Court can be removed from his position only on the ground of proved misbehaviour or incapacity. The procedure begins with motion addressed to the President, which is investigated by a Committee of three Judges and if the Committee finds the Judge guilty of either misbehaviour or incapacity then it is taken up for consideration in the House. He can be removed from his office by an

order of the President passed after an address from each House of Parliament, supported by a majority of the total membership of the House and by a majority of not less than 2/3rds of the members present and voting in Parliament, supported by a majority of the total membership of the House and by a majority of not less than 2/3rds of the members present and voting. The procedure for impeachment is same for Judges of the High Court as well.

A Judge of the Supreme Court gets a salary of Rs.30,000/- per mensem. The salary of the Chief Justice is Rs. 33,000/-. In addition, each judge is also entitled to a free House and certain other allowances and privileges. Neither the Salary, allowances, and privileges, nor his rights in respect of leave of absence or pension (to which he is entitled after retirement) can be varied to his disadvantage after his appointment. There is, however, one exception to this almost absolute rule. The salaries of the Judges may be reduced by a law of Parliament during a grave financial emergency proclaimed by the President.

13.1.6. Seat of Supreme Court

The Supreme Court ordinarily shall sit at Delhi but it can sit at such other places as the Chief Justice of India may, with the approval of the President, from time to time decide. The provision for making the sittings of the court at a place other than Delhi possible was justified on the ground that if the capital of India was changed, we would have to amend the Constitution in order to allow the Supreme Court to sit at such other place as the Parliament may decide as the capital.

13.2. THE JURISDICTION OF THE SUPREME COURT

Taking into consideration the position of the Supreme Court under the Constitution, it has been rightly said that the jurisdiction and powers of our Supreme Court are in their nature and extent wider than those of the highest judicial authority in any other country. It is

at once a Federal Court, a court of appeal and a guardian of the Constitution. Any law declared in exercise of these jurisdiction, under Constitution, is binding on all other Courts within the territory of India (Art.141)

In our Constitution since the powers are divided between the Centre and States, and although our federation is not federal in real total sense yet a division of legislative as well as administrative powers between the Union and the States has been made. Thus our Constitution under Art.131 vests the Supreme Court with original and exclusive jurisdiction to settle the disputes between the Centre and the States or between States interse.

Like the House of Lords, the Supreme Court of India is also the final appellate tribunal of the land. Besides, as a guardian of the Constitution, the Supreme Court can decide a law to be void, whenever the Constitutional limitations have been trangressed.

Thus we see that the Supreme Court has wide jurisdiction which can be considered to be mainly three fold: a) Original Jurisdiction b) Appellate Jurisdiction and c) Advisory Jurisdiction.

13.2.1. Original Jurisdiction

Under Article 131, the Supreme Court's exclusive original jurisdiction covers all disputes (I) between the Government of India and one or more States; (ii) between the Government of India and any State or States on the one side and one or more other States on the other; or (iii) between two or more States inter se if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. However, disputes arising out of the provisions of treaties with the former Indian States or to which any such State is a party are excluded from the Original Jurisdiction of the Supreme Court.

The Original Jurisdiction of the Supreme Court will be exclusive in the sense that no other Court in India shall have the power to entertain any suit. The Supreme Court cannot entertain

any suit – where both the parties are not units of the federation - or if a suit is brought either against the State or the Government of India by a private citizen. Still a dispute arising out of any treaty, agreement. Covenent engagement, Sanad or similar instrument which have been entered or executed before the commencement of the Constitution and continues, or which provides that the said jurisdiction should not extend to such a dispute – such disputes are excluded from this original jurisdiction.

13.2.2. Writ Jurisdiction:

The jurisdiction of the Supreme Court to entertain an appeal under Art 32 to issue a constitutional Writ for the enforcement of Fundamental Rights is sometimes treated as an original jurisdiction of the Supreme Court. It is considered to be original in the sense that the aggrieved party has the right to directly move the Supreme Court by way of appeal, by passing the High Court. But since, Writ jurisdiction relates to disputes not between the Units of the Union but an aggrieved individual and the Government or its agencies, this jurisdiction needs to be treated seperately.

13.2.3. Appellate Jurisdiction

The Supreme Court is the highest court of appeal from all courts in the territory of India, since the jurisdiction of the Judicial Committee of the Privy Council to hear appeals from India have been abolished on the eve of the Constitution. The Appellate Jurisdiction of the Supreme Court may be divided under three heads: (i) Cases involving interpretation of the Constitution civil, criminal or otherwise; (ii) Civil Case, irrespective of any constitutional question; and (iii) Criminal Cases irrespective of any constitutional question.

Apart from appeals to the Supreme Court by special leave of the Court under Article 36, an appeal lies to the Supreme Court from any judgement, decree or final order in civil proceeding of a High Court in two classes of case – (a) Where the case involves a

substantial question of law as to the interpretation of the Constitution, an appeal shall lie to the Supreme Court on the certificate of the High Court that such a question is involved or on the leave of the Supreme Court where the High Court has refused to grant such a certificate but the Supreme Court is satisfied that a substantial question of law as to the interpretation of the Constitution is involved in the case (Art.132). (b) In case where no constitutional question is involved, appeal shall lie to the Supreme Court if the High Court certifies that the following conditions are satisfied – (I) that the case involves a substantial question of law; (ii) that in the opinion of the High Court the said question should be decided by the Supreme Court (Art. 133 (I).

Prior to the Constitution, there was no Court of criminal appeal over the High Courts. Article 134 of the Constitution for the first time provides for an appeal to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court, as of right, in two specified classes of cases – (a) where the High Court has in an appeal reversed an order of acquittal of an accused person and sentenced him to death; (b) where the High Court has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial connected the accused and sentenced him to death. In these two classes of cases relating to sentence of death by the High Court, appeal lies to the Supreme Court as of right.

Besides the above two classes of cases, an appeal may lie to the Supreme Court in any criminal case if the High Court certifies that the case is fit one for appeal to the Supreme Court.

13.2.4. Appeal by Special Leave

While the Constitution provides for regular appeals to the Supreme Court from decisions of the High Courts in Articles 132 to 134, there may still remain some cases where justice might require the interference of the Supreme Court with decisions not only of the

High Courts outside the purview of Articles 132-134 but also of any other court or tribunal within the territory of India. Such residuary power outside the ordinary law relating to appeal is conferred upon the Supreme Court by Article 136. According to this Article: "Notwithstanding anything in this chapter the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India."

The special appellate power has become a handy weapon in the hand of the court to review the decision of Election, Labour and Industrial Tribunals. According to M.V.Pylee, "Nevertheless, the reach of Article 136 is indeed formidable. It has become convenient instrument at the disposal of the court to check arbitrary acts and unjust decisions of the ever-increasing number of administrative tribunals which the Union and the States are setting up almost daily in the process of realising the objectives of a socialist pattern of society."

13.2.5. Advisory Jurisdiction

The Supreme Court, has an advisory jurisdiction, to give its opinion, on any question of law or fact of public importance as may be referred to it for consideration by the President. Article 143 of the Constitution lays down that the Supreme Court may be required to express its opinion in two classes of matters, in an advisory capacity as distinguished from its judicial capacity.

(a) In the first class, any question of law may be referred to the Supreme Court for its opinion if the President considers that the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court. It differs from a regular adjudication before the Supreme Court in the sense that there is no litigation between two parties in such a case and that the opinion given by the Supreme Court on such a reference is not binding upon the Government and further

that the opinion is not excuteable as a judgment of the Supreme Court. The opinion is only advisory and the Government may take it into consideration in taking any action in the matter but it is not bound to act in conformity with the opinion is received. The Chief utility of such an advisory judicial opinion so to enable the Government to secure an authoritative opinion either as to the validity of a legislative measure before it is enacted or as to some other matter which may not go to the courts in the ordinary course and yet the Government is anxious to have authoritative legal opinion before taking any action.

(b) The second class of cases belong to the disputes arising out of pre-Constitution treaties and agreements which are excluded by Art. 131, Proviso, from the Original Jurisdiction of the Supreme Court, as we have already seen.

13.2.6. Miscellaneous Jurisdiction.

There are provisions for reference to this Court under Art. 317(1) of the Constitution, s.257 of the Income-tax Act, 1961, s.7(2) of the Monopolies and Restrictive Trade Practices Act, 1969, s.130A of the Customs Act, 1962 and s.35H of the Central Excise and Salt Act, 1944.

Appeals also lie to Supreme Court under the Representation of the People Act, Monopolies and Restrictive Trade Practices Act, Central Excise and Salt Act, Terrorist Affected Areas (Special Courts) Act, 1984 and Terrorist and Disruptive Activities (Prevention) Act, 1985.

The jurisdiction of the Supreme Court, as outlined in the foregoing pages, was curtailed by the 42nd Amendment of the Constitution (1976), in several ways. But some of these changes were recoiled by the Janata Government, by repealing them by the 43rd Amendment Act, 1977. The provisions so repealed are Art.32A, 144A.

13.3. Let us Sum up:

The Supreme Court has been composed of highly qualified Judges with a guaranteed, secure tenure and remuneration. The removal of the Judges has been delibrately a difficult task so that the judges can function impartially, without any political pressure. The Constitution vests the Supreme Court with power relating to Jurisdiction. Under original jurisdiction it finally settles matters between the Centre and States, or between the States themselves. Through appellate jurisdiction it includes in its scope civil, criminal as well as constitutional matters, and above all it is the guardian of Fundamental Rights guaranteed under the Constitution. Law as well as rights guaranteed to the individuals. Despite these powers, the Judiciary is under attack and being criticized further for judicial delays. It has also been critized for its expensiveness, the Poor being unable to approach the Supreme Court, the rich and powerful alone can reach the Court and achieve what they want. It has been also critized that, Judiciary has failed to discharge it duty of implementing social justice. Bus as a watch dog of the Constitution, the Supreme Court has discharged its function fearlessly and boldly in interpreting the Constitution. The Supreme Court has also shown its social concerns through legal aid and Judicial activism, giving justice to people and implementing changing values of our society within the frame work of the Constitution.

13.3. Key Words

Jurisdiction	-	Territory/areas/authority covered by a court.
Bench	-	Seat or body of Judges
Ad hoc Judges	-	Temporary
Quorum	-	Required number to be present to conduct the Legislative work.
Motion	-	Proposal
Interse	-	Within Section

Check Your Progress -1

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1) Discuss the Constitution of the Supreme Court.

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2) What do we mean by Original Jurisdiction.

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3) What is Appeallate Jurisdiction.

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4) What is Advisory Jurisdiction.

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5) Discuss the Jurisdiction of the Supreme Court of India.

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13.5. Suggested Readings.

Basu D.D.	:	Introduction to the Constitution of India – 19th Ed. 2001.
Pylee M.V.	:	Constitutional Government in India (2000)
Granville Austin	:	The Indian Constitution : Corner Stone of a Nation.
J.C.Johari	:	Indian Government and Politics
Subhash Kashyap	:	Our Parliament.
Govt. of India (Pub.)	:	The Constitution of India.
B.L.Fadia	:	Indian Government and Politics.

11.7. Answer to check Your Progress Exercise

Check your progress - 1.

1) See Section 13.1. upto 13.1.6.

2) See Section 13.2.1 and 13.2.2.

3) See Section13.2.3.

4) See Section 13.2.5

5) See Section 13.2 to 13.2.6.

UNIT - 14 Judicial independence and Judicial Review

STRUCTURE

14.0. Objectives

14.1. Introduction

14.2. Independence of Judiciary

14.3. Judicial Review

14.3.1. Provision of Judicial Review in the Constitution

14.3.2. Constitutional Amendments & Judicial Review

14.3.3. Legislative enactments ordinances and Judicial Review

14.3.4. Revision of the Constitution

14.4. Let us Sum up

14.5. Key Words

14.6. Answers Check Your Progress Exercise

14.7. Suggested Readings

14.0. Objectives

After going through this Unit , you will understand.

- the importance of Judicial independence and Judicial Review in a democratic set up in order to function satisfactorily, and speedily protect the objectives and values laid down in our Constitution, and
- the need for review of the constitution

14. 1. Introduction

The Supreme Court is the custodian of the Constitution and expected to be the highest forum for its interpretation, Obviously it follows that without the independence of the Judiciary, it is effectively not possible for the judiciary to function. Independence of judiciary ensures its impartiality and would allow it to work without the executive and legislative interference, influence or pressure. This independence is also necessary as a custodian of the Constitution to ensure the achievement of the goals of the Constitution, such as justice liberty, equality, and fraternity. But just independence of the Judiciary would not be sufficient for it to act as a custodian and an interpretor. Hence, it has been empowered to review the laws passed by the legislature and declare them ultra vires or unconstitutional if it contravenes any provisions of the Constitution. This power maybe described as power of judicial review. Hence we would now try to understand, what do we mean by independence of Judiciary and Judicial Review.

14.2. Independence of Judiciary

As noted above, independence of Judiciary is an important criteria for the Judiciary to function impartially. In the context of evolving an independent Judiciary, certain important provisions were made within the constitutional framework. They are as follows.

1. The appointment of the Judges are made by the President. But the President has to consult such judges of the Supreme Court

and High Courts as he deems it necessary to minimize the political interference in the Judicial system, the highest minimum qualification for the appointment of judges has been prescribed within the Constitution itself.

2. Once appointed as a judge, a judge cannot be removed except through a difficult process, and the only ground for his/her removal is proved misbehaviour or incapacity. This kind of security of office is necessary for impartial functioning, without any political interventions or influence.
3. The other factor leading to independent functioning is that the salaries of judges and other expenses of Supreme Court are charged on the Consolidated Fund of India which means, that they are not subject to vote in the House.
4. Further, the actions and decisions made by the judges in their official capacity are immune from criticisms.
5. The Parliament except in cases of removal of a judge, cannot discuss the conduct of judges.
6. The Court is the sole authority to decide regarding the service conditions and appointments of the officers and civil servants.

Thus we see that the Supreme Court of India has ample independence as compared to the American Supreme Court and as watchdog of the Constitution it has exhibited boldness, fearlessness and independence in the discharge of its functions. A number of laws and orders have been declared null and void viz., The annulment of Bank Nationalisation and Privy purses clearly indicates its boldness, independence and integrity of purpose.

14.3 Judicial Review

Judicial Review is the power of a court to inquire whither a law, an executive order or any other official action conflicts with the written Constitution of the country and if the court concludes it to be so, then the court would declare it to be unconstitutional and void. This indicates the necessity of a written Constitution and is more or

less practised or is associated with federal Constitution with seperation of powers. Thus it means that Judicial review is the power of the court to examine the Legislative, executive and administrative actions of the Government and see whether they are in confirmity, with the provisions of the Constitution, if not, it has the power to declare it avoid.

Judicial Review has been one of the most distinctive features. In the United STates, although the Constitution makes no specific mention of it. It was 1803 that for the first time that the U.S. Supreme Court in the case of Marbury vs Headison, Chief Justice Marshall gave a verdict that the court of law had the authority to hold federal laws void, if they voilate the fundamental law of the country. Thus the major function of Judicial Review is to protect the Constitution, safeguard the Constitutional law by rejecting legally those actions contradicting the basic framework and structure of our Constitution. It also legitimizes government action. These two functions help the Constitution to expand in right perspective.

14.3.1. Provision of Judicial Review in the Constitution

The Constitution clearly defines the powers and functions of the Legislative and the Executive, being federal, the powers and functions of Union and the states has also been defined and delimited and it also guarantees the fundamental rights of individuals. The limitation and guarantee is provided by the judiciary within the text of the Constitution under the powers of Judicial Review under Articles 13, 32, 131 to 136, 143, 145, 226, 246, 251, 254 and 372.

Art 13 of our Constitution declares that any law which contravnes any of the provisions of the part of Fundamental Rights shall be void. Besides Art 13, Art 32 and Art 226 also provide important power of Judicial review, as under these two articles, the Supreme Court and High Courts respectively have been given power to issue writs for the enforcement of Fundamental Rights, Hence the

Court has observed that even without the specific provision of Art 13, the Court would have the power to declare any enactment which abridges or transgresses a fundamental right as invalid. That is why Dr.Ambedkar referred to Art 32 as the Soul and heart of the Constitution and without Art 32 the Constitution would be a nullity.

The Constitution has a provision of three lists the Union list, the State list, and the concurrent list. Although Art 256(3) provides that the State Legislature has exclusive power over the state list, Art 251 and 254 say that in case of inconsistency between the Union and the state law, the state law shall be void while Art 245 makes the powers of the Parliament as well as the State Legislatures, subject to the provisions of the Constitution, Art 131 to 136 gives the power of adjucating disputes on issues arising between individual and the State, between the States and the Union. Thus being an arbiter of constitutional conflicts between the Union and the States, the Supreme Court stands in a unique position in exercising the power of reviewing the legislative enactment. The laws or enactments made by the Parliament or the State Legislature can be questioned and challenged and declared to be invalid if the subject matter of the legislation is (a) either infrings one of the fundamental rights or (b) is repugnant to the provisions of the Constitution or (c) is not within the competance of the Legislature which has passed it.

14.3.2. Constitutional Amendments and Judicial Review

The Constitution of India has provided for Constitutional amendments as prescribed in Art 368 of our Constitution; but the Constitution also has imposed definate limit upon law making and execution of law on and hence the courts are to decide whether any of the said Constitutional limitations have been encroached or transgressed and if so, it could make the law void.

There has been a historical controversy as to whether an amendment of the Constitution made in the manner provided under Art 368 must conform to the requirements of Art 13(2) as a law. In

other words, whether a Constitutional Amendment Act would be void if it seeks to take away or is inconsistent with a fundamental right as enumerated in Part-III of the Constitution. It was not until the historic case of Golakh Nath vs The State of Punjab (1967) that before 1967, the Supreme Court upheld that, no part of our Constitution was unamendable and that the Parliament might amend as per Act. 368 any provision of the Constitution including Fundamental Rights and Art 368 itself. This was reflected in Shankar Prasad vs Union of India (1951) the first amendment challenged before the Supreme Court on the ground that it abridged the Fundamental Rights and under Art 13(2) it could not be done so, as also in Sajjan Singh's case (1964). Thus upto 1967, the Supreme Court held that the Amendment Acts were not ordinary laws, and hence could not be struck down by the application of Art13 (2).

In the case of Golaknath vs State of Punjab (1967) the Supreme Court by a majority reversed its earlier decision and declared that the Parliament under Art 368 has no power to abridge or take away the Fundamental Rights contained in Chapter-III of the Constitution. But once again in 1973 – i.e. in the Keshvanand Bharti vs State of Kerala, the Constitutional validity of the 24th, 25th Amendments were challenged in the Fundamental Rights case. The Government of India took a stand that it had the right to change or modify the entire fabric of the Constitution through its power under Art 368.

The Court held that, the Parliament under Art 368 had amending power but that it is limited. It is entitled to abridge any fundamental right or amend any provision of the Constitution, but their abridgment cannot extend to damage or destruction of their or the basic structure of the Constitution.

14.3.3. Legislative enactments, Ordinances and Judicial Review

The Supreme Court has on a number of occasions declared Union or State legislatures as void fully or partially. Right since 1951 in case of A.K.Gopalan vs State of Madras, through Champakam Doraigajans, the Bihar Zamindare, upto 1980, the Parliament had passed as many as 1977 Acts of which the Supreme Court had invalided 22 of them.

14.3.4. Revision of the Constitution

Although under Art 368 of our Constitution, the Parliament has been conferred the power of amendment, we see that the urge for judicial intervention has arisen from the very tendency of the legislature to make frequent amendments to the Constitution. While it is rightly understood that the Constitution is a dynamic document – which needs to grow and should grow to suit the needs of changing society, circumstances, under the new socio-economic forces - this requires Government to make major desirable changes. It cannot and should not become an obstruction or a stumbling block to such desirabel changes, on grounds of performance. But on the other hand, the Constitution being the fundamental document has to be guarded against undue intervention into the very core of the objectives of the Constitution. Paradoxically, the power to amend the Constitution (Art 368) has been making space for frequent amendments which are eating up the vitals of the Constitution which the Supreme Court as 'basic features' of the Constitution. Hence the Court asserted that it could set aside even the act to amend the Constitution not only on procedural ground (as laid down in Art 368) but also on the substantive ground, that the amending Act has violated one or more of the basic feature of the Constitution. The Court has propounded two doctrenes i.e.(a) that the Court is the exclusive and final interpreter of all provisions of the Constitution, (b) the Court has the duty to make the ideals enshrined in the Constitution a reality

and to meet the needs of social change in a changing democratic country like ours.

The fact that it has the duty to attain the ideals laid down in the Constitution, has led to the novel trends of Judicial activism. Activism is one way of judicial policy making which furthers the cause of social change or articulates concepts such as liberty equality or justice. It counters the traditional concept that judiciary is a mere umpire, on the Constitutional Scheme, an arm of social revolution.

14.4. Let us sum up:

The Constitution has, within its framework to provide justice and make the provisions of the Constitution more meaningful and applicable has made due provisions for ensuring the independence and impartiality of the Supreme Court. Under such provisions, it places the Supreme Court beyond the pressures, interference or influence of the Executive or Legislature. Yet we see that there is a lot of criticism over the way the Supreme Court actually works and at times there has been political pressure over the judiciary. Eg. During the S.P.Gupta vs Union of India 1982 case or during emergency there was a lot of pressure on the judiciary by way of transfers.

In case of Judicial Review, during the first decade, the court was reluctant to declare any Parliamentary enactment as invalid, but later on in the second decade, and especially with Golakhnath's decision the Judiciary began to change its attitude. With the declaration of Court being the final interpreter of the constitution, the Supreme Court has begun to assert its independence of working.

14.5. Key Words

Enactment	-	Passing of a law
Ordinance	-	Decree
repugnant	-	Against, offence
Infringes	-	Violate
Encroach	-	To go beyond proper limits

Welfare Society	-	Society working with the objective of welfare of the down trodden
Doctrines	-	Principles, belief

Check Your Progress - 1

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Examine the importance of independence of Judiciary.

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2. What is Judicial Review, discuss the provisions of Judicial Review in the Constitution

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3. Discuss the importance of Judicial review in relation to Legislative enactments and ordinances.

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4. Evaluate the role of Judicial review in the revision.

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14.6. Suggested Readings.

Basu D.D.	:	Introduction to the Constitution of India – 19th Ed. 2001.
Pylee M.V.	:	Constitutional Government in India (2000)
Granville Austin	:	The Indian Constitution : Corner Stone of a Nation.
J.C.Johari	:	Indian Government and Politics
Subhash Kashyap	:	Our Parliament.
Govt. of India (Pub.)	:	The Constitution of India.
B.L.Fadia	:	Indian Government and Politics.

14.7. ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress - 1

1) See Section 14.1 and 14.2

2) See Section 14.3.3.

3) See Section 14.3.4

4) See Section 14.3.5

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ಕರ್ನಾಟಕ ರಾಜ್ಯ ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯದ ಪ್ರಾದೇಶಿಕ ಹಾಗೂ ಅಧ್ಯಯನ ಕೇಂದ್ರಗಳು

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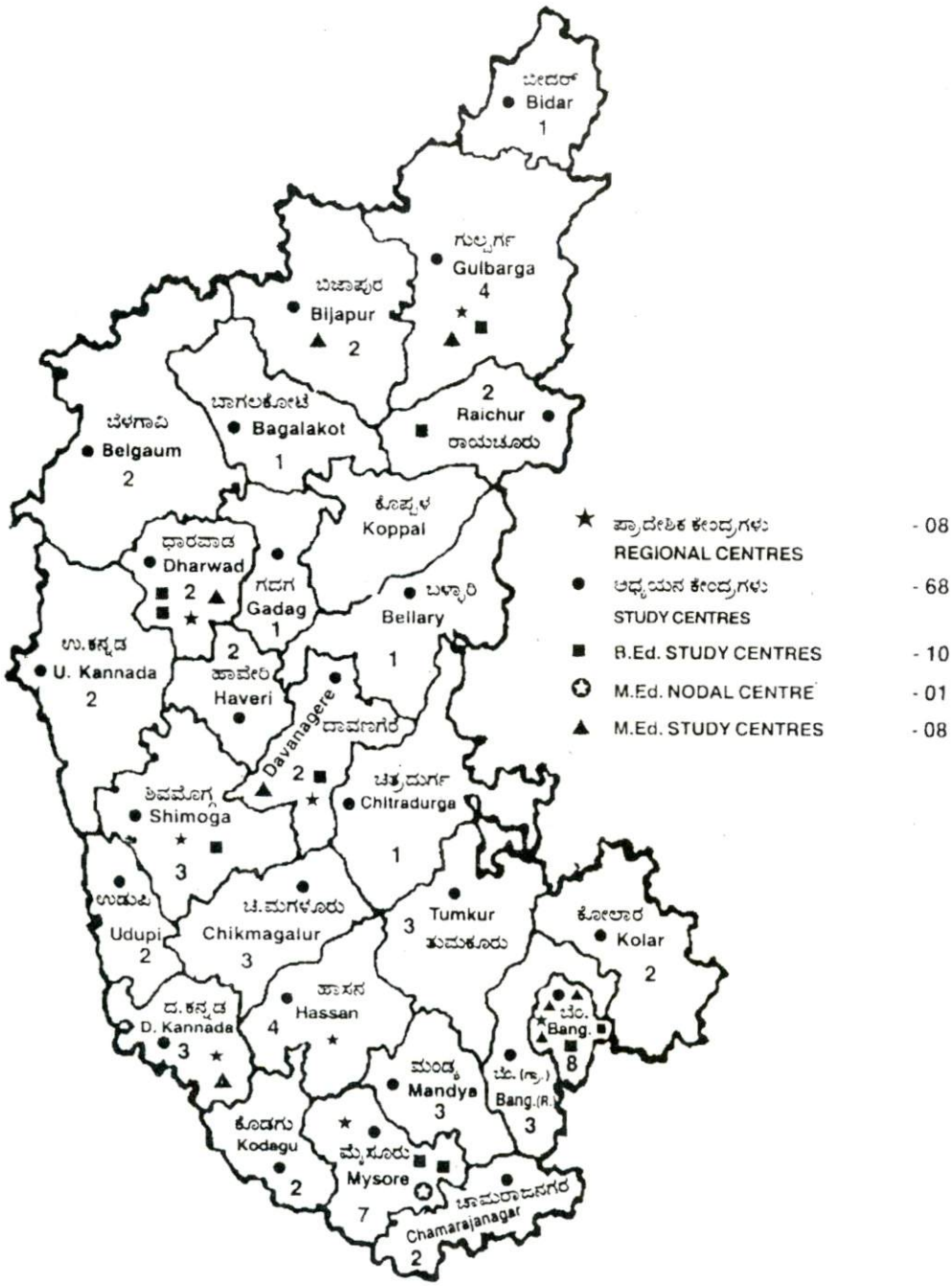


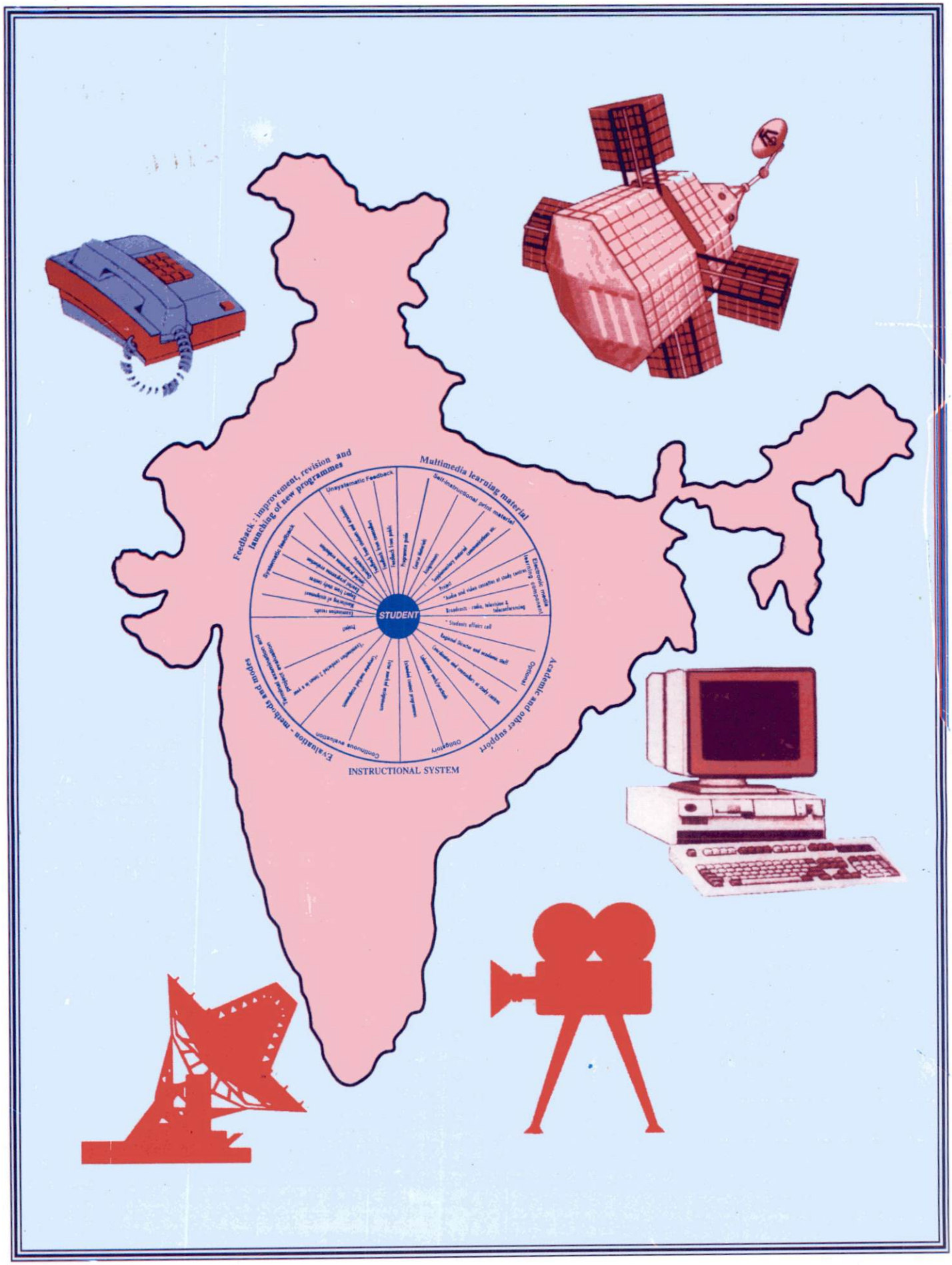
(ನಮೂದಿಸಿರುವ ಅಂಕಿ – ಜಿಲ್ಲೆಯಲ್ಲಿರುವ ಒಟ್ಟು ಅಧ್ಯಯನ ಕೇಂದ್ರಗಳ ಸಂಖ್ಯೆಯನ್ನು ಸೂಚಿಸುತ್ತದೆ.)

(The Number indicate the total number of study Centres existing in that districts.)

ಆದೇಶ ಸಂಖ್ಯೆ : ಕರಾಮುವಿ/ಸಿಪಾವಿ/4/809/2007-08 ದಿನಾಂಕ : 28-05-2007

ಒಳಪುಟ : 60 GSM MPM ಕಾಗದ, ವೈಟ್ ಪ್ರಿಂಟಿಂಗ್ ಮತ್ತು ರಕ್ಷಾಪುಟ : 170 ಆರ್ಟ್‌ಕಾರ್ಡ್

ಮುದ್ರಕರು : ವಿನಾಯಕ ಆಫ್‌ಸೆಟ್ ಪ್ರಿಂಟರ್ಸ್ , ಬೆಂಗಳೂರು–560 076. ಪ್ರತಿಗಳು : 3000


Feedback : improvement, revision and launching of new programmes
Multimedia learning material
Academic and other support
Evaluation - methods and modes
INSTRUCTIONAL SYSTEM
STUDENT