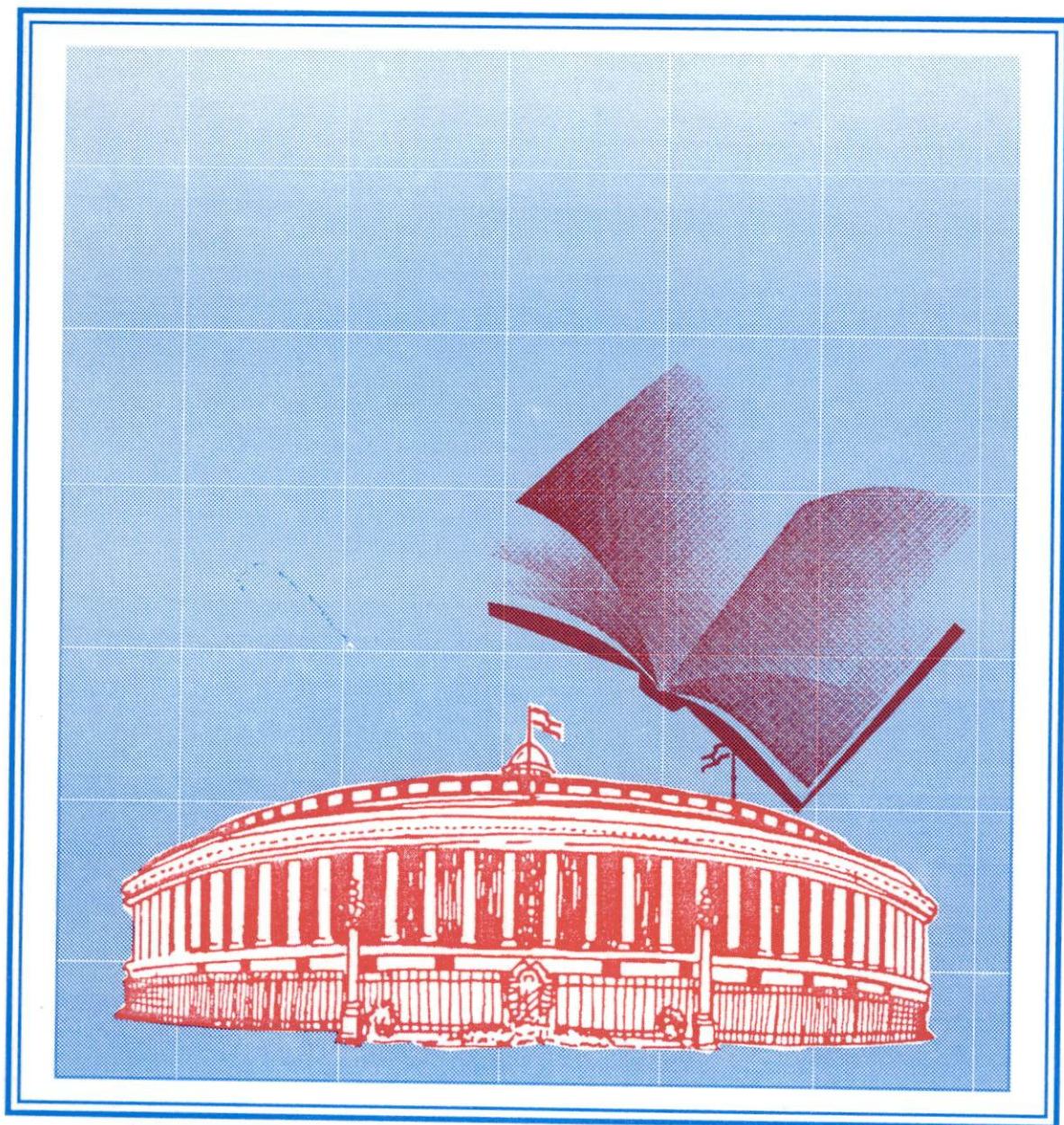




**POLITICAL SCIENCE**  
**MA [PREVIOUS]**  
**Course III**

1884



**KARNATAKA STATE OPEN UNIVERSITY**  
**Manasagangothri, Mysore - 570 006**

**Block - 7**



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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 democratizing education.*

**National Education Policy 1986**

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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**

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## 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 ಸರ್ವಸ್ವರದ ಉದಯ. ಪರಸ್ಪರ ವಿಮುಖವಾಗಿ ಸಿಡಿದು ಹೋಗುವುದಲ್ಲ; ಸಮನ್ವಯಗೊಳ್ಳುವುದು. ಸಂಕುಚಿತ ಮತದ ಆಂಶಿಕ ದೃಷ್ಟಿ ಅಲ್ಲ; ಭೌತಿಕ ಪಾರಮಾರ್ಥಿಕ ಎಂಬ ಭಿನ್ನದೃಷ್ಟಿ ಅಲ್ಲ; ಎಲ್ಲವನ್ನು ಭಗವದ್ ದೃಷ್ಟಿಯಿಂದ ಕಾಣುವ ಪೂರ್ಣದೃಷ್ಟಿ.

ಕುವೆಂಪು

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## 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**

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**Karnataka State  
Open University**

**Political Science  
Course III**

## **Block**

**7**

### **Introduction**

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#### **Unit 22**

**Election Commission and Electoral Process**

**1 to 8**

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#### **Unit 23**

**Merits and Defects of Adult Franchise - Attempts at Electoral Reforms**

**9 to 30**

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#### **Unit 24**

**Indian Federal System - Nature and Constitutional Determinations**

**31 to 43**

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#### **Unit 25**

**Review of Legislative, Administrative and Financial Relations between the centre and the states**

**44 to 59**

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#### **Unit 26**

**Emergency Provisions - Their Political Significance and Repercussions**

**60 to 70**

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## **Block - 7**

### **Block Introduction**

Block VII has 5 units. Unit-22 explains the composition powers and functions of the Election Commission in India. It also deals with regional commissioner at state level and also at district level with their functions. Unit-23 discusses the concept of Adult Franchise, its merits and defects, with electoral reforms suggested by the government, the recommendations of the Tarakunde committee, Goswami committee and Election Commission's recommendations. It also explains the need of women's representation in the Parliament and State Legislatures. Unit-24 explains the nature of Indian Federal System with unitary trends found in our constitution. Unit-25 discusses in detail the legislative, administrative and financial relationship between the centre and the states according to the constitution, and also the issue in centre-state relations. Lastly Unit-26 tries to explain the three types of Emergencies, the reasons for the inclusion of these provisions in the constitution, the use and the effects of emergency proclamation on Indian Political System.





## Block - VII

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### UNIT 22 ELECTION COMMISSION AND ELECTORAL PROCESS

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#### STRUCTURE

- 22.0 Objectives
- 22.1 Introduction
  - 22.1.1 The Election Commission: Composition
  - 22.1.2 Regional / Deputy Commissioner
  - 22.1.3 Election Machinery at State & District Level
  - 22.1.4 Functions & Powers *of* the Election Commission
- 22.2 Let us sum up
- 22.3 Key words
- 22.4 Suggested readings
- 22.5 Answer to check your progress exercises

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## 22.0 OBJECTIVES

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After studying this unit you will be able to

- Understand the organization and functions of the Election commission, and
- Know the role of the Election Commission in the electoral process

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## 22.1 OBJECTIVES

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Election Commission in a multiparty system and democracy has a very important role to play for ensuring free and fair elections. Hence, it is necessary to understand the establishment, composition, function and role of Elections Commission and the electoral process.

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## 22.1 INTRODUCTION

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The architects of the Indian Constitution attached the highest significance to establish an independent electoral machinery for the conduct of election. For this it was essential to have an independent Election Commission with its vast paraphernalia in the country. Such a Commission would ensure fair and free elections of the representatives of the People at all levels. It is mainly with this idea of fulfilling the long cherished desire that the Elections Commission of India was ushered in under Article 324, which is as follows:

“The superintendence, direction and control of the electoral rolls for, and the conduct of all elections of Parliament and to the Legislature of every state and of elections to the offices of President and Vice President held under this constitution, including the appointment of election tribunals for the decision of the doubts and disputes arising out of or in connection with election to Parliament and to the Legislatures of the States, shall be vested in a Commission”.

Dr. B.R Ambedkar contented that Article 324" - proposed to centralize the election machinery in hands of single commission, to be assisted by regional commission, working under the supervision, direction and control of the Election Commission and not under the control of the State Governor. The centralization of electoral administration was done" to prevent in justice being done by the provincial Governments to people other than those who belonged to the provinces racially, linguistically and culturally.

### 22.1.1 The Election Commission: Composition

A good electoral system is the bed rock of genuine representative government. Pollock observed, “Unless public elections are conducted with accuracy and efficiency, not only public services are discredited



but the whole democratic system is endangered". Of four pillars of the Indian Constitution, the Election Commission is one, the other being the Supreme Court, the Public Service Commission and the Controller and Auditor General of India. The Election Commission depends upon the integrity of election, which is the oxygen of democracy importance to the country's entire political system.

The constitution thus establishes - a body autonomous in character and free from political or executive influence. The Election Commission is an All India body having jurisdiction over elections to Parliament; State Legislatures, offices of the President and Vice President. The intention of the constitution to have an All India Body to supervise and conduct elections, rather than separate bodies to organize elections in each State, is that some states have a mixed population, as there are the active people as well as others who are racially, linguistically or culturally different from the native people. A state Government could discriminate against outsiders by so managing things as to exclude them from the electoral process and thus deprive them their franchise, which is the most basic right in a democracy. In order to see that no section of the society is deprived, in India one central body, which would be free from local influences and have control over the entire election machinery in the country has been established.

The Election Commission consists of the Chief Election Commissioner and such member of Election Commissioners, if any, as the President may fix from time to time. The Chief Election Commissioner stands at the apex of the hierarchy of the Election Commission of India. All these commissioners are appointed by the Parliament. Indeed, the President appoints them at the behalf of the Prime Minister because it is a constitutional necessity under the parliamentary system of government.

The Chief Election Commissioner acts as the Chairman of the Commission. The tenure of the Chief Election Commissioner is independent of the executive discretion; which is ensured by a specific Article 324 (5) of the constitution - to the effect that Chief Election Commissioner shall not be removed from his office except in like manner and on like grounds as judge of the Supreme Court and conditions of his service shall not be varied to his disadvantage after his appointment. The other Election Commissioner cannot be removed from office except on recommendation by the Chief Election Commissioner. These provision in the constitution establish a security of tenure to the Chief Election Commissioner similar to a Judge of the Supreme Court. Therefore - he can discharge his functions without fear, favour or pressure from the executive or the party in power.

Article 324 - clause (2) provides that Election Commission shall consist of Chief Election Commissioner and such number of other Election Commissioners. It was not until October 7, 1989, the President fixed the number of Election Commissioners (other than the Chief Election Commissioner) at two until further orders. Since its inception to October 7th 1989 it consisted only of Chief Election Commissioner. Further in a sudden development on October 1, 1993 the Government converted Election Commission into a three member body by appointing two more Election Commissioners. This decision

of the Government came in the wake of beliefs of controversial decisions taken by T.N. Sheshan the then Chief Election Commissioner, who started developing various tussles with the center, State Governments and besides political parties. It was also demanded by various parties, when Sheshan had suspended all by-elections on the issue of the Commissioner's power over deployment of Para-military force and polling personnel. The President of India also promulgated an ordinance amending the Chief Election Commissioner and other Election Commissioner (Conditions of Service) Act providing - that in case of differences of opinion among the three members the matter shall be decided according to the opinion of the majority.

Under the ordinance, the conditions of service of the Election Commissioners have been redefined and placed on par with the Chief Election Commissioner and Supreme Court judges.

They will have a six year term or serve upto 65 years of age whichever is earlier.

Clause ten of the ordinance relating to transaction of business of Election Commission provides thus:

1. The Election Commission may, by unanimous decision, regulate the procedure for transaction of its business as also allocation of its business amongst the Chief Election Commissioner and other Election Commissioner.
2. Save as provided in sub section (1), all business of the Election Commission shall, as far as possible, be transacted unanimously.
3. Subject to the provisions of sub section (2) if the Chief Election Commissioner and other Election Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.

#### **22.1.2 Regional/Deputy Commissioner**

To assist the Chief Election Commissioner in performance of his onerous duties there exists a large paraphernalia of the officers and staff subordinate to him. Among them are the Regional Commissioner, Deputy Commissioner, Secretary, Under Secretary, Research Officers etc. The system of Regional Election Commissioners as provided under Article 324 (4) did not prove much success, and hence discontinued. In place of the regional commissioners, a new post of Deputy Election Commissioner was created in the Election Commission; whose services are utilized during elections from time to time. Since the Deputy Chief Election Commissioner is appointed by the President and is usually sent on deputation, he can be recalled by the Central Government at the request of the Chief Election Commissioner at any time; which ordinarily extends up to a period of five years.



### **22.1.3 Election Machinery at State Level and District Level**

Election Commission has to maintain election machinery throughout the length and breadth of the country. At the state or the Union Territory level there is the Chief Electoral Officer as the king pin in the electoral machinery. He is nominated by the Election Commission in consultation with state / Union Territory Governments. He is usually a senior executive or judicial officer of the state government. He is assisted by the joint, deputy or assistant Chief Election Officers as well as the rest of the staff appointed by him in consultation with the State Government. He is in-charge of the supervision and preparation of the electoral rolls and the conduct of election; who is accorded statutory status.

At the District level the duties are discharged by the District Officer or the Executive Officer in addition to his normal administrative duties.

The responsibility for the preparation and revision of electoral rolls is vested in an officer called the Electoral Registration Officer. He may have under him Assistant Electoral Registration Officers. The officers of the status of deputy - collectors such as sub - divisional officers and executive officers of large municipal corporations are designated as electoral registration officers junior to them such as Tehsildhars are nominated as assistant electoral registration officer.

The election in every constituency is supervised by an officer known as the Returning Officer, nominated by the Election Commission in consultation with the State's Government. The same officer can be nominated as Returning Officer for more than one constituency. He is assisted by one or more Assistant Returning Officers. Returning Officers for assembly constituencies are usually drawn from the cadre of sub - divisional officers, while those for Parliamentary Constituencies are District Officers. The State Government sends the list of officials with their designations to the Election Commission, which after scrutinizing the same formally designates them as such for assembly and parliamentary constituencies. The staff consists of Presiding and Polling Officers, appointed by the District Election Officer; who appoints a Presiding Officer for each polling station and such other officers. The Presiding Officer keeps order at the polling station and ensures the fair conduct of the poll. Usually government servants with administrative abilities and knowledge of election law and integrity are picked up for appointment as presiding officers.

### **22.1.4 Functions and Powers of the Election Commission**

The Election Commission of India has to perform multifarious duties assigned to under the Constitution. Plenary powers and superintendence, direction and control of the preparation of electoral rolls and the conduct of elections vested in the Election Commission under Article 324 of the Constitution are supplemented further by various Acts. Some of the principal functions of the Commission are as follows:

### **a) Demarcation of Constituencies**

To facilitate the conduct of elections, a country is divided into several constituencies. The task of delimiting the constituencies is generally performed by a delimitation commission. In 1951 first general elections, the power to delimit parliamentary and assembly constituencies was conferred on the President; but later the Election Commission strongly pleaded for taking away this power from the Parliament. As an outcome of the recommendation of the Election Commission the Parliament enacted the Delimitation Act, 1952. The Delimitation Commission was to consist three members, two of whom were to be nominated by the President from serving or retired judges of Supreme or High Courts while the Election Commissioner was to be an ex-officio member.

### **b) Electoral Rolls**

The second important and tedious function is to prepare, up date list of all the persons entitled for voting at the poll and prepare the Electoral roll i.e. the list of the voters.

### **c) Recognition of Political Parties**

Another important function of the Election Commission is to allot symbols to the political parties and the candidates, and also to accord recognition to the political parties. The Commission has specified certain symbols as reserved and others as free. The reserved symbols are only available for candidates sponsored by the political parties and free symbols are equally available to other candidates. (Part IV A) added to the Representation of the People Act 1951, Section 29 provides, the Election Commission the power to adjudicate upon disputes with regard to recognition of political parties and rival claims to a particular symbol for purposes of elections. A recognized political party has been classified either as a National Party or a State Party under paragraph 79 the Election symbol order 1968.

### **d) Scrutiny of the Nomination Papers**

Besides these function, the Election Commission has to examine the nomination papers of the candidates. These papers are accepted only if found in order, but otherwise rejected. Thus duty is performed by the Returning Officer who notifies to all contesting candidates the date; time and place for the formal scrutiny of the nomination papers. The Returning Officer judicially examines all the nomination papers and decides the objection raised. He is also to 'see whether the requisite requirements of security deposit, election symbol election agent etc, have been fulfilled. He is empowered to reject the nomination papers either by upholding the objection raised by rival candidate or on his own motion or any of the following grounds.



- i) That the candidate either is not qualified or is disqualified to fill the seat under the constitutional provisions, viz. Art 84, 102, 173 and 191.
- ii) That the provisions of Section 33 and 34 of the Peoples Act 1951 have not been complied with and
- iii) That the signature of the candidate or the proposal on the nomination papers is not genuine.

#### **e) The Conduct of the Poll**

Conduct of the poll is a stupendous task and functional which is performed by the Election Commission. In a Parliamentary or Assembly Constituency the Returning Officer is to make suitable arrangements for conducting the poll with the prior approval of the Election Commission. The Commission can order a re-poll for the whole constituency under compulsion of circumstances. Art 324 confers on the Election Commission necessary powers to conduct the election including the power to countermand the poll in a constituency and ordering a fresh poll because of breakdown of law and order at the time of polling or counting of votes.

#### **f) Election Expenses**

The most controversial and difficult function that the Election Commission performs is to scrutinize the accounts of election expenses submitted by contestants in election. In India every contesting candidate is required to maintain and file the accounts of his election expenses within the prescribed period after publication of the result of his elections. Within 10 days from the last date of filing the returns, the Returning Officer submits the Election Commission a list of all the candidates and their agents together with their returns as also his observations in respect of candidates who have failed to lodge returns within the time limit, and as per the laid down procedure. In case of any default it notifies the candidates or their agents of their disqualification by publishing these in the official Gazette.

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### **22.2 LET US SUM UP**

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The Election Commission of India has acquired a prestigious position as an electoral grievances platform and it has also earned credit at home and abroad. But making of the Election Commission function independently does not work because political parties play an important role in a fair election. Rigging booth capturing and other male practices take place not without the help of the candidates. Such and other type of loop- holes in the election process requires electoral reforms and hence cannot be wished away. Election process and reforms are considered to be a basic. That is why despite huge expenditure, elections its process and reforms cannot be regarded as a luxury but an essential component of democracy.

### Check your progress

Note: a) Answer in the space give below.

b) Check your progress with those given at the end of the unit.

1. Discuss the composition of Election Commission

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2. Explain the role of Regions and Deputy Commissioner.

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3. Examine how the Election machinery works at the state and District level.

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4. Discuss the powers and functions of the Election Commission.

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### 22.3 KEY WORDS

Belies	-	Prove wrong
Integrity	-	Not corrupt
Deploy	-	To employ
Discriminate	-	Partiality

### 26.4 SUGGESTED READING

1. Government of India (Publication) The Constitution of India.
2. B.L.Fadia - Indian Government and Politics
3. Granville Austin - The Indian Constitution: Corner stone of a Nation.
4. Subhash Kashyap - Our Parliament
5. Basu D.O. - Introduction to the Constitution of India - 19th Ed.2001.
6. Pylee M.V. - Constitutional Government in India (2000)
7. J.C.Johari - Indian Government and Politics.

### 22.5 ANSWER TO CHECK YOUR PROGRESS EXERCISES

1. Refer 22.1 ., 22.1 .1 ., and 22.1 .2.
2. Refer 22.1.1., (22.1.1. & 22.1.2. brief) 22.1.3. detail.
3. Refer 22.1.4.
4. Refer 22.1 ., 22.1 .1 . and 22.1.5.

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**UNIT 23      MERITS AND DEFECTS OF ADULT FRANCHISE - ATTEMPTS AT  
ELECTORAL REFORMS**

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**STRUCTURE**

- 23.0 Objectives
- 23.1 Introduction
- 23.2 Theories of Franchise
- 23.3 Universal suffrage
- 23.4 Limited Franchise
- 23.5 Adult Franchise – India
- 23.6 Merits
- 23.7 Defects
- 23.8 Electoral Reforms – Introduction
- 23.9 Electoral Reforms in India
- 23.10 Electoral Reforms – Suggestions
- 23.11 Tarakunde Committee's Recommendations
- 23.12 Election Commission's Recommendations
- 23.13 Report of the panel of State funding of Elections
- 23.14 Representation of women
- 23.15 Let us sum up
- 23.16 Key words
- 23.17 Suggested Readings
- 23.18 Answers to check your progress exercises



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## 23.0 OBJECTIVES

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After going through this unit you will be able to

- Explain the background to accept adult Franchise
- Know its merits and defects
- Understand the attempts made by India towards electoral reforms

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## 23.1 INTRODUCTION

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Modern democracy is indirect or representative democracy, a form of government based on consent and criticism is possible by handing over governmental machinery in the hands of persons who are elected by the people. Democratic government is run not by any particular individual or a class but by representatives of the people. In a democracy it is supposed that power is vested in the people should be allowed to choose their leaders or representatives. Representatives are elected by persons who have franchise. A candidate who secures more votes than his rivals is declared successful. The study of the electorate and the representative is of great importance in dealing with democracy; in fact the study of these is the study of democracy. The electorate is the foundation of a democratic form of government. "In a popular government of the representative type, the electoral branch may be viewed as the foundation upon which the whole structure of government is elected. It is thus logical that a consideration of the several branches of government should begin with it." The electorate elects representatives who run the government. In countries having the system of referendum and initiative, plebiscite and recall, the importance of the electorate is very great. "The electorate, or voters, are sometimes spoken of as the 'political people' to distinguish them from those who have no direct legal share in the conduct of public affairs. The French Constitution of 1791 spoke of these two classes as active and passive citizens'.

The principle of democracy is spreading fast in countries which won their independence in recent years. Elections have been held in several countries of Asia and Africa. Thinkers in Europe who were not prepared to believe that the Africans and Asians were fit enough for franchise must have been disappointed to learn that their judgement has been proved to be wrong. India held General Elections on the basis of adult franchise. Ceylon also held elections but her problems were not so great as those of India. In Europe all countries including dictatorships have been following the principle of elections. "The successful experiments in India, Ceylon, Ghana, and Nigeria were followed by elections in the Sudan, Malaya, Sierra Leone, Kenya, Zanzibar, Uganda, Tanganyika and elsewhere with methods suited as far as possible to serve local needs and conditions. The French overseas as territories have rapidly developed their own electoral systems.

All persons in a state do not have franchise or the right to vote. Certain qualifications are laid down as essential to have franchise. States in which there is universal suffrage persons below a certain



age (it may be 18, 21 or 25) are allowed to vote. Aliens, people who have served a jail sentence for criminal offence and people of unsound mind do not have franchise. Even today there are states in which women are not allowed to vote. In the most highly advanced democracies franchise is given to all, that is, to all adults. Though India cannot be put on a par with the leading democracies of the West, she introduced the principle of adult franchise in her constitution at one stroke.

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### **23.2 THEORIES OF SUFFRAGE**

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The following theories have been put forth regarding suffrage: (a) The Theory of Natural Rights: This theory is based on the Social Contract Theory, which says that the state is a product of contract. According to the theory of Natural Rights, every citizen gets franchise as his inherent right. The theory bases the right to vote on an abstract right emanating from laws of nature. (b) The Tribal Theory: According to this theory which was developed by the Greek, Roman and German peoples, the right to vote (which every citizen enjoyed) was part and parcel of the life of the community. It must be remembered here that only a small minority in the community enjoyed the rights of citizenship which included the right to vote. The theory bases the modern right of voting on the ancient tribal right among the Greeks and Romans. (c) The Feudal Theory: This theory, which was developed in the middle ages, linked the right to vote with social status derived from property ownership. Those who prescribe a property qualification for the right of voting depend on this theory. (d) The Ethical Theory: This theory says that the right to vote enables the individual to develop his personality, as he gets the right to express himself and associate himself with the work of government. (e) The Legal Theory: This theory is based on the belief that franchise is a political right nor an ethical right. It is a political right created by law.

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### **23.3 UNIVERSAL SUFFRAGE**

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Opinion is sharply divided on the question whether all should have the right to vote or not. If all adults in the state are given the right to vote, it means there is universal suffrage. Thus universal suffrage in actual practice means adult suffrage. In India there is universal suffrage. All men and women, whether educated or uneducated, rich or poor have the right to vote at the general elections provided they have attained the age of 21. Only aliens, criminals, bankrupts and insane people are excluded from electorate as it is believed they are not fit to exercise franchise. In Switzerland women had no franchise. In the country-wide referendum in Switzerland held in 1959 men voted against the enfranchisement of women. Later in 1973 women were given the right to vote in Switzerland. "The British Commonwealth countries in Asia, which have gained independence since the Second World War are, in general, firmly wedded to the concept of universal adult suffrage." In the countries of Africa viz. Rhodesia, Nyasaland, Kenya, Sierra Leone, the Gambia; Uganda and Tanganyika there is no adult franchise and suffrage is based on income, property, literacy and so on. Zanzibar, North Nigeria, Iraq, Tansjordan and Sudan have no women voters. In Syria all males and females who are eighteen required to have a certificate of primary education for franchise.



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## 23.4 LIMITED FRANCHISE AND EXCLUDED CLASSES

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As stated already, all the people in a state are not given franchise. Franchise is subject to the certain restrictions in certain states. Statesman impose one or more of the following conditions for the exercise of franchise: (a) Must have property or must pay tax: Owing to feudal influence, even in European countries those who had no property were not given franchise. Non-possession of property implied non-payment of taxes. But this view is regarded as incorrect, because even those who have no property pay indirect taxes to the state. In Britain till 1832 franchise was given to freeholders owning property worth forty shillings a year. In British India franchise was based on property or educational qualification. In the U.S.A. too in some states property ownership and tax payment formed conditions of franchise. In the recent times property qualification has been done away with, as reactionary and unjust. People are high-placed or low-placed by the accident of birth and it is manifestly unjust to penalize people who have no property. It is also not admitted now-a-days that property - ownership is a guarantee of education. (b) Must have educational qualification: In countries like Brazil and Chile, illiterate people have no franchise. "There has been little use of literacy as a qualification for the franchise in modern Asia, but it has been and still is in common use in Africa. Literacy is usually not an obligatory qualification but rather one of the alternative qualifications in much of East Africa." J.S.Mili is a strong advocate of educational qualification as a necessary condition for franchise. Scholars like Graham Wallas and Finer criticized the attitude of Mill. They are of the opinion that it is not education or knowledge that is of importance, as political issues are decided by people's passions and desires, and therefore the imposition of an educational qualification will exclude a large majority of people from franchise and do injustice to them (c) Must be males: Owing to causes already stated before, women are excluded from franchise in several countries. In Switzerland and other countries women have not been enfranchised. (d) Must have residential qualification: The rule regarding residence varies from country to country. (e) Must belong to a particular race: In the U.S.A. in the Southern States the Negroes have no franchise. In Nazi Germany, Jews had no franchise (f) Must be the citizen of the State: Only citizens of a particular state are given franchise in that state, while aliens are excluded. (g) Must reach a certain age: It is believed that unless a person becomes mature, he is not fit to exercise his franchise. So an age qualification is laid down. But there is no uniformity regarding age and different states have their own age qualification. In India, France and the U.S.A. every voter must be 18, in Russia and Turkey he must be 18, and in some other countries he must be 25, In several African countries the age is 21, in Zanzibar and the Gambia, it is 25. "Countries in which the minimum age for voting is less than 21 include Indonesia, Iraq and Syria." In Syria the age is 18. "In Kenya the attainment of the age of forty five was one of the alternative qualifications". (h) Must not suffer from certain disabilities: In the past military personnel had no franchise. Bankruptcy, insanity and conviction for criminal offences disqualify persons in most of the states. In some states government servants have no franchise. In Britain aliens, peers, people of unsound mind and persons convicted for criminal offences and corrupt or illegal practices have no franchise.



### 23.5 ADULT FRANCHISE IN INDIA

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Ever since the introduction of the elective principle for Legislature in India, separate communal electorates were the features of the Indian electorate scene. The Indian National Congress had always opposed the concept, calling it to be anti-national, anti-democratic and barrier to the Indian freedom and the development of Indian Unity. Meanwhile, all the efforts of forging a settlement with the Muslim league vanished with the partition of the country in 1947. Undoubtedly, Pakistan was the ultimate result of the separate communal electorates injected by the British rulers in India.

In its first meeting, the Advisory Committee on Fundamental Rights, Minorities, Tribal and Excluded Area took up the question of joint or separate electorates, including the question of safeguards for minorities proposed by the Cabinet Mission Plan. By an overwhelming majority, the Advisory Committee underlined the complete abolition of the system of separate electorates in the new Constitution. The motion to this effect was moved in the Constituent Assembly on August 27, 1947 by Mr. Valabhbhai Patel. Barring a few members, the opinion was unanimous for 'joint electorates'. The Draft Committee further proposed a new article (Article 289-A) providing all elections to either House of Parliament or the legislature of any state should be on the basis of joint electorate and there should be "one general electoral roll for every territory constituency" for any election, and no person should be excluded from any such roll on the ground of religion, race, caste, sex or any of them. The new Article as moved by Dr. Ambedkar on June 16, 1949, was adopted by the Assembly without any discussion, while abolishing the principle or reservation of seats for Muslims, Anglo-Indians, Sikhs and Indian Christians. With this change, it came to be known as Article 325 of our Constitution.

As explained earlier that during the British period, the Indian Legislatures were elected on a very restricted franchise and only a small fraction of the population was eligible to exercise the right to vote. The Cabinet Mission Plan for the first time recognized the principle of 'adult franchise' as the most satisfactory method of forming a Constituent Assembly, though it had to bypass it on account of the 'unacceptable delay'. But the Advisory Committee happily agreed on April 23, 1947 with the recommendations of both the Fundamental Rights Sub-Committee and the Minorities Sub-Committee that every citizen not below 21 years should have the right to vote as a fundamental right to any election to the Legislature, of the Union or of any unit thereof. Accordingly, the model Provincial Constitution and the Union both contained the provisions regarding the adult suffrage. The Draft Constitution prepared by the Drafting Committee also included the provisions that elections to the Legislative Assemblies in the Provinces and the House of the People should be on the basis of adult suffrage. But Dr. Ambedkar moved an amendment to Article 289-B on June 16, 1949, introducing a new clause which laid down that "elections to the House of the People and to the Legislative Assembly of every State should be on the basis of adult franchise". This now figures as Article 326 of the Constitution and is known as Universal Adult Suffrage'.



Today, Adult Franchise is an established fact and its merits and demerits are no longer debated in India or elsewhere. For, it is now generally recognized that representative Government without universal franchise will be meaningless. However, the question of an appropriate voting age has in recent years assumed considerable significance, especially because the western countries have today accepted voting age as 18 years, while in India it was till recently 21. It is argued that the youth in age group of 18-21 had been deprived of their participation in the country's political affairs. This group had felt itself estranged, alienated and ignored which had weakened to our democratic apparatus. The result of it was stated as student unrest, although there was no close relationship with the problem of youth revolt with the question of lowering the voting age. But there is a general desire among the youth to secure full participation and a decisive voice in administering their affairs. The arguments forwarded against this proposal for lowering the age were that (a) election expenditure would go up as a result of the increase in the number of voters, (b) youths of 18 year-age cannot be considered as responsible enough to exercise the right to vote, and (c) the logic that the change would bring about politics into the educational institutions, are dismissed as shallow poppy cock. Article 326 has now been amended as to grant the youth in the age-group of 18-21 right to vote. In 1983, the Joint Parliamentary Committee on Electoral Reforms also favoured lowering of the voting age to 18 years. Thus India has adopted universal suffrage - in case of adult Franchise.

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### 23.6 MERITS

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Certain arguments are advanced in favour of universal suffrage: (a) Universal Suffrage builds complete democracy: If democracy is a form of government in which sovereignty is vested in the people, a democratic state must have universal suffrage. If all are not given the right to vote, there can be only restricted democracy. If some people alone are privileged to exercise franchise on the basis of property or other qualifications, it implies that other people are at a disadvantage and they are not associated with the affairs of government. (b) Necessary for personality - development: Every individual in the state should be given opportunities for the full development of his personality. This is possible only when all enjoy the right to vote. A person who cannot vote obviously cannot also stand for election and cannot be a member of the legislature. Even if he has the ability, he is not allowed to participate in governmental affairs. This subjects him to a great handicap and the growth of his personality is stunted. (c) Limited suffrage benefits a minority: If only a few persons in a state are given franchise, it means others are excluded from the enjoyment of political power. Those who have the right to vote will be able to exercise power. These privileged men and women obviously use their position and power in their own interests and not in the interests of all. A government in the hands of a few cannot be expected to be fair and just to all (d) All must have a share in shaping policies: Unless there is universal suffrage all cannot have a share in shaping the policies of government. Policies, pertaining to home affairs and foreign affairs are the concern of all and therefore they must be decided by all. Some scholars say that universal suffrage must be the general rule. T.E. Smith observes: "The combined experience of Asia, Africa and the West Indies clearly demonstrates that widespread education and literacy are not essential conditions for the successful



working of adult suffrage. Given a suitable system of voting and elections conducted fairly, the backward peasant in an under-developed country is as capable of casting his vote intelligently in favour of the candidates". Limiting franchise to the literate part of the population presents practical difficulties, though theoretically it looks sound. In countries which have made educational qualification one of the conditions for voting, officials have to verify whether a person can read or write. This provides much scope to officials to make use of their discretion and thus open the door to partiality and corruption. "In some of the states of the U.S.A., literacy tests are carried out in a way which effectively disenfranchises a section of the Negro population." Most of the democratic countries have decided in favour of universal suffrage. as it is with all its drawbacks better than restricted suffrage. "External tests of fitness were gradually done away with. and in the democratic states practically universal suffrage was achieved in the twentieth century Universal suffrage was becoming sacrament of the democratic religion."

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### 23.7 DEFECTS

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On the other hand universal suffrage has been criticized by several eminent writers like Macaulay, Lecky, Sir Henry Maine, Bluntschli and J.S.Mill. The following are the drawbacks of universal suffrage:

(a) Power goes to the ignorant and the illiterate: If all and sundry irrespective of an educational qualification are allowed to vote. there is the likelihood of power falling into the hands of the ignorant and the illiterate. These men at the helm of affairs will spell ruin on the state by their incompetence and ignorance. (b) Progress will be halted: Progress in all fields will be halted when through universal suffrage power is vested in the hands of the incompetent. who attach no importance to scientific. and other types of progress. Then democracy would mean keeping the state stationary. If not driving it in the reverse direction. (c) Misuse of vote: A vote in the hands of a man who does not know anything about politics and other matters is not only a sheer waste but also a source of mischief. An ignorant man does not know for whom he should vote or others may press him to cast his vote in favour of a candidate lacking in competence and integrity. It is also possible that he may sell his vote. Universal suffrage in a backward country gives ample scope for mischief, bribery and corruption. (d) Does injustice to property owners: J.S. Mill points out that a payer must be allowed to vote. He says: "Those who pay no taxes, disposing by their votes of other people's money have every motive to be lavish and none to economize." If property owners and those without property are given the same political rights, the former will suffer and the latter will have undue advantage in the state. As Finer points out, two reasons were given in favour of property qualification. "One was that the possession of some property was a trustworthy indication that its possessor was educated and therefore competent to pronounce upon public affairs. The other was that if those who had no property were enfranchised there would be an end of private property." (e) Vote to women is harmful: Women neither by capacity nor inclination are fit for taking part in the political affairs of their country, If they are given the right to vote, their attention will be diverted from the affairs of the home to the affairs of the state and thus the interests of the home will be neglected.



Thus despite certain defects, the Indian Constitution has adopted that a youth of 18 years of age is considered to be adult - who is mature enough to participate in the political affairs of the nation in 1983 through the Joint Parliamentary Committee on electoral reforms.

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### 23.8 INTRODUCTION: ELECTORAL REFORMS IN INDIA

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Free and fair elections are essential in a healthy democracy. It is an essential condition for the success of democracy that people maintain their allegiance towards the democratic institution based on rule of law. The more the elections are free and fair the stronger the allegiance the people will have towards democratic institutions. Contrary to this, if the elections are not free and fair, the people will not have faith in democracy. Mohan Dharia has rightly observed: "Present election system, which has encouraged use of black money, casteism, abuse of administrative machinery, rigging, and even capturing of booths in some areas, has been fast eroding the faith of the people in free and fair elections."

Parliament has made a law to ensure free and fair elections and a very comprehensive system of elections has been developed in the country. The experience of the last thirteen General Elections have shown the merits and demerits of the system to the people. Minor changes have since been made in the system. Still our electoral process is beset with many evils. Some of them can be easily identified. First, is the mounting expenditure on elections, incurred both by the Government on organizing them and, more particularly, by the parties and candidates on fighting them. Barring a few rich individuals nobody can finance an election from his own resources. The political parties and their candidates have, therefore, come increasingly to rely on business sources. The business contributions are mostly in cash and from unaccounted money. Another source is the wealth amassed by the gangs of anti-social elements smugglers, dacoits, and industrial mafias. Secondly, even more than money power factor, which vitiates the elections, is the muscle power, acting in aid of the candidates belonging to dominant castes and communities in a constituency. Often the administrative machinery is hand in glove with these elements. Amethi parliamentary election and the reports on the recent by-elections in Meham are illustrative of this ugly combination. With the aggravation of caste and communal conflict, the eclipse of idealism and ideology in public life, the evil of booth capturing and rigging has virtually made a mockery of free and fair elections. The evil practice, which started in Bihar, has gradually spread to other States. Thirdly, it has also been observed that due to large number of percentage of votes polled by political parties also does not correspond to their percentage of seats. The majority party generally wins with minority votes. Fourthly, the dependence of the Election Commission on the Central and State governments for the conduct of the polls is another serious defect in the existing electoral system. Many Presiding Officers at the polling booths have been caught stamping the ballot papers and putting them inside the ballot boxes during the night before the poll. Fifthly, candidates with criminal records are contesting elections and get elected by using strong arms. For example, a record 435 candidates with criminal backgrounds stood for 11 the Lok Sabha elections in 1996 and 27 of these actually made it to Parliament.

Indeed, the battles of ballots have been turned into battles of bullets. On the election days booths are captured, polling agents attacked and bombs thrown to prevent weaker sections from exercising their franchise.

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### 23.9. ELECTORAL REFORMS

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The following electoral reforms have been introduced in our electoral system in the last few years.

- 1) Lowering of Voting Age: The Constitution (Sixty-first Amendment) Act, 1988 amends Article 326 by substituting the words '18 years' for '21 years'. This came into force on 28 March 1989. Thus Parliament through a constitutional amendment in 1989 reduced the minimum voting age from 21 to 18. For the first time, as many as 25.7 million voters in this age group exercised their right to elect representatives in the 1989 elections.
- 2) Deputation to Election Commission: Under the Representation of the People (Amendment) Act, 1988, a new section 13CC was inserted which provides that officers or staff engaged in preparation, revision and correction of electoral rolls for elections shall be deemed to be on deputation of Election Commission for the period of such employment and such personnel shall during that period, be subject to control, superintendence and discipline of Election Commission.
- 3) Increase in number of proposers: Number of electors who are required to sign as proposers in nomination papers for elections to Council of states and state Legislative Council has been increased to ten per cent of the electors of the constituency or ten such electors, whichever is less, to prevent frivolous candidates.
- 4) Electronic Voting Machine: The Representation of the Peoples Act, 1951, was amended to facilitate use of electronic voting machines in elections. Electronic Voting Machines (EVMs) were first used in November 1998 in various constituencies in the state elections of Rajasthan, Madhya Pradesh and Delhi. The Commission continued to hold bye-elections across the country by using EVMs.
- 5) Booth Capturing: Section 58 A has been inserted in the Representation of the Peoples Act, 1951 by Act 1 of 1989 providing for adjournment of poll or countermanding of elections because of booth capturing, Booth capturing has been defined in section 135 A of the Representation of the People Act, 1951. If because of booth capturing result of poll/result of counting cannot be ascertained returning officer will report the matter forthwith to Election Commission. Election Commission on such report may either declare the poll at the particular polling station as void and appoint a date for fresh poll or countermand election in the constituency.
- 6) Disqualification on Conviction under the Prevention of Insults to Nation of Honour Act, 1971 : Any conviction under section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence) of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 shall hereafter entail disqualification for contesting elections Parliament and state legislatures for a period of six years from the date of such conviction.



- 7) Increase in Security Deposits and Number of proposers: The amount of security deposit which a candidate at an election to the House of the People or a State Legislative Assembly has to make has been enhanced as a measure to check the multiplicity of non serious candidates. In the case of an election to the House of the People, the amount of security deposit has been increased from Rs. 500 to Rs. 10,000 for the general candidate and from Rs. 250 to Rs. 5,000 for a candidate who is a member of a Scheduled Caste or Scheduled Tribe. In the case of elections to a State Legislative Assembly, the candidates will have to make a deposit of Rs. 5,000 if they are general candidates and Rs. 2,500 if they belong to a Scheduled Caste or Scheduled Tribe, instead of Rs. 250 and Rs. 125 respectively as was being previously deposited by them. The amended law further provides that the nomination of a candidate in a Parliamentary or Assembly constituency should be subscribed by 10 electors of the constituency as proposers, if the candidate has not been set up by a recognized National or State Party. In the case of candidate set up by a recognized party only one proposer is sufficient; Minimum interval between the last date for withdrawal and date of poll has been reduced to 14 days instead of 20 days.
- 8) Restriction of Contesting Election from More than Two Constituencies: A candidate shall hereafter not be eligible to contest election from more than two Parliamentary or Assembly constituencies at a general election or at the bye-elections and bye-elections to the council of states and state legislative councils.
- 9) Listing of names of candidates: For the purpose of listing of names of candidates, they shall be classified as (a) candidates of recognized political parties (b) candidates of registered unrecognized political parties, and (c) other (independent) candidates. Their names in the list of contesting candidates, and in the ballot papers will now appear separately in the above order and in each category they will be arranged in alphabetical order.
- 10) Death of a Candidate: Previously, the election was countermanded on the death of a contesting candidate. In future, no election will be countermanded on the death of a contesting candidate. If the deceased candidate, however, was set up by a recognized National or state party, the party concerned will be given an option to nominate another candidate within seven days of the issue of a notice to that effect to the party concerned by the Election Commission.
- 11) Prohibition of going Armed to or near a Polling Station: Going armed with any kind of arms as defined in Arms Act, 1959 within the neighborhood of a polling station is now a cognizable offence punishable with imprisonment offender shall also be liable to confiscation and license granted in relation to however, not apply in the case of Returning Officer, Presiding Officer, any police officer or any other person appointed to maintain peace and order at the polling station.
- 12) Grant of Paid Holiday to Employees on the Day of Poll: All registered electors who are employed in any business, trade, industrial undertaking or any other establishment shall be entitled to a paid holiday on the day of poll. Even the daily wagers will receive their wages for the said day. But this will not apply in the case of an elector whose absence may cause danger or substantial loss in respect of the employment in which he is engaged. Any employer contravening the law shall be



punishable with-fine up to Rs. 500.

- 13) Prohibition on Sale, etc., of Liquor: No liquor or other intoxicants shall be sold, given or distributed at any shop, eating place, hotel or any other place, whether public or private, within a polling area during the period of 48 hours ending with the hour fixed for the conclusion of poll. Any person contravening the law shall be punishable with imprisonment up to six months or with fine up to Rs.2000 or with both.
- 14) Time Limit for Holding Bye-elections: Bye-elections to any House of Parliament or a State Legislature will now be held within six months or occurrence of the vacancy in the House. However, this stipulation will not apply where the remainder of the term of the member whose vacancy is to be filled is less than one year or where the Election Commission, in consultation with the Central Government, certifies that it is difficult to held the bye-election within the said period.

The President issued an ordinance on 5 June 1997, called the Presidential and Vice-Presidential Elections (Amendment) Ordinance, 1997 whereby number of proposers and seconders for contesting election to the office of the President of India was increased to fifty each in place of ten; number of electors as proposers and seconders for contesting Vice-Presidential election was increased to 20 each in place of five. The amount of security deposit has been increased to Rs. 15,000 in place of Rs. 2,500 for contesting election to the offices of President and Vice-President.

An ordinance was promulgated to amend section 60 of the Representation of the People Act, 1951 for inserting a new sub section @ for making provisions for voting by certain classes of persons through postal ballot. The provision was meant to facilitate right of franchise by migrants from Kashmir valley in view of the then Impending General Elections to the twelfth Lok Sabha.

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## **23.10 ELECTORAL REFORMS: SUGGESTIONS**

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To streamline the system we want radical reforms in the entire electoral system. Electoral reforms and other measures have become imperative to overcome the threat to democracy and carry democratic process forward. To improve the drawbacks and loopholes in the electoral system we propose these reforms:

### **1. Reorganization of Election Commission**

To start with let us consider the appointment of the Chief Election Commissioner which as per the present procedure cannot be considered to be totally free from political bias as the appointment is made on the advice of the leader of the ruling party (Prime Minister) in the House. Considering the various suggestions regarding the appointment of Chief Election Commissioner, the following mechanism would seem to be a good compromise and a practical proposition.

The appointment of the Chief Election Commissioner can be made through a Committee consisting of the Chief Justice of India, the leaders of the ruling party and main opposition party in Parliament. The Committee can make a panel of few eminent persons, each one of them selected unanimously, and forward it to the President for final selection. In this way the overwhelming say that the ruling party has in the appointment of the Chief Election Commissioner can be neutralized. Further, it should be made mandatory that the Chief Election Commissioner on completion of his term will not be eligible for consideration for any office of profit. However, a retiring Chief Election Commissioner may be provided an adequate compensation package. The other members of the Election Commission should be appointed by the same Committee as is proposed for the selection of the Chief Election Commissioner, but with the Chief Election Commissioner as an ex-officio member. Retired Government officials should not be allowed to occupy this office.

## **2. Independent Election Machinery**

The Election Commission should have its own administrative machinery at the state level and its powers should be considerably augmented. At present the Election Commission is completely at the mercy of the Central and state governments. It cannot even maintain the electoral rolls up-to-date without assistance from the state government. In these circumstances, the independence of the election system would always be under constant threat from the vested interests dominating the party in power, which in fact controls the administration. Unless the commission is provided with an independent cadre and enjoys the same degree of autonomy as the judiciary, its impartiality will remain theoretical concepts.

## **3. Simultaneous Elections**

To curb the election expenditure it should help much if elections are simultaneously held for the Lok Sabha, state Assemblies and also the local bodies {through constitutional amendments their term can be easily made uniform}. This would drastically reduce election expenditure of all kinds and would incidentally promote development of a healthy party system at all levels of administrative structure. The government deliberately separated the Lok Sabha elections from the state Assembly elections in 1971-72 in order to make them expensive to the great disadvantage of the opposition.

## **4. State Funding of Electoral Campaigns**

In addition to the simultaneous holding of elections, some system of funding of electoral campaigns is absolutely necessary. A simple procedure can be adopted: Candidates of a recognized political party and independents, who have received more than, say 25 per cent of the valid votes polled in a particular constituency in a previous election, would be entitled to receive a fixed contribution in two installments equal to three-fourth of the limit imposed by the Election Commission on the election expenditure. These



limits should be revised on the index series. The amounts should be given directly to qualified candidates if the funds are distributed through the parties; blatant discrimination would be practiced. New candidates will, of course, not benefit by this arrangement. They will have to prove their electoral worth before they can claim state assistance. The qualification of a minimum of 25 per cent vote would reduce the number of claimants. Apart from this, the recognized parties should be given grants for organizational work and for office expenses. The accounts should be audited by a machinery set up by the Election Commission.

There should be limit on leaflets and posters issued and advertisements contributed by the candidates and parties during the elections.

### **5. Election Time Table**

In order to help reduce the heavy expenses incurred by the candidates in electioneering, the scrutiny of nomination should be taken up on the day after the last date for making nominations, the interval allowed after the scrutiny of nominations for the withdrawal of candidatures should be reduced to 2 days and the minimum period prescribed for the election campaign should be reduced to 10 days.

### **6. Electronic Machines**

There is a need to introduce electronic machines in the voting process. According to Shakhdher this is very simple and can be operated by the illiterate voter also with ease. The only difference here is the voter has to press a button instead of marking a ballot paper. By the use of EVMs, there are various advantages: (1) quick voting; (2) mixing and detailed counting of ballot papers in minutes as against long hours now taken; (3) less number of polling personnel and polling materials, opening up the scope for stationery auxiliary polling stations near the electors' residences.

### **7. Disposal of Election Cases**

Election petitions also take a long time to be disposed of. Although it is required by law that the election petition should be disposed of within 6 months of its filing, yet seldom this is done. The J.P. Committee while agreeing that the election petitions should be filed only in High Courts also recommends that the cases should be so distributed among a large number of judges that they are expeditiously disposed of (at least within the stipulated period of 6 months).

### **8. Introduction of Proportional Representation with List System**

The present majority system should be replaced by a system of proportional representation. Of all the systems of representation, proportional representation will be best suited to our conditions to



ensure that legislative bodies, i.e., the Lok Sabha and the State Assemblies – more correctly reflect the popular support the different political parties enjoy in a state or in the country as a whole. The legislative bodies will mirror the correlation of the political forces and trends. Seats should be allotted in proportion to the valid polled votes of the different political parties.

Of the various forms of the proportional representation, the most democratic and feasible for our conditions will be list system. The electorate votes for the party list as a whole.

According to Madhu Limaye, “In India where parties are far from democratic a list system based on PR would be disastrous. A Lok Sabha elected on this basis would not be representative of the nation but of party bureaucracies and party bosses.”

### **9. Rotation of Reserved Seats**

It is proposed rotation of reserved seats for Scheduled Castes and Scheduled Tribes.

### **10. Caretaker Government at the Centre and in the States**

In the case of the Lok Sabha and Assembly elections, the Central government as well as the state governments should function only as caretaker governments during a minimum period immediately proceeding the election and it should include some leaders of the opposition parties.

### **11. Use of Radio and T.V.**

Radio and Television should be allowed to be used by all political parties for election propaganda on some considered formula. The votes secured by the political parties in earlier elections could be rational basis.

### **12. Election Expenditure**

Expenses incurred by the candidate and the party should be taken, into consideration while accounting for election expenditure. Having regard to the present costs, proper limits on expenditure should be fixed in consultation with the opposition parties. Expenditure incurred by some voluntary organizations should also form part of the election expenses. All these expenses must be required to be examined by chartered accountants and any false entries should be made rigorously punishable.

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## **23.11 TARAKUNDE COMMITTEE'S (J.P. COMMITTEE) RECOMMENDATIONS**

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In August 1974, Jaya Prakash Narayan on behalf of the "Citizen's for Democracy" appointed a Committee to study and report on a scheme for electoral reforms. The members of the Committee were: V.M. Tarakunde, M.R. Masani, P.G. Mavalankar, A.G. Noorani, R.D. Desai and E.P.W. Decosta. It is known as J.P. Committee or Tarakunde Committee. The Committee made the following recommendations:

1. The Election Commission should be appointed by the President on the advice of a Committee consisting of the PM, the leader of the opposition in the Lok Sabha and Chief Justice.
2. The Election Commission should be a three-member body.
3. The minimum age for voting should be 18 years.
4. The TV and Radio should be placed under the control of autonomous statutory corporation.
5. The Committee recommended the formation of Voter's Council in as many constituencies as possible which can help on free and fair election.

### **23.11.1 Goswami Committee's Recommendations**

In accordance with the Janata Dal's election commitment, the National Front Government announced in the Lok Sabha on May 4, 1990, that a Bill for major electoral reforms, including a time limit for bye elections, increase in deposits from independents, a check on advertisements in newspapers and strengthening of the Election Commission would be introduced in Parliament soon. A special committee under the Chairmanship of Mr. Dinesh Goswami - the Law Minister, had been set up early in 1990 to study the problem in detail and suggest measures for remedying the flaws in the system. The committee has made the following recommendations:

1. On booth-capturing, the committee felt that even after the 1988 amendment of the Representation of the People's Act the evil persisted and recommended a series of legislative measures to eradicate booth-capturing, rigging and intimidation. The recommended steps include ordering of re-poll or countermanding not only on the report of the returning officer but even otherwise and giving the commission the power to appoint investigation agencies, prosecuting agencies and ask for the constitution of special courts.
2. The Committee also called for amendment of the anti defection law to restrict disqualification only to those cases where an elected member voluntarily gives up his membership of the political party, or when he votes or abstains from voting contrary to the party whips, directions only in respect of motion of vote of confidence or a motion amounting to non-confidence of a money bill or motion of vote of thanks to the President's address. The power of deciding the legal aspect of disqualification should be taken away from the Speaker or Chairman and entrusted to the President or Governor who will act according to the Election Commission's recommendations. Nominated



members of the House should also incur disqualification if they joined any political party at any period of time.

3. There was difference of opinion on switching over from the present electoral system to proportional representation or the list system. The Committee has, in this case, recommended constitution of an experts committee by the Law Ministry in consultation with the Election Commission.
4. A fresh delimitation on the basis of the 1981 census and a provision for rotation of seats reserved for Scheduled Castes.
5. Photo identity should be allowed to contest election made a multi purpose card and a time-bound programme for covering the entire country with proposed scheme should be drawn up.
6. A person should not be allowed to contest election from more than two constituencies. Age qualification for contesting elections to Legislative Assemblies and Lok Sabha should be reduced to 21 years and Legislative Councils and Council of States to 25 years.
7. For discouraging non-serious candidates, the security deposit in their cases should be Rs. 5,000 for Lok Sabha elections and Rs. 2,500 for Assembly elections. This will be forfeited if they fail to secure one fourth of the votes instead of one-sixth as at present. The number of proposers to a nomination paper filed by them should be ten, drawn from different Assembly segments.
8. The committee has said that there should be statutory backing for some of the important provisions of the model code of conduct like use of official machinery and personnel, including aircraft and vehicles, issue of advertisement matter at the cost of the exchequer, use of official media for partisan coverage of political news, announcement or sanctioning of financial grants in any form or making payments out of discretionary funds and laying of foundation stones for projects.
9. It called for a ban on transfer of officials and staff connected with election work and giving the commission's observers statutory powers.
10. The panel called for fixing of a six-month time limit for holding bye elections.
11. Enabling the Army personnel and those in paramilitary forces and persons outside India in diplomatic service to vote through proxy was also recommended by the committee.
12. The other recommendations include extensive restructuring of the election expenses account to restore the position as it existed before 1974 and making unauthorized expenditure an offence.
13. Similarly, submission of false accounts and failure to keep an election account should also be made offences. There should be a constant review of the ceiling by the election Commission.
14. There should be appointment of adequate number of ad hoc Judges to relieve regular judges entrusted with the expeditious trial of election petitions.
15. The Committee said punishment for offences should be made more strict. Banning playing of mechanically propelled vehicles on polling day, going about armed with lethal weapons and fire arms on polling day and the sale and distribution of liquor were also recommended.
16. It also said that a standing committee of Parliament should be constituted to go into all matters from time to time as electoral reforms were a continuous process.

17. The committee said that it was satisfied that the electronic voting machine was "free from any scope of manipulation of tamperability" and should be used in all future general and bye elections.

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### **23.12 THE ELECTION COMMISSION'S RECOMMENDATIONS**

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In July 1998, The Election Commission set an agenda of electoral reforms by stating that the task of delimitation of constituencies, including the question of rotation of seats for reserved categories, should be entrusted with the Commission.

The Commission circulated a detailed note on electoral reforms, which included its views on the outcome of the all-party meeting with Home Minister LK. Advani recently and the three-member body's suggestions for further reforms.

Chief Election Commissioner Manohar Singh Gill said the process of setting up a Delimitation Commission for determining the territorial limits of constituencies had been deferred for a considerable period of time since 1970s. It may perhaps not be an exaggeration to state that at the present political juncture, composition of a new Delimitation Commission may not have the consensus of major political parties and thus become a contentious issue among them". Dr. Gill said. Stating that all matters relating to delimitation of states into Parliamentary and Assembly territorial constituencies should be left to the Commission, Dr. Gill said: "The Commission should also have the power to remove the distortions from time to time which affect the basic principle of elections". Dr. Gill said that the Commission had sent its view to the BJP led Government on some of the important issues such a model code of conduct, anti-defection law, donation by companies to political parties. Significantly, the Commission has changed its earlier opinion of providing a statutory backing to the model code of conduct. The opinion of the Commission, based on its experience of conducting general and legislative Assembly elections, now was that bringing the code on the status book would be a 'self-defeating' measure. "No doubt that in the past it was the Commission itself which had proposed that the model code of conduct be brought into the statute book, but after detailed discussions on the issue the Commission is of firm view that it would not be worthwhile to convert the model code into a statute attracting penal code," the CEC said. On the anti-defection law, the CEC said though the law was satisfactory, its application was "faulty". "If the decisions relating to anti defection matters are rendered by the President or the state Governor, on the opinion of the Commission, the same would receive more respect and acceptability from the common people, apart from being arrived at more quickly and expeditiously Dr. Gill said. Interestingly, the Commission did not approve of a total ban on donations by companies to the political parties. The logic behind this was that if trade unions and other organizations had been allowed to contribute to political parties there was no reason that companies should be banned from making political contributions. Dr. Gill said that in democratic set-up, companies should be allowed to contribute for political causes. However, he said, these contributions should be limited to a reasonable level and all transactions in this



regard must be made above board. On the issue of automatic disqualification of a candidate found guilty of corrupt practices, the CEC said the Commission was in best position to decide on the gravity of the corruptness and the period of disqualification it attracted. "It is suggested that the Commission, on receipt of the judgement from the high court, may immediately tender its opinion to the President, instead of the long route presently followed," he said. The CEC said that Commission was not in favour of lowering the age of candidates contesting elections to the Legislative Assembly and the Lok Sabha from 25 years to 21 years and Legislative Council and Council of state from 30 years to 25 years. "The Parliament and State Legislatures are entrusted with the most crucial and vital role of framing policies and framing laws.... It's best not to leave the destiny of millions of Indians in immature hands... the present age qualifications should be allowed to remain and not experimented with," Dr. Gill said.

Among other issues the Commission submitted its views were compulsory maintenance of accounts by political parties, state funding of elections and empowering the Election Commission to frame disciplinary rules in respect of election officers.

Stating that the Government was silent on the "criminalisation of politics", Dr. Gill said the Commission has suggested that any person who "was accused of any offence punishable with imprisonment for five years or more should be disqualified even when the trial was still on put provided the competent court of law had taken cognizance of the offence and framed charges against the person concerned.

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### **23.13 REPORT OF THE PANEL ON STATE FUNDING OF ELECTIONS**

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The Committee on state Funding of Elections has recommended the creation of a separate election fund with equal contributions from the Centre and the state Governments. To begin with it has suggested the, creation of a corpus, with contributions worth Rs. 1,200 crore, which would be shared equally by the Centre and the state Governments.

The eight-member high-powered committee, headed by former Home Minister Indrajit Gupta, presented its report to Home Minister L.K. Advani on January 15, 1998. The BJP led Government had constituted this committee following a decision on May 22 last -at an all-party meeting on electoral reforms.

Even as the report recommends the state funding of elections in kind as against any cash, it has suggested that the funding be confined only to the political parties recognised as the national or state parties by the Election Commission and to the candidates set up by such parties.

Significantly, the committee has recommended that the political parties should compulsorily submit their annual accounts regularly to the Income-Tax authorities, showing all details of their receipts and expenditure.

“No state funding should be provided to any party or its candidates if the party has failed to submit its annual returns for the previous assessment year under the I-T Act”, the report recommends, while suggesting that donations received by the political parties over Rs. 10,000 to be accepted through cheque/drafts for greater transparency.

The committee has also recommended that the accounts of the political parties be audited by chartered accountants on their own that could be subjected to further verification by the I-T authorities, if necessary.

Leaving the question of the existing ban on donations by companies and corporate bodies for political purposes to “the collective wisdom of the Government and Parliament”, the report has suggested a continuance of the ban on donations by the Government companies.

“The question whether election expenses of the political parties and other bodies or associations and individuals should be included or not in the accounts of election expenses of the candidates may also be decided by the Government/Parliament in their collective wisdom”, the report recommends.

As a first step towards state funding of the elections, the committees has suggested the grant of a number of facilities, such as the allotment of rent-free accommodation in Delhi with a rent-free telephone to the recognized national and state parties. sufficient free air time on Doordarshan and AIR. including the provision for such benefits through other private channels. including Cable Operators. specified quantity of petrol of diesel. paper for the printing of election literature. postage stamps. five copies of the electoral rolls for each constituency besides refreshments and food packets for the counting agents.

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### **23.14 REPRESENTATIONS OF WOMEN IN PARLIAMENT AND STATE LEGISLATURES:**

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For the last several years a demand has been made for adequate representation or women in Parliament and state Legislatures. The idea has generated a serious debate amongst the political parties and in intellectual circles. Views differ on several aspects of the proposal, such as percentage to be reserved as to further internal reservation for women belonging to Schedule Castes. Scheduled Tribes and Backward Classes; the methodology and wisdom of allocation and rotation of the constituencies. that may be reserved for women candidates. etc. On all these and other issues. the matter seems to - be embroiled in serious differences with no early solution in sight.

Therefore, it is proposed, that instead of following the reservation route, with the possibility of further internal reservation within reservation, it may more desirable to insist on all recognized political parties, giving adequate space to women in the political process. This can be easily, achieved by a simple



legal provisions, which will require all recognized political parties to set up a specified percentage of women candidates in all state and parliamentary elections, that they take part in. While the political parties will get the requisite flexibility to choose the constituencies and the women candidates, that may be most appropriate in their judgement, women political workers, will also have to quickly come forward, for effective work in the Indian political arena. This proposal envisages, that the parties will so fix a percentage for women candidates that the accepted success rate is enough, to ensure a sizeable increase in the presence of women in Parliament and state Assemblies. If this idea is taken up the controversy of further internal reservation also will become unnecessary. It will be open to political parties to give as many tickets as they please, out of the percentage fixed, to candidates from the less fortunate sections. This type of mechanism of ensuring a minimum percentage of women candidates has apparently worked well in Northern European Countries. The suggestion has the merit of not requiring constitutional amendment eliminating current controversies and going forward with a simple amendment in the Representation of people's Act.

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### 23.15 LET US SUM UP

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According to Mr. T. N. Seshan, many things are wrong with the present election system where "cash criminality and corruption" have prevailed. Realising that the use of money power must be effectively curbed if elections are to be really fair, the Election Commission decided on February 4, 1993 to appoint observers to note the amount of expenditure incurred by the candidate on their poll campaigns. The observers are senior officers not below the rank of Joint Secretaries to the Government of India, drawn from the cadres of Board of Direct and Indirect Taxes. They are necessarily officers of proven integrity and impartiality with experience of unearthing circulation of unaccounted financial resources, both in cash and kind. On February 2, the Commission barred Union and State Ministers from undertaking an official visits to a constituency after the announcement of an election and till its completion.

A comprehensive legislation on electoral reforms is unavoidable for the Government, the reticence of all political parties notwithstanding with the growing confrontation between the Election Commission and the State, the reforms in the electoral process cannot be wished away, at best they can be delayed.

#### Check your progress

**Note:** a) Answer in the space give below.

b) Check your progress with those given at the end of the unit.

1. What is an adult franchise? Discuss theories of adult franchise.

- 
2. What is universal suffrage and Limited franchise.
- 
-

3. Explain adult franchise in India.

4. Critically evaluate the merits and defects of adult franchise in India.

5. Explain the electoral reforms introduced in our electoral system in the last few years.

6. Examine the suggestions made for electoral reforms.

7. State the recommendations made by Goswami Committee.

8. Briefly state the recommendations made by Election Commission.

9. Critically examine the issue of representation of women in Parliament and state Legislature.

### 23.16 KEY WORDS

- |                       |   |   |
|-----------------------|---|---|
| 1. Franchise          | - | right to vote                           |
| 2. Suffrage           | - | right to vote                           |
| 3. Bankruptcy         | - | loss of all financial assets            |
| 4. Insanity           | - | mentally abnormal                       |
| 5. aliens             | - | outsiders                               |
| 6. Universal suffrage | - | all in a community having right to vote |
| 7. Electoral reforms  | - | changes brought in election process.    |



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### 23.17 SUGGESTED READINGS

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1. Sher Singh, "Election and Electoral Reform" in S.L.Shakhdher (ed) *The Constitution and Parliament in India* (New Delhi, 1976)
2. Madhu Limaye, *Contemporary Indian Politics* (New Delhi, 1988)
3. Ibid,
4. J.R. Siwach, *Dynamics of Indian Government and Politics* (New Delhi, 1988)
5. J.K.Chopra, *Politics of Election Reforms in India* (New Delhi, 1989)
6. *Indian Express*, May 10, 1990
7. *Indian Express*, May, 1990
8. *The Hindustan Time* (New Delhi, 1998).
9. Election Commission of India, *Agenda and Notes: Meeting with Recognized National and State Political Parties*, April, 2000.

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### 23.18 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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- Que.1. Refer 23.0., 23.1 ., 23.2.  
Que.2. Refer 23.3., 23.4.  
Que.3. Refer 23.5.  
Que.4. Refer 23.6.,23.7.  
Que.5. Refer 23.8. and 23.9.  
Que.6. Refer 23.1 O.  
Que.7. Refer 23.11 ., 23.11.1  
Que.8. Refer 23.12.  
Que.9. Refer 23.14.

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**UNIT 24** INDIAN FEDERAL SYSTEM - NATURE AND CONSTITUTIONAL DETERMINATIONS

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**STRUCTURE**

- 24.0 Objectives
- 24.1 Introduction
- 24.2 Theory of Federation
- 24.3 Nature of Indian Federal System: (A Controversy)
- 24.4 Indian federal System: Constitutional Determinants
- 24.5 Unitary Trends in Indian Federation - A Strong Central Government
- 24.6 Let us sum up
- 24.7 Key words
- 24.8 Suggested Readings
- 24.9 Answers to check your progress exercises



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## 24.0 OBJECTIVES

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After studying this unit you will be able to

- Understand the uniqueness of our federal system
- Know the unitary features (trends) in the constitution

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## 24.1 INTRODUCTION

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The Indian Federal Structure is characterized formally by a bias in favor of the Centre - a bias that has been subject of controversy since the system's inception. Kenneth Wheare has described the system as "Quasi-Federal", and Asok Chanda, former Controller and Auditor General of India, has stated flatly that "India is not a federal State. In final analysis," he says, "it is a unitary state in concept and operation...."

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## 24.2 THEORY OF FEDERATION

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The unitary emphasis in the Constitution, inherited from the Government of India Act of 1935, is to be found in the division of powers and in the various articles specifying the relationship between the Centre and the States. The founding fathers of Indian Constitution have been also influenced by the provisions of the American, Canadian and Australian federations. According to A. V. Dicey, there are two requisite condition for the formation of a federation. First, by history there must be a body of states, closely connected by locality, by race or the like, as to be capable of having, in the eyes of their inhabitants, an impress of common nationality. They must desire union but must not desire unity. The aim of federation is to give effect, as far as possible, to both these sentiments. A federal state is thus a political contrivance attended to reconcile national unity and power with the maintenance of 'State' rights. It is a union of a number of independent states whose territories are contiguous and whose citizens have certain affinities, either racial, ethnological or traditional, with common historical background or heritage, a community of economic interests, and feel a craving for spiritual and national unity. They enter into an agreement to part with a portion of their sovereignty and thus to create a national state which discharges certain functions in relation to all states - functions which are common to all.

As the federating units are jealous of their independence, except that portion which they have surrendered to the national government, the Constitution is always rigid and it cannot be amended without the consent of the federating units. Thus the Constitution becomes the Supreme law of the land. The authority of the State is necessarily divided between the national government and the federating units; their respective rights and powers are clearly defined and delimited, and each has to function strictly and rigidly within the delimited sphere.

As the whole basis of federation is distribution of Executive, Legislative and Judicial authority among bodies; each co-ordinate with and independent of the others, there is every likelihood of encroachment by one on the sphere of the other; and also of disputes between the national government and the federating units or between the federating units 'inter-se'. From thus it necessarily follows that there must be some institution to keep the national government and its legislative, and the State Government and their Legislatures, within their respective demarcated and defined spheres, and to settle in a federal system. Such a court is at once the guardian and interpreter of the Constitution and is the highest tribunal for the settlement of disputes.

A study of modern federal systems, reveals three major characteristics of a true federal Constitution.

- i) Supremacy of the Constitution
- ii) Distribution of powers among bodies with limited and co-ordinate authority and
- iii) Authority of the Federal Court to act as an interpreter of the Constitution.

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### **24.3 NATURE OF INDIAN FEDERAL SYSTEM: (A CONTROVERSY)**

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Various scholars of government, Indian and foreign have expressed their views in context of the nature of Indian federalism; who State, that India is a Quasi federal state, some even regret it a more unitary than federal.

K.C.Wheare, a well known British authority on federalism, classified India as a unitary state with subsidiary federal principles rather than federal state with subsidiary unitary principles. According to Norman D. Palmer; The Republic of India is a federation, although it has many distinctive features, which seem to modify the essentially federal nature of state. Sir Ivor Jennings feels that "India has a federation with a strong centralizing tendency". W.H.Morris Jones held the view that Indian federalism was kind of 'co-operative federalism' where bargaining took place between the Centre and the States", but ultimately a solution come out and both agreed to co-operate. P.B.Ganjendargodkar – a former Chief Justice of India opined that though the Constitution "partakes of some of the characteristics of a federal structure, it cannot be said to be federal in the time sense of the term. K.M.Munshi - member of the Constituent Assembly, held the view that the Constitution made India a quasi - federal union invested with several important features of a unitary government".

Thus various scholars, reflecting on the vast powers that remain with the Central Government, and the subordinate practically annihilate an existing State, doubt whether India is a federation at all. Some have been described it a 'pseudo - federation. Others feel that it would be more appropriate to call it a Quasi federation, to which some again point that there is no such thing as a Quasi federation, and



that a system is either a federation or it is not a federation and that India should be grouped among the federations by virtue of its Constitution.

India is a federation; as India fulfills the laid features of federation; which in brief are

- a) In a federation, there should be a Central Government and State Governments
- b) Secondly, the powers and functions of both the central and State Governments should be defined by a written Constitution.
- c) Third Criterion - that there should exist an exclusive field for the Centre and another exclusive field for the States, it can be called federation. Then
- iv) Fourthly - that both the Centre and any of the States should have the powers and ability to function in its exclusive field through its own agencies. The essential difference between federation and a confederation - is that a confederation is a sort of a State which usually has no central agency or government to implement its policies. It has to depend upon its units (States) for the implementation of its policies. But in case of federation, the central government will have its own agencies for its function and the units will have their own agencies for their functions.
- v) Lastly - the fifth test of a federation is that it should be possible for any citizen or for a State to have disputes relating to the powers and functions of the Central Government and the units decided by the courts, that is to say the relations must be justiciable. Now, if we apply those tests, our Indian Constitution satisfies each of them fully and therefore, there can be no doubt that India is a Federation.

Dr. B.R Ambedkar, laying the Draft Constitution in the Constituent Assembly said - that the form of the Constitution was federal. He added:

“It establishes a dual polity with Union at the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution”.

“Both the Union and the States are created by the Constitution, both derive their respective authority from the Constitution. The one is not subordinate to the other in its own field; the authority of one is co-operative with that of the others”.

“The basic principle of federation is that the legislative and executive authority is partitioned between the Centre and the States not by any law to be made by the Centre, but by the Constitution itself. This is what the Constitution does. The States are in no way dependent upon the Centre for their legislative or executive authority. The States and the Centre are co-equal in this matter”.

"It is difficult to say how such a Constitution can be called Centralism. It may be that the Constitution assigns to the Centre a larger field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that residuary powers are given to the Centre and not to the States. But these features do not form the essence of federation.

"The Chief mark of federation lies in the partition of the legislative and executive authority between the Centre and Units by the Constitution. This is the principle embodied in our Constitution. It is, therefore, wrong to say that the States have been placed under the Centre".

Thus if viewed from a broad sense - there is hardly any possibility for a controversy on the federal character of the Constitution. It is also said that Indian Union, though it is a federation, is a federation of a special type having its own features. In presenting the Report of the Union Powers Committee to the Constituent Assembly on August 20, 1947 - Jawaharlal Nehru, the Chairman, said:

"We are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority, which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite dear in our minds that there are many matters in which authority must be solely with the units and that to frame a Constitution on the basis of a unitary state would be a retrograde step both politically and administratively".

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#### **24.4 INDIAN FEDERAL SYSTEM: CONSTITUTIONAL DETERMINANTS**

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The Indian Federal System of today has many such characteristics which are essential for a federal polity. The main features are as follows:

##### **1) Written Constitution:**

In a federal system the Constitution should be a written one, so that both the units as well as the Centre can refer to that as and when need be. Hence the Indian Constitution is a written document containing 395 Articles and 12 Schedules, and therefore fulfilling the basic requirements of a federal government. The Indian Constitution is considered to be the most elaborate Constitution of the world.

##### **2) Supremacy of the Constitution**

In a federal system the Constitution should be the supreme source of strength, both for the Centre and as well as the federating units (States). The Constitution is the supreme law of the land and the laws passed by the Union or the State Governments must conform to the Constitution. Accordingly, India's,



Constitution is also supreme and not the handmaid of either the Centre or the States. If any government - either the Centre or the State/ s, or any other organ of State, violates any of the provision of the Constitution, the courts of law are there to ensure that the dignity of the Constitution is upheld at all costs.

### **3) Rigid Constitution**

Another important feature of a federal government is that the Constitution should be rigid. This rigidity is specially described by the federating units (States) so that the Centre does not change the list of subject to suit its own convenience, or tries to enhance its own jurisdiction. In a rigid Constitution, all the provisions of the Constitution concerning Union State relations can be amended only by the joint action of the State legislatures and the Union Parliament. Such provisions can be amended only if the amendment is passed by a two-thirds majority of the members present and voting in the Parliament (which must also constitute the absolute majority of the total membership) and ratified by at least one-half of the States.

### **4) Division of Powers**

In the Indian Constitution there is a clear division of powers - so that the units and the Centre are required to enact and legislate within their sphere of activity and none violates its limits to encroach upon the functions of others. These requirements are mentioned as follows in the Constitution. The Seventh Schedule contains three Legislative lists which mention subjects of administration; viz, Union List, State List and Concurrent List.

The Union List consists of 97 subjects, the more important of which are Defense, Foreign Affairs, Railways, Posts and Telegraphs, Currency, Defense - etc. The State list consists of 66 subjects, including, inter-alia, public order, police, administration of justice, public health, education, agriculture, etc. The Concurrent List embraces 47 subjects, including criminal law, marriage, divorce, bankruptcy, trade unions, electricity, economic and social planning etc. The Union Government enjoys exclusive power to legislate on the subjects mentioned in the Union List. The State Governments have full authority to legislate on the subjects mentioned in the State List under normal circumstances. And both the Centre and the State can legislate on the subjects mentioned in the Concurrent List. The residuary powers have been vested with the Central Government. But now due to amendments that have been done to these lists, the number of subjects in 3 lists varies.

### **5) Independent Judiciary**

In a federal system it is very much essential that the judiciary should be supreme and independent, besides with federal it is essential that the judiciary should also be federal in structure. The judiciary should be the custodian of the Constitution. In India the Constitution has provided for a Supreme Court

and every effort has been made to see that the judiciary is independent and supreme. The Supreme Court can declare a Law as unconstitutional or Ultra Vires, if it contravenes any laid down provisions of the Constitution. In order to ensure the impartiality of the judiciary, our judges are not removable by the Executive and their salaries cannot be curtailed by the Parliament.

## **6) Bicameral Legislature**

Bicameralism is an essential feature in a federal system; so as to provide equal representation to the units in the Upper House (Rajya Sabha). The Constitution of India provides for a bicameral legislature at the Centre consisting of Lok Sabha and Rajya Sabha. While the Lok Sabha consists of the elected representatives of the people, the Rajya Sabha mainly consists of representatives elected by the state Legislative Assemblies. However all the States have not been given equal representation in the Rajya Sabha.

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## **24.5 UNITARY TRENDS - IN INDIAN FEDERATION - A STRONG CENTRAL GOVERNMENT**

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It is equally difficult to categorize Indian Constitution as Federal Constitution, even though it has all the features of a Federal Constitution. It is a fact that the Constitution of India is the result of various factors and is so designed to meet certain special requirements of Indian society. The framers of the Constitution have modified the true nature of Indian Federalism by incorporating certain - non-federal features in the Constitution. These features have lent to certain contentions that the Indian Constitution is federal in form but unitary in spirit some of the Unitary trends are as follows:

### **1) Single Citizenship**

Usually in federal system there is dual citizenship (i.e. U.S.A.) A citizenship of the Union as a whole and citizenship of each Constituent State. The Indian federation is a dual polity with a single citizenship, no matter in which state he resides, he is a citizen of India.

### **2) Strong Central Government**

The result of the distribution of powers between the federation and units is that the State governments are governments of limited enumerated powers. Though the Union Government also a government of limited and enumerated powers, it has under certain circumstances power even over the State Governments and has the residuary power over the whole territory.



### **3) Single Constitution for Union and State**

In a federal system the states have their own Constitutions separate from that of the Union (i.e. in U.S.A.). The Indian Constitution, on the contrary, has not the Constitution of the Union, but also of the States; besides the States of the Union have a uniform Constitution. The amending process for the Constitution of Union and the States is also the same.

### **4) Creation, Change of name and alteration of Boundaries of States**

Truly speaking, in a federal system, the centre had no right to change the boundaries of the States. But in context of India, the Centre has been empowered to change the boundaries, create new states out of the other. In fact, this has been done, not only once but several times. The State Governments have also enjoyed this power of alteration - by creating new districts out of the other. In the fifties, Andhra Pradesh was carved out of the Madras State. Shortly after Independence, the States Re-organization Commission was appointed and a chain of events unfolded. There is no State whose boundaries have not been changed at one stage or another. The right of the Centre to change the boundaries of the State is against the federal set up.

### **5) Single Integrated Judicial System**

Dual polity involves in certain federations a double system of judiciary. For example in the United States - the states have their own judicial systems unrelated to with, the federal judiciary. Australia also has followed more or less the same system as that of U.S.A. But in India the Supreme Court and the High Court forms a single integrated judicial system. They have jurisdiction over cases arising under the same laws: Constitutional, Civil and Criminal. The civil and criminal laws are codified and are applicable to the entire country. To ensure uniformity, they are placed in the Concurrent List. The appeal from the State (High Court) could be made in the Supreme Court which is the final Court of verdict.

### **6) Emergency Powers**

The Constitution of India is so designed that in normal times the federal system is at work, but in the times of emergency the federal system converts itself into a Unitary Government. The Constitution of India confers emergency powers to the President of India who is responsible to maintain law and order of the nation. An emergency can arise both in the political and financial fields. In the political field it implies that the administrative machinery of the State cannot be carried out in accordance with the Constitution of the country. It would mean that there is political instability in the state or law and order machinery has completely broken down. In the financial field it impetus that there is a grave financial crisis which cannot be solved by normal Constitutional procedures. The effect of declaration of emergency

is that administration of the State is taken over by the Centre, which is not in keeping with the spirit of federal polity at all.

### **7) All India Services**

Special provisions are made in the Constitution to ensure uniformity in the administrative standards without imposing the federal principle. Perhaps administrative integrity is well established by creation of the All India Services. These include services such as Indian Administrative Services and Indian Police Service, placing them at the key administrative positions in the States.

### **8) Unequal Representation in the Council of State (Rajya Sabha)**

The Parliamentary system in India has adopted bicameralism, but in the Council of States, the States have not been provided with equal representation. The representation in the Council of States has been followed on the basis of population, as a result the bigger States have greater representation than the smaller states. This method goes again, against the spirit of the federal system. In U.S.A. the Senate, which is the Upper House of the U.S. Congress, has equal representation from all the States either big or small and not on the basis of population or size of the States.

### **9) Appointment of Governor by the President of India**

The Heads of the State - the Governor - is appointed by the President, who holds office during the pleasure of the President. This makes the Governor - representative of the Centre in the State, which enables the Union Government to exercise control over the State administration.

### **10) Controller and Auditor General**

The Controller and Auditor General of India has an organization managed by the officers of the Indian Audit and Account Services, a central service, who are concerned not only with the accounts and auditing of the Union Government but also those of the State Governments.

### **11) Appointment of High Court Judges and Election Commission by the President of India.**

Appointments to High Courts are made by the President and the Judges of the High Courts can be transferred by the President from one Court to another. The Election Commission, a body appointed by the President, is in charge of conducting election not only to Parliament and to other elective offices of the Union, but also to those of the State Legislatures, which also helps to establish the Unitary feature in a federal set up.



## **12) Flexible Constitution**

Federalism demands a rigid Constitution which implies that the Constitution cannot be easily amended or tampered. This done to ensure that the Centre should not be in a position to easily amend the Constitution. The amending procedure in U.S.A. can be said to be the most ideal one, because the amendment will never take place until the State governments accept it by its approval. Comparatively the Indian Constitution is not very rigid, as many parts of the Constitution have been amended. This flexibility of the Constitution goes against the Federal principle.

## **13) Powers of Council of States over State List**

The Parliament is empowered by the Constitution to make laws on any subject mentioned in the State List if the Council of States passes a resolution by two-thirds majority declaring a particular subject or subjects to be of national importance. Similarly, the Parliament can pass laws on the items of State List, if it is deemed essential by the Government of India to honor an international obligation. Briefly - the Centre can encroach on the field reserved for the States as and when it feels necessary.

## **14) Control over State Laws**

All laws passed by the State Legislature cannot be implemented unless they have been reserved for the approval of the President of India. Thus laws concerning the acquisition of property, all laws on Concurrent List which are contrary to the laws passed by the Parliament; and the laws concerning the sales tax on essential commodities, etc. need the approval of the Central Government. Moreover, the Governor of a State reserves the right to reserve (with held) any bill passed by the State Legislature for the consideration of the President. The President may accord his approval to such a bill or may withhold his assent.

## **15) Financial Dependence of States**

In a federation as far as possible, States should be financially self sufficient so that they enjoy maximum autonomy. In India the provision made in Constitution make the States depend on the Centre for all its development activities. The States in India have very little resources of income but need more resources for expenditure. This financial dependency has hindered the growth of States on federal Lines.

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## **24.6 LET US SUM UP**

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There is no classic theory of federalism and the federal structure of a country cannot be evaluated on the universally accepted criteria. It is after all a political contrivance and it has been twisted in different

countries to suit their own purposes. Classification of federalism as American, Australian, Canadian, Indian, Swiss - is based on no principle except the Frederic Neuman had described the American Constitution as the "Father of all Federations", for which the principles of all other Constitutions are compared with this, the first experiment in federal Government.

Thus centralized federalism in India has been the result of five outstanding factors - viz.

- 1) Monolithic parties which control the State organizations through their national organs.
- 2) Congress rule in the Union and in all states from 1950 to 1967 with minor exceptions.
- 3) The dominating personality of Jawaharlal Nehru as the Prime Minister from 1950 - 1964.
- 4) Introduction of national planning as the medium for rapid economic growth in the country - and the need of uniformity in economic planning.
- 5) The emergency declared in the wake of Chinese aggression in 1962 and Pakistani aggression in 1965 and 1971.

Uninterrupted Congress rule in India had undermined Constitutional federalism by making the State Governments political vassals of the Union. The emergence of strong personalities in the States sphere might have worsened the hold of the Centre but this was unthinkable in the face of the leadership of Jawaharlal Nehru.

In India - the past disruptive forces had been very strong. The necessity for guarding against centre fugal tendencies is recognized in the new polity; and the distribution of power between the Union and the States is designed to avoid these dangers and evils. The President is empowered to take measures to avoid the difficulties from this detection as well as those difficulties which have been felt by the United States, Canada and Australia. The federal Constitution of India is the latest addition to the federal Constitutions of the world. The framers have borrowed largely from other federal Constitutions and have drawn upon the experience and close study of their working, and they have attempted to embody in the Constitutional provisions which are necessary and essential in a federal polity, but have modified them to meet the peculiar needs and conditions of India. Like any other Constitution it is an instrument for the government of the country. It is sufficiently elastic for adoption to India's changing and growing needs.



**Check your progress**

**Note:** a) Answer in the space give below.

b) Check your progress with those given at the end of the unit.

1. Explain the theory of Federation.

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2. Examine the nature of Indian Federal System.

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3. Discuss the Constitutional determines of Indian federal system.

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4. Explain the federal features of Indian system.

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5. Explain the Unitary features in Indian federation.

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**24.7 KEY WORDS**

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1. Quasi - Midway / half
2. Contrivance - to plan
3. Reconcile - to bring together
4. Disruptive - break up / forcible separation
5. Ultra-virus - Un constitutional

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**24.8 SUGGESTED READING**

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1. Government of India (Publication) The Constitution of India.
2. B.L.Fadia - Indian Government and Politics
3. Granville Austin - The Indian Constitution: Corner stone of a Nation.
4. Subhash Kashyap - Our Parliament
5. Basu D.D. - Introduction to the Constitution of India - 19th Ed.2001.
6. Pylee M.V. - Constitutional Government in India (2000)
7. J.C.Johari - Indian Government and Politics.

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**24.9 ANSWER TO CHECK YOUR PROGRESS EXERCISES**

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1. Refer 24.1. and 24.2
2. Refer 24.3.
3. Refer 24.4. and 24.5. in brief.
4. Refer 24.5. only



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**UNIT 25      REVIEW OF LEGISLATIVE, ADMINISTRATIVE AND FINANCIAL  
RELATIONS BETWEEN THE CENTRE AND THE STATES**

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**STRUCTURE**

- 25.0 Objectives
- 25.1 Introduction
- 25.2 Distribution of Legislative Powers between the Union & the state
- 25.3 Parliament can Legislate on the subjects of state
- 25.4 An Review of the Centre-state Legislative Relations
- 25.5 Centre-state Administrative Relations
- 25.6 Centre state: Financial Relations
  - 25.6.1 Distribution of Source of Revenue
  - 25.6.2 Borrowing Powers of the Union & the States
  - 25.6.3 Exemption of Union Property from State Taxation.
  - 25.6.4 Finance Commission
- 25.7 Financial Emergency
- 25.8 Role of the Comtroller and Auditor - General of India
- 25.9 Issues in Centre-state - Financial Relations
- 25.10 Demands made by the state in brief.
- 25.11. Let sum up
- 25.12 Key words
- 25.13 Suggested readings
- 25.14 Answers to check your progress exercises

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## 25.0 OBJECTIVES

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After going through this unit you will be able to

- know the legislative relationship between the centre and states
- understand the administrative relationship between the centre and states
- know the financial relations between the centre and the states
- analyse the issues in centre – state relations.

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## 25.1 INTRODUCTION

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The Federal Constitution of India, represents a deliberate attempt to reconcile the need for a powerful central authority with the strength of regional feelings may, therefore, well “prove to be a work of political genius. If the attempt has left an almost unprecedentedly large quantum of authority in the hands of the Centre, it is not only desirable but also unavoidable in the peculiar circumstances of the country. Unlike the ‘classical’ federations of the U.S.A. and Switzerland, federalism has taken shape in India in the era of the Positive State in which the financial and administrative resources of the entire nation have to be harnessed to the task of achieving economic development for the general welfare. This is particularly true in the country like India, which must take giant strides in order to leave behind the colonial legacy of poverty and backwardness. Neither the mid-twentieth century ideological climate, nor her economic situation nor even the actual experience of the so-called ‘true’ federation permitted India the luxury of experimenting with a defunct ‘Competitive’ federalism with its ‘equal sovereignties’. The framers of the Indian Constitution were, therefore, wise in preparing the blue print of a co operative federalism in which central leadership can co-exist with state autonomy in order that the Centre and the states may function in a faithful partnership. Economic Planning has brought out fully the possibilities of co-operative federalism by putting brick and mortar on the Constitutional scaffolding. “The Plan is a joint enterprise in which the Centre and the States are partners in a common purpose working with agreed policies in different fields of national development and nation building process. The Indian federal system is an instance of “mature federation” in the sense that the framers of the Indian Constitution took account of the federal experience in other countries and of the requirements of government under contemporary conditions in giving a statutory form to a pattern of Union state relations broadly similar to what has emerged in older federations over the years as a result of actual practice. The normative federalism of India is a true-child of its age.

The essence of federalism is division of powers between the National government and the State governments. A federation implies an agreement between two or more communities which as between themselves are independent and autonomous. The federating states enter into a compact and create a national state, and the instrument by which their relations are governed, forms the fundamental law of the country. The exact line which is drawn to separate the matters of common concern to the whole federation



varies according to the views of those who enter into the compact as regards the relative functions of the federating states and the National Government. Thus, the distribution of powers constitute the pivot of federalism: and the scheme of distribution of powers in each federation gets determined by the peculiar political conditions under which it came into existence. Whatever may be the variations or differences in the details of the distribution of legislative powers and this distribution determines the distribution of executive authority.

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## **25.2 DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE UNION AND THE STATES**

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The most important feature of any federation is the division of powers between the federation and constituent units. This is also the most significant feature of the Indian federation. This aspect is herein-examined - Legislative - Administrative and financial relation between the Centre and the state.

### **a) Legislative Relations between Union and the states.**

The basic provisions regarding the distribution of powers between the Central and Provincial Governments are in Part XI of the Constitution. This part is divided into two chapters, legislative relations and administrative relations. In the Constitution of India - there are two lists of legislative powers, one for the Centre and the other for the states. The residual powers remain with the Union Government. It must be noted that the Scheme regarding distribution of powers and the actual division of powers is almost the same as it was in the Seventh Schedule of the Constitution.

### **b) Union List**

The Union list consists of ninety-seven items is the longest of three lists: It includes items such as Defense (Armed Forces), Foreign affairs, Citizenship, Railways, Shipping and Navigation, Post and telegraphs, Broadcasting, Currency, Natural resources, Union Public Service Commission, Customs duties and export, Excise duties, Estate duty, Corporation tax - etc. Parliament has exclusive powers of legislation with regard to the items mentioned in this list. The items included in this list are selected on the common interest to the Union and with respect to which uniformity of legislation throughout the Union is essential.

### **c) The state List**

The state list consists of Sixty-six items. Some of the important items included are, Public order, Police, Administration of justice, Prisons, Local government, Public health and Sanitation, Education, Agriculture, Animal husbandry, Water supplies and Irrigation, land rights, Forests, State Public Service

Commission, land revenue, Taxes on vehicles, luxurious, etc. The selection of these items is made on the basis of local interest and it envisages the possibility of diversity of treatment with respect to different items in different States of the Union. The State legislature has the exclusive power of legislation with regard to every one of the items included in the State List. In this context Prof. M. V. Pylee has aptly pointed the "scope of the application of the federal principle in India is to be determined by the scope of state legislation arising out of items included in this list".

**d) The Concurrent List**

Concurrent List consists of Forty-seven items. These are with respect of which uniformity of legislation throughout the Union is desirable but not essential. They are placed under the jurisdiction of both the Union and the States. The list includes items such as marriage and divorce, transfer of property other than agricultural land, contracts, labor welfare, electricity, stamp duties, foodstuffs, drugs, economic and social planning etc.

The Parliament of India and the state legislatures have concurrent powers of legislation over the items included in this list. Once Parliament enacts a law on any, item of the concurrent list. Parliamentary law shall prevail over any state law on the item. There is, however, one exception to this general rule. According to this a later law of the state legislature on any item in the concurrent list shall prevail over an earlier law of Parliament on the same subject, if the state law was reserved for consideration of the President and received his assent. This enables a state to pass a more advanced piece of legislation than the existing Parliamentary law. This also provides for any special conditions and circumstances that may prevail in any state.

**e) Residuary Powers**

In the federations of the United States, Switzerland and Australia the residuary powers are assigned to the state governments; but in India, the residuary powers remain with the Union government like the Canadian federation.

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**25.3 PARLIAMENT CAN LEGISLATE ON THE SUBJECTS OF STATE LISTS**

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Though the state Governments enjoy exclusive power of legislation over every item in the state list; but there are certain exceptions to this general rule; as follows:

- 1) Article 249 - provides that if the Rajya Sabha declared by a resolution - supported by two-thirds of members present and voting that it was necessary in the national interest that Parliament should make laws enumerated in the State List specified in the resolution. Such a resolution



remained in force for such a period, not exceeding one year, as might be specified therein. The Rajya Sabha however, could extend the period of such a resolution for a further period of one year from the date on which it would otherwise have ceased to operate.

- 2) Article 250 - Herein Parliament is empowered to make laws on any subject of the state List - for the whole or any part of India while a proclamation of Emergency is in operation. The maximum period for such a law to be in force is the period of emergency lasts and six months beyond that period.
- 3) Article 252 - Parliament has power to make any law for two or more states by their consent. If two or more states request the Central Government to legislate on a particular subject in the state List, the Central Parliament shall legislate on these subjects. If such law is to be amended, it can be done only by Parliament alone, on the initiative of the states.
- 4) Article 356 & 357 further helps the Union Government for its predominance, which lays down that - if the President is satisfied that a situation had arisen in which the Government of a state fails to carry on in accordance with the provisions of the Constitution he might declare that the powers of the Legislature of that state would be exercisable by or under the authority of Parliament. The effect of Article 356 would be that the legislature of the state in question would stand dissolved, and the law making power would rest in Parliament during the period the proclamation of emergency was in force.
- 5) The Parliament enjoys its predominance as mentioned above, besides this it also exercises some control over state Legislatures; as follows:
  - a) Clause 3 of Article 31 (Right to Property) provided that - if the Legislature of a state adopts a Bill providing for compulsory acquisition of movable or immovable property for public purposes, such a Bill would not be effective unless it had been reserved for the consideration of the President and received his assent.
  - b) Article 200 states that the Governor should not assent to, but should reserve for consideration of the President, any Bill which in the opinion of the Governor, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court has by an the Constitution designed to fill.

Article 200 and 201 provide for President assent to Bill of the state legislatures, but prescribed neither time limit within which to give or refuse to give assent nor any criteria according to which the assent was to be given or withheld.

Under Article 200 - the Governor could reserve a Bill of the state Legislature for consideration and assent of the President. Whether he would do so in his discretion or on the directive of the Union authorities has not been stated in the Constitution. As a consequence - the Governor would reserve the Bill for consideration of the President only if some important political issues were involved.

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## 25.4 AN REVIEW OF THE CENTRE - STATE LEGISLATIVE RELATIONS

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Most of the state Governments, political parties and eminent persons, believe that there is nothing wrong with the scheme of the Constitution favoring a 'strong Centre' having adequate powers both in extent and nature. It is also accepted that only a strong centre can effectively preserve the unity and integrity of the nation. They also agree in time of emergency - Article 352, the Union should be able to exercise full powers with respect to all matters in the three lists of the Seventh Schedule. But they also emphasize that in normal times, the division of powers between the Union and States, should be scrupulously observed. They complain that in practice, this has not happened. Due to undue centralization in the name of public interest or national importance the predominance of the Union has increased. The Union has sought to dictate its policy to the state legislatures under Article 201. They suggest that the State Governments must be consulted in context of concurrent matters.

In this context Sarkaria Commission recommends "that ordinarily the Union should occupy only that much field of a concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation, leaving the rest and the details for state action within the broad frame work of the policy laid down in the Union Law. Further, whenever the Union to undertake legislation to a matter in the Concurrent List, there should be prior consultation not only with the state Governments individually, but collectively with the Inter-Government Council – as recommended to be established under Article 263.

Most of the state Governments, political parties and eminent persons also find no fault with the structural aspects of Article 246 and 254; but some state Governments have demanded for reformulation of Article 246 so as to exclude from it words and clauses which give supremacy to the Union legislative power over the states.

Here again Sarkaria Commission feels that supremacy clause is the very keystone of the arch of federal power. "If the principles of Union Supremacy are excluded from Articles 246 and 254, it is not difficult to imagine its deleterious results. There will be very possibility of our two-tier political system being stultified by interference, strife, legal chaos and confusion caused by a host of conflicting laws. Integrated legislative policy and uniformity on basic issues of common Union state concern will be stymied. The federal principle of unity in diversity will be a very much a casualty .

It has also been suggested that extensive structural changes affecting 29 entries in the Union List, beside demanded for total omission of Entry 2-A. The suggested reformulation, partial deletion or transfer, wholly or in part of Entries 7, 24, 25, 30, 31, 32, 33, 40, 45, 48, 51, 52, 53, 54, 55, 56, 58, 60, 62, 63, 64, 66, 67, 76, 84, 85, 90 and 97 of List I and List II or some of them to List III. The main object of these proposals are to curtail the powers of the Union, and enhance the power of the states. The focus



of the criticism is on those Entries in List I which enable the Union to control or takes over the field of certain entries in List II. The major argument is that these entries are Anti-Federal.

These above mentioned redistribution of powers at the out set would require drastic changes in the basic scheme and framework of the Constitution, so sedulously designed to protect the independence and ensure the unity and integrity of the country. Sarkaria Commission feels, making of such wholesale structural changes in the fundamental fabric of the Constitution may even be beyond the scope of Article 368.

### **Conclusions:**

The entire scheme of distribution of legislative powers no doubt display a strong tendency towards high degree of Centralization. This scheme seeks to reconcile the imperatives for a strong centre with the need for state autonomy. It distributes powers, yet does not effect rigid compartmentalization. Functionally, it is an inter – dependent arrangement. It is flexible enough to keep pace with the movement of a complex, heterogeneous society through time and henceforth the Sarkaria Commission has not suggested wholesale structural changes in the fundamental fabric of the Constitution. The Commission has very aptly observed:

The rule of federal supremacy is a technique to avoid absurdity, resolve conflicts and ensure harmony between the Union and state Laws. This principle, therefore, is indispensable for the successful functioning of any federal system. Any change would result in entire system falling in pieces.

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## **25.5 CENTRE - STATE: ADMINISTRATIVE RELATIONS**

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In a federal system it is necessary to remember that the states are autonomous but the ultimate residual responsibility for peace and safety of the nation is vested in the Government of India. The Union has to exercise its executive authority in the states with regard to the subject in respect which Parliament alone has power to make laws. The fathers of Indian Constitution accepted the administrative relations between Union and states, the general principle laid down by the authors of the Government of India Act 1935 - that the executive power is co-existence with the legislative power. They extended the authority of the Union Executive over all those matters on which Parliament was competent to legislate. Similarly, the authority of the State Executive was extended to coincide with the legislative competence of the State legislature. Both the Union and the States were to have their own administrative staff with full control over them. K. Santhanam has sated, “The administrative autonomy of the states - is almost equal to the administrative autonomy of the Centre”. The framers never intended to create two independent polities in India. Instead, they attempted to provide for much co operation and collaboration between them as possible. As the federal Government is responsible for the Government of the country, there is a necessity for an effective administrative nexus between the Union and its Constituent units. Therefore, the following provisions have been included in the Constitution.

- 1) Article 256: All executive power of every State has been exercised to ensure compliances with the laws made by the Union Government. Further, the Union executive can issue directions to a state as may appear to the Government of India, besides Article 257 calls upon every state not to impede or prejudice the executive power of the Union in the state. If any Union agency within the state finds any difficulty in its functioning, the Union executive is empowered to issue appropriate directions to the state Government - to remove all such obstacles; which include certain specific matters such as a) the Constitution and maintenance of means of communications which are of national importance, b) the protection of railways within the states.
- 2) The Constitution also empowers the Union Executive, with the consent of the Government of a state, to entrust to that Government or its officers, functions that fall within the scope of the Union's executive function. The Parliament may also confer powers and impose duties upon the state or officers and authorities. The Union Government will pay to the state the cost involved in discharge of such functions by the state or its officers. These provisions empower the centre to make use of the state administration for the purpose of enforcing the laws of Parliament
- 3) The members of all India Services are appointed by the President of India on the basis of a competitive examination held by the Union Public Service Commission. The presence of All India Services like the Indian Administrative Services, the Indian Police Services etc, further makes the authority of the Central Government dominant over the States; besides integrated administration. The Constitution also has made provision for creation of new All India Services by the Parliament.
- 4) Articles 352 to 360 - contain various emergency provisions which empowers the President to suspend the Constitution and to take over the administration of a State or States of the Indian Union if he is satisfied that there is a threat to the security of nation, or a breakdown in the Constitutional machinery of a State or States, or a financial emergency.
- 5) The Governors' of the State Government are appointed by the President on the recommendations of the Central Government.
- 6) Apart from Articles 256 and 257 - there are also other provisions, which confer authority to the Union to give directions to the States. Article 339 (2) extends the executive power of the Union to issue directions to a State - to execute certain schemes in specific directions - essential for the welfare of the scheduled tribes in the State. The President has also been empowered to give directions under 344(b) in regard to official language of the Union, under Article 347 - with regard to the language spoken by a section of the population of a State, and under Article 350-A - for providing adequate facilities for instruction in the mother tongue at the primary state of education to children belonging to linguistic minority groups.
- 7) If and when any state failed to comply with, or to give effect to, any direction given by the Union, the President under Article 365, conclude that a situation had arisen, and by which in accordance with provision of the Constitution, under Article 356 - residents rule may be promulgated.



The emphasis in the Constitution is on co-operation – administrative co-operation - administrative business. Provision is also made for the execution of final judgements or orders delivered or passed by civil courts in any part of India. The Constitution has an important provision embodied in Article 262 dealing with the waters of inter - state rivers and river valleys. Aware of inter-state water - disputes in other federation (i.e. U.S.A.) the Constitution makers decided that the powers to deal with this subject be vested in Parliament. Thus, Parliament may by law provide for the adjudication of any dispute of any inter-state river or river valley. Further to facilitate the smooth working of the administrative machinery of the country as a whole, as well as to ensure better co-ordination of policy, the Constitution empowers the President to appoint an inter-state council whenever felt essential. The council is charged with the function to inquire into and advise upon disputes, to investigate and discuss subjects in which the States or Union and the States have a common interest, to make recommendations for the better co-ordination of policy and action.

The state Re-organization Act of 1956 grouped the states into five zonal councils. They are advisory bodies, they “discuss and make recommendations to the Centre with regard to matters of common interest in the field of economic and social planning, border disputes, linguistic minorities, inter-state transport and any matter arising out of the re-organization of states. The Union - Home Affairs Minister functions as the Chairman of each zonal council whose other members are the Chief Ministers and two other ministers of the member states. All these aspects seek to establish an Inter-State- Comity.

### **Conclusion:**

For understanding the significance and the necessity of such provisions wherein the tilt is towards centripetal or centrifugal, there is no static, immovable format of a ‘federal’ Constitution. Each country adapts and moulds the federal idea to its peculiar conditions and needs. The framers of the Indian Constitution - choose to secure execution of many Union laws through the enforcement agencies of the states. After understanding the working of older federations (U.S.A., Australia etc.) that the classical concept of federalism in which the government powers are supposed to be divided into two water - tight compartments, was nowhere a functional reality. It is because of this, they preferred co-operative arrangement, as it was best suited to social condition needs and aspirations of Indian people. Examining the factual position - is that the power to give directions under Article 256 and 257 has never invoked and no proclamation has been made so far under Article 356 by application of Article 365. Normally, differences between Union and the states, in this context, would be sorted out by mutual consultation so as to maintain a healthy and constructive relationship between them, without resulting to the issue of formal Constitutional directions. However, such provisions, to be used as a measure of the last resort, are necessary to cope with situation irreconcilable. Though some provisions are evil; they are a necessity in the context of nation building process.

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## 25.6 CENTRE - STATE: FINANCIAL RELATIONS

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The financial relation between the Centre and the Units are among the most difficult problems in a federation. In the older federation like the U.S.A., jurisdiction of the Centre and the Units were demarcated in all other aspects, but taxation was left as concurrent subject. It was felt by the Constitution makers that it was difficult, if not possible to foresee the requirements of either the Centre or the States or the prospective yields of any particular source of taxation. This is the vital distinction between the Indian and other federal systems are due to historical reasons. A summary of development from a highly centralized system to the federal system embodied in the Government of India Act 1935; is given in Chapter-II of the Report of the first Finance Commission. From the point of view of political science, it is not easy to say that either system is superior to the other.

In a federal system it is important to note that two sets of governments operate simultaneously and directly upon the same people. In order to avoid conflicts, there is a need to have a very clear-cut division of functions. It is equally important to take care that each layer of Government has access to sufficient financial resources so that the obligations of the people are fulfilled. Hence the troubled history of federal finance in the older federations and squabbles leading to frequent adjustments in relatively new federations amply prove the crucial position of federal finance.

### 25.6.1 Distribution of Source of Revenue

Under the existing scheme of distribution the taxing powers of the Centre and the states have completely separated, and unlike the other federations, there is non-concurrent jurisdiction. As a result the taxes that have an inter-state base are levied by the Centre - and those with a local base are levied by the states.

Union List - containing twelve items of taxation - with five categories.

1. Taxes levied by the Union - but collected and appropriated by the state, vile stamp duties, duties on medicinal and toilet preparation etc.
2. Taxes levied and collected by the Union but assigned to the state, viz - succession and estate duties, terminal taxes on passengers and goods carried by railway, sea, air, taxes on railway fares and freight etc.
3. Taxes levied and collected by the Union and compulsorily distributed between the Union and the states, vile Taxes on income other than agriculture.
4. Taxes levied and collected by the Union and maybe distributed between the Union and states, if the Parliament by law so provides, viz., Union excise duties, excises on medical and toilet preparations.
5. Taxes levied and collected and retained by the Union - viz., customs, corporation tax, surcharge on income tax.



The state List - Contains of 19 items, viz, land revenue, liquor, opium, excise, stamps, agriculture income; sales and purchase taxes, taxes on land buildings, taxes on passengers and goods, taxes on consumption and sale of electricity, taxes on vehicles, animals and books, amusements, belting and gambling, profession, trade and callings, etc. Every state is entitled to levy, collect and appropriate these taxes.

Grants in Aid; Article 275 empowers Parliament to give financial assistance to the states in need of such assistance. The grants so fixed are based upon the recommendations of the Finance Commission. Article 282 empowers the Centre to make public purpose grants to the states and to any institution within the states.

The Constitution, however, lays down that the cost of all the schemes aiming at the welfare of the scheduled tribes is to be met by the Union Government and the Union Government makes necessary grants to the concerned state on this account. The Constitution also makes special provisions for grants to Assam to meet the extra cost involved in raising the administrative level of the tribal areas. Moreover, the states of Assam, Bihar, Orissa and West Bengal are paid such sums, as are prescribed by the President of India in lieu of their share in the export duty on jute and jute products.

### **25.6.2 Borrowing Powers of the Union and the states**

The framers of the Constitution, realizing that the Union and state governments would not be able to raise sufficient funds through taxation, made provisions to enable them to borrow on the security of their Consolidated funds. Article 272, authorized the Union Government to do so, and placed no territorial limitations. While the states could also borrow upon the security of their Consolidated Fund, Article 292 provided that they could do so only within the territory of India.

### **25.6.3 Exemption of Union Property from state Taxation**

Article 285 exempted the property of Union from all taxes imposed by a state or by any authority within a state, unless Parliament by law provides for it. The state were also prohibited from imposing any tax on electricity consumed by Government of India - in construction, maintenance or operation of railways. No law of a state - could impose a tax in respect of water - electricity - generated or consumed, distributed or sold by any established authority by Parliament. This provision was made to promote the establishment of inter - state multi purpose river valley projects. Article 289 as reciprocal - exempted property and income of a state from Union taxation. But this has not prevented the Union from imposing any tax in respect of trade or business of any kind carried on by or on behalf of the Government of a state.

#### **25.6.4 Finance Commission**

The distribution of financial resources is to be adjusted from time to time, in accordance to changing economic conditions and varying needs of both the Union and the states. The Finance Commission has been established to perform and discharge this function. The President of India appoints the Commission at the expiration of every fifth year or earlier as the need be. It consists of a Chairman and four other members. It is the duty of the Commission to recommend to the President.

- a) The Distribution between the Union and the states - of the net proceeds to taxes, which are to be made, or may be, divided between them - and the allocation between the states of the respective shares of such proceeds.
- b) The principles to govern the Grants in aid of the revenue of the states out of the Consolidated Fund of India;
- c) Any other matter referred to the Commission by the President in the interest of sound finance. The Commission shall determine their procedure and have such powers in the performance of their function as Parliament may by law confer on them.

The President shall cause every recommendations made by the Finance Commission together with an explanatory means random as to the action taken thereon to be laid before each House of Parliament.

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#### **25.7 FINANCIAL EMERGENCY**

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During the proclamation of financial emergency, the President can suspend the provisions relating to the division of the taxes between Union and the states and the grants-in-aid to the states. During financial emergency, "the executive authority of the Union shall extend to the giving of directions to any state to observe such canons of financial propriety as may be specified in the directions' or any other directions which the President may deem necessary for purpose.

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#### **25.8 ROLE OF THE COMTROLLER AND AUDITOR - GENERAL OF INDIA**

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The Comtroller and Auditor General, who is responsible for the maintenance of audit of Union and state accounts is an official of the Central Government. He can direct the state Governments to keep their records in a particular manner and these are duty bound to obey his instructions.

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#### **25.9 ISSUES IN CENTRE - STATE - FINANCIAL RELATIONS**

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In accordance to the provisions made by the Constitution, wide ranging responsibilities are allotted to the state Governments, i.e., like building social and industrial infrastructure, education, rural



development, medical and public health, welfare of S.C. and S.T. etc. Under non development activities the state also need substantial expenditure. Compared to all these responsibilities and the resources available to the states are very few and scanty necessitating large scale resource transfer from the Union, in the process making the states heavily dependent on the' Union, for every financial need. Hence, it has been pleaded that state's finances must be strengthened by enlargement of state's taxation powers; as the sources available are few. As an impact there has been erosion of the jurisdiction, authority and initiative of the state in their own Constitutionally defined spheres. The broad issues encompassing the entire spectrum of Union State financial relation can be specified as: enlargement of state's own resources, enlargement of the divisible pool, pattern of devolution, role of Finance Commission, specific problems and institutions and state, indebtedness market borrowings and sharing of capital resources.

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### **25.10 DEMANDS MADE BY THE STATE IN BRIEF**

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The states have demanded, enlargement of state's power of taxation, stamp duties, and duties of excise on medicinal and toilet preparations levied by the Union and collected as well as appropriated by the states - should be transferred to state List.

The state's feel that Estate Duty and Succession Duties on non agricultural property, terminal taxes on goods and services carried by rail, sea or air, taxes on sale or purchase of newspapers and advertisements which are levied and collected by the Union but assigned to the States, herein the states be given freedom which will enable to garner more resources by levying these taxes. Tax on lotteries, banking, excise duties on items like sugar, molasses and Khandsari, the States feel that they should be included in realm of state's Taxation.

It has also been suggested that percentage of the States should be built into the Constitution and the Finance Commission then needs concern itself only with the division of such resources among the States. The State's have demanded inclusion of corporation income tax in the divisible pool, as was the case before 1959. Besides the experience of raising administered prices of items like petroleum, steel, cement etc, by the Union has deprived the states of a fair amount if financial resources. Hence it is demanded that - the increase in receipts on account of raised prices must be shared with the States.

It has also been pointed by the states, that the federal transfers are effected through Finance Commission, Planning Commission and the Ministry of Finance. It has been maintained that only statutory transfers i.e. through Finance Commission were envisaged by the Constitution, whereas, rest of the transfers under Article 282 were intended to be a sort of residuary. Over the years discretionary transfers have contained statutory transfers, thereby, distorting the Constitutional Scheme. Inter state equity in transfers has also been to some extent, violated and backward states have demanded of such formulary which would place more resources at their disposal.

It has also been suggested by the States that they should have representatives on the Finance Commission. Besides the state Governments have raised quite a valid point that periodical upward revision of pay, dearness allowance, terminal benefits, etc. of the Central Government employees put pressure on States to revise the allowances of their own employees. With limited resources, States find it very difficult to keep pace of development. It is also felt that - Relief Grants granted to states as relief for natural calamities should be treated as National Obligation.

### **Conclusions:**

The recommendations of the Sarkaria Commission with respect to financial relations between the Centre and states can be said to be the most important. The federal structure weighing in favor of the Centre, over the years and the various amendments and legislative measures taken in the public interest as added more to wards the Central powers against the state. The emergence of more regional political parties voted power in state will put the federation to test more frequently. The Sarkaria Commission seeing the backdrop of these developments feels that a prudent policy has to evolve in the area of federal financial relationships.

The Commission has taken a favorable view on the demand of the states to have more financial resources at the disposal of states, suggesting to periodically review and explore the revision of the position of duties covered by Article 268.

The Expert Committee with representation from the states as suggested by Sarkaria Commission will help revising the tax structure and federal financial relations in accordance to the changing needs. Effective measures for decentralization have also been suggested by the Commission on Centre state relations. The state level Finance Commission should suggest district / region wise allocation of financial resources within a state will help bring about a balanced regional development. The Commission has also suggested that the Union Government should not, as far as possible, deviate from the recommendations of a Finance Commission.

Taking an overall view, it can be said that the Sarkaria Commission has recommended an appropriate federal - financial structure, maintaining strict financial discipline on part of the Union and states, creation of new institutions to suit the changing conditions. All these will provide a sound base for Finance Commissions to commence these works, as well as any impending controversy between the Union and the states, will have to be solved in the light of the work carried out by the Sarkaria Commission.

Based on the recommendations of the Tenth Finance Commission, an alternative scheme for sharing taxes between the Union and the states have been enacted by the Constitutional (Eightieth) Amendment Act 2000. Under this scheme of devolution of revenue between Union and the states, 29



per cent out of gross proceeds of Union taxes and duties is to be assigned to the states in lieu of their existing share in the income tax, excise duties; special excise duties and grants in lieu of tax on railway passenger fares.

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## 25.11 LET US SUM UP

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We have seen that the entire distribution of Legislative powers has shown a strong tendency towards high degree of centralization, but also reconciles with the need of state autonomy. In case of legislative powers between the centre and the state, the Sarkaria Commission has recommended a strong Union with certain structural changes / reformatations in the Union List.

In case of administrative powers, it seems to be a cooperative arrangement to suit the social conditions and aspiration of Indians, yet it is criticised to be centripetal. Financial relation provisions too, have shown strong centralized tendencies, Sarkaria Commission has again, in this case too, has recommended creation of new institutions to suit the changing conditions which have been implemented through the 80th Amendment.

But overall as the Sarkaria Commission rightly observed that "the rule of federal supremacy is a technique to avoid absurdity, resolve conflicts and ensure harmony between the Centre and the states It is an indispensable principle.

### Check Your Progress

**Note:** a) Answer in the space give below.

b) Check your progress with those given at the end of the unit.

1. Give a brief account of Centre-state relation.

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2. Discuss the distribution of Legislative powers between the Centre and the state.

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3. Give a review of centre:state legislative relation.

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4. Discuss in detail, the administrative relation between the Centre and the states.

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5. Elaborate on the Centre-State financial relation.

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6. Explain the issues in Centre-State financial relations and the demands made by state.

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### 25.12 KEY WORDS

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- |               |   |                      |
|---------------|---|----------------------|
| 1. enumerated | - | listed               |
| 2. Consent    | - | to express support   |
| 3. absurdity  | - | not clear            |
| 4. Residuary  | - | remaining            |
| 5. envisages  | - | enumerated / induces |
| 6. Consumed   | - | utilized / used      |
| 7. prohibited | - | disallowed           |

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### 25.13 SUGGESTED READING

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1. Government of India (Publication) The Constitution of India.
2. B.L.Fadia - Indian Government and Politics
3. Granville Austin - The Indian Constitution: Corner stone of a Nation.
4. Subhash Kashyap Our Parliament
5. Basu D.O. - Introduction to the Constitution of India - 19th Ed.2001.
6. Pylee M.V. - Constitutional Government in India (2000)
7. J.C.Johari - Indian Government and Politics.

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### 25.14 ANSWERS TO CHECK YOUR PROGRESS EXERCISE

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1. Refer 26.1.
2. Refer 26.2., 25.3., (briefly 26.4.)
3. Refer 26.4.
4. Refer 26.5.
5. Refer 26.6 & 26.7.
6. Refer 26.8 & 26.9.



**STRUCTURE**

- 26.0 Objectives
- 26.1 Introduction
  - 26.1.1 Kinds of Emergencies
- 26.2 The Effects of Proclamation of Emergency
- 26.3 Uses of the Emergency Powers ( a brief note)
- 26.4 Let us sum up
- 26.5 Key words
- 26.6 Suggested Reading
- 26.7 Answer to Check your progress exercises

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## 26.0 OBJECTIVES

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After studying this unit you will be able to,

- know different kinds of emergencies
- understand the effects of emergencies

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## 26.1 INTRODUCTION

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The British Act 1935 established a federal system in which provision was made for the different status of the British Provinces and The Indian States. When the point of independence was reached this structure proved too light to satisfy the demands of the Muslim areas, and partition had to be adopted. Since that date the 1935 Act has formed a basis for many of the provisions of the new Constitution of India. The Indian Constitution of 1949 is a federal one which somewhat complicated by the fact that it establishes three classes of states; the former provinces, States and Chief Commissioners Provinces of India before independence. The third class are governed by the President of India through a Chief Commissioner or lieutenant Governor (today known as Union Territories). The other two classes of states have identical legislative powers.

Bryce has very aptly stated that - Federal government, means weak government because it involves a division of power. As mentioned above the freedom of India came after experiencing various hurdles especially the partition. Because of this the constitution itself provides for conferring extra ordinary powers upon the Union Government in case of different kinds of emergencies. It is because of Emergency provisions of our Constitution enable the federal government to acquire the strength of a Unitary system whenever the exigencies of the situation demand.

### 26.1.1 Kinds of Emergencies

The Constitution of India has identified three different kinds of abnormal situations which call for a departure from normal governmental machinery set up by the Constitution - as mentioned below:

1. An emergency due to war, external aggression or armed rebellion - Article 352.
2. Failure of Constitutional machinery in the States - Article 356.
3. Financial Emergency - Article 360.

An 'armed rebellion' poses a threat to the security of the state as distinguished from internal disturbances contemplated under Article 355.



Where the Constitution simply uses the expression 'Proclamation of Emergency', the reference is Art 366 (18) to a proclamation of the first category, i.e. under Art 352.

The Emergency provisions in Part XVIII of the Constitution (Article 352 - 360) have extensively amended by the 42nd Amendment (1976) and 44<sup>th</sup> Amendment (1978) Acts, so that resultant position may be stated for the convenience of the reader, as follows:

A 'Proclamation of Emergency' may be made by the President at any time he is satisfied that the security of India or in any part there of has been threatened by war, external aggression or armed rebellion (Article 352). It may be made even before the actual occurrence of any such disturbance, e.g., when external aggression is apprehended.

By 'Emergency' it means the existence of condition whereby the security of India or any part there of is threatened by war or external aggression or armed rebellion. A state of emergency exists under the Constitution when the President makes a 'Proclamation of Emergency'. The actual occurrence of war or any armed rebellion, is not necessary to justify a Proclamation of Emergency of the President. The President may make such a Proclamation of Emergency if he is satisfied that there is an imminent danger of such external aggression or armed rebellion. But Article 352 (3) states that no such proclamation can be made by President unless the Union Ministers of Cabinet rank, headed by the Prime Minister, recommend to him, in writing & that such Proclamation be issued.

While the 42nd Amendment made the declaration immune from judicial review, that fetter has been removed by the 44th Amendment, so that the Constitution of the Proclamation can be questioned in a court on the ground of mala fides.

Every such Proclamation must be laid before both Houses of Parliament and shall cease to be in operation unless it is approved by resolutions of both Houses of Parliament within one month from the date of its issue. Until the 44<sup>th</sup> Amendment of 1978 there was no Parliamentary control over the revocation of a Proclamation, once this was approved by resolutions of the Houses of Parliament. After the 44th Amendment, a Proclamation under Art 352 may come to an end in the following ways.

- a) On the expiry of one month from its issue, unless approved by resolutions of both Houses of Parliament before the expiry of that period. If the Houses of People is dissolved at the date of issue of the Proclamation or within one month there of the Proclamation may survive until 30 days from the first sitting of the House after its reconstitution, provided the Council of States has in the mean time approved of it by a resolution (C1 (4)).
- b) It will get a fresh lease of six months from the date it is approved by resolutions of both House of Parliament (C1.5), so that it will terminate at the end of six months from the date of last such resolution.

- c) Every such resolution under as (4) - (5) must be passed by either House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting (a-6).
- d) The President must issue a Proclamation of revocation any time that the House of the Peoples passes a resolution disapproving of the issue or continuance of the Proclamation (a-7). For the purpose of convening a special sitting of the House of the People for passing such a resolution of disapproval, not less than 1/10 of the members of the House may give a notice in writing to the Speaker or to the President (when the House is not in session) to convene a special sitting of the House for this purpose. A special sitting of the House shall be held within 14 days from the date on which the notice is received by the Speaker or as the case may be by the President (C1.8).

It may be that an armed rebellion or external aggression has affected only a part of the territory of India which is needed to be brought under greater control. Hence, it has been provided, by the 44th Amendment, that a Proclamation under Art 352 may be made in respect of the whole India or only a part thereof. The Executive and the Legislatur of the Union shall have extra ordinary powers during Emergency.

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## **26.2 THE EFFECTS OF PROCLAMATION OF EMERGENCY**

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The effects of Proclamation of Emergency can be discussed under four major heads.

1. Executive
2. Legislative
3. Financial, and
4. Fundamental Rights.

### **1) Executive:**

When a Proclamation of Emergency is in effect, the executive power of the Union shall, during the operation of the Proclamation, extend to the giving of directions to any state as to the manner in which the executive power there of is to be exercised in Arts 256 - 257.

Under the Proclamation of Emergency, the Government of India shall acquire the power to give directions to a state on 'any' matter, so that though the State Government will not be suspended, it will be under the complete control of the Union Executive, and the administration in so far as the Proclamation goes, will function as under a unitary system with local sub-divisions.



## 2) Legislative:

a) Under a Proclamation of Emergency, the Parliament may, by law, extend the normal life of the House of the People (5 years) for a period not exceeding one year at a time and not extending in any case beyond a period of 6 months after the Proclamation has ceased to operate (Proviso to Art 83 (2), ante).

As soon as an Emergency is made, the Legislative competence of the Union Parliament shall automatically widened and the limitation imposed as regards List II, by Art 246 (3), shall be removed. In other words – Parliament shall have the power to legislate as regards List II (State List) as well (Article 250(1)). The Proclamation - will not suspend the State legislature, but it suspends the distribution of powers between the Union and State, so far as the Union is concerned. As a result the Union Parliament gets empowered to meet the emergency by legislation over any subject as necessary resulting as a Unitary State.

c) In order to carry out the laws made by the Union Parliament under the extended jurisdiction as Stated above, Parliament also has the power to make laws conferring powers, or imposing duties (as essential for the purpose), upon the Executive of the Union in respect of any matter, even if comes under the State's jurisdiction. (Art 353(b)).

## 3) Financial:

When Emergency is in operation, the President shall have the constitutional power to modify the provisions of the Constitution relating to the allocation of financial resources (Art 268-279) between the Union and the States, by his own Order. But no such Order shall have effect beyond the financial year in which the Proclamation itself ceases to operate, and, further, such Order of the President shall be subject to approval by Parliament (Art 354).

## 4) Fundamental Rights:

Articles 358-359 lay down the effects of a Proclamation of Emergency upon fundamental Rights, as amended up to 1978 by the 44th Amendment Act, the following impact emerges on fundamental Rights.

a) While Art, 358 provides that the state would be free from the limitation imposed by Art 19, so that these rights would be non - existent against the State during the operation of Proclamation of Emergency; under Art 359. The right to move the courts for the enforcement of the rights –stand suspended, by Order of the President.

- b) While Art 359 would apply to an Emergency declared on any of the grounds specified in Art 352, i.e. War, external aggression or armed rebellion, the application of Art 358 is confined to the case of Emergency on ground of war or external aggression only.
- c) While Art 358 is in operation it automatically suspends Art 19 as soon as a proclamation of Emergency on the ground of war or external aggression is issued, to apply Art 359 a further Order is to be made by the President, specifying those Fundamental Rights against which the suspension of enforcement shall be operative.
- d) Art 358 or Art 359 shall have the effect of suspending the operation of the relevant fundamental rights unless the law which affects the aggrieved individual contains recital to the effect that "Such law is in relation to the Proclamation of Emergency". In absence of such recital in the law itself, neither such law nor any executive action taken under it shall have any immunity from challenge for violation of a fundamental right during operation of Emergency (Cl (2) of Art 358 and Cl (1B) of Art 359).

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### 26.3 USES OF THE EMERGENCY POWERS. (A BRIEF NOTE)

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- A. The first Proclamation of Emergency under Art 352) was made by the President of India on October 26, 1962, in view of the Chinese aggression in the N.E.F.A. This Proclamation was revoked by an Order made by the President on January 10, 1968.
- B. The Second Proclamation of Emergency under Art. 352 was made by the President on December 3, 1971 when Pakistan launched an undeclared war against India.
- C. While the two preceding Proclamations under Art 352 were made on the ground of external aggression, the third Proclamation of Emergency under Art 352 was made on June 25, 1975, on ground of "Internal disturbance".

The "Internal disturbance", which was cited in the 'Press Note' relating to the Proclamation, was that certain persons have been inciting the Police and the Armed Forces against the discharge of their duties and their normal functioning'. Both the second and third proclamations were revoked on 21st March, 1977.

It should be noted that after 1978, it is not possible to issue a Proclamation of Emergency on the ground of internal disturbance; short of an armed rebellion, for, the words 'internal disturbance' have been substituted by the words 'armed rebellion', by the Constitution (44th Amendment) Act 1978.

II The Constitution provides for carrying on the administration of a state in case of failure of the constitutional machinery.



- a) It is the duty of the Union to ensure that the government of every state is carried on in accordance with the provisions of the Constitution (Art 355). So, the President is empowered to make a Proclamation, when he is satisfied that the Government of a state cannot be carried on in accordance with two provisions of the Constitution, either on the report of the Governor of the state or otherwise (Art 356 (1)).
- b) Such Proclamation may also be made by the President where any state has failed to comply with, or to give effect to, any directions given by the Union, in the exercise of its executive power to the state (Art 356) By such Proclamation - the President may
  - i) assume to himself all or any of the functions the Executive of the State or any other authority save the High Court and
  - ii) declare the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. in short, by such Proclamation, the Union would assume control over all functions in the state administration, except judicial.

When the State Legislature is thus suspended by the Proclamation, it shall be competent -

- i) for Parliament to delegate the power to make laws for state to the President or any other authority specified by him
- ii) for the President to authorize, when the House of the People is not in session, expenditure from the Consolidated Fund of the State pending the sanction of such expenditure from Parliament – and
- iii) for the President to promulgate Ordinances for the administration of the State when Parliament is not in session (Art 357).

Proclamation of failure of the Constitutional machinery differs from Proclamation of 'Emergency' - in following contents

- a) A Proclamation of Emergency may be made by the President only when the security of India or any part there of is threatened by wart external aggression or armed rebellion. A Proclamation in respect of failure of the constitutional machinery may be made by President when the Constitutional Government of the State cannot be carried on for any reasons/ not necessarily connected with war or armed rebellion.
- b) When a Proclamation of Emergency in made/ the Center shall get no power to suspend the State Government or any part thereof. The State Executive and Legislature would continue in operation and retain their powers. All that the Centre would get are concurrent powers of legislation and Jurisdiction of the State.

But under a Proclamation in case of failure of the Constitutional machinery/ the State Legislature would be suspended and the executive authority of the State would be assumed by the President in whole or in part. (This is why it is popularly referred as "Presidents Rule").

- c) Under a Proclamation of Emergency, Parliament can legislate in respect of State subjects only by itself: by under a Proclamation of the other kind, it can delegate powers to legislate for the State, - to the President or any other authority specified by him.
- d) In the case of a Proclamation of the failure of constitutional machinery, there is a maximum limitation to the power of Parliament to extend the operation of the Proclamation, namely, three years (Art 356 (4)), Proviso I), but in the case of a Proclamation of Emergency, it may be continued for a period of six months by each resolution of the Houses of Parliament approving its continuance, so that if Parliament so approves, the Proclamation is not revoked or the Parliament does not cease to make resolution approving its continuance (new O. (5) to Art 352, inserted by the 44th Amendment Act - 1978).

This makes it clear that the power to declare a Proclamation of failure of constitutional machinery in a State has nothing to do with any external aggression or armed rebellion; it is an extraordinary power of the Union to meet a political breakdown, in any of the units of the federation (on the failure by such Unit to comply with the federal directives (Art 365), which might affect the national strength. It is one of the coercive powers at the hands of the Union to maintain the democratic form of governmental machinery, in the States. The importance of this power in the political system of India though criticized has its own importance, because this power has been used not less than 108 times during the first 50 years of the working of the Indian Constitution (till March, 2001). From foregoing history of the use of the power by the Union under Art 356, it is to always remembered that the provision for such drastic power was defended by Dr. Ambedkar in the Constituent Assembly, on the plea that the use of this drastic power would be a matter of last resort. The proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President who is endowed with this power will take pretentious before actually suspending the administration of the Province.

It is natural, therefore, that the propriety of the use of this provision (which was envisaged by Dr. B. R. Ambedkar to "remain a dead letter") has evoked criticism from different quarters. A proper occasion for use of this power would, of course, be when a Ministry resigns after defeat in the Legislature and no other Ministry commanding a majority in the Assembly cannot once be formed. Dissolution of the Assembly may be a radical solution, but, that being expensive, a resort to Art 356 may be made to allow the state of free in the Assembly to subside so as to obviate the need for a dissolution, if possible. A similar situation would arise where the party having a majority declines to form a Ministry and the Governor fails in his attempt to find a coalition Ministry. Another obviously proper use is mentioned in Art 356 of



the Constitution itself; but Curiously, none of the numerous past occasions specially referred to this contingency. The provision in Art 365 relates to the failure of a State Government to carry out the directives of the Union Government which the latter has the authority under the Constitution to issue (e.g. under (Art 256,257). The Union may also issue such a directive under the implied power conferred by the latter part of Art 356, to ensure that the government of every state is carried on in accordance with the provisions of this Constitution.

Art 360(1) reads 'If the President is satisfied that a situation a situation has arisen whereby the financial stability or credit of India or of any part of the territory there of is threatened, he may by a Proclamation make a declaration to that effect'; which is know as 'Proclamation of Financial Emergency.

As a result of such declaration the consequences would be:

- a) During the period any such Percolation is in operation, the executive authority of the Union shall extend to the giving of directions to any state to observe such canons of financial propriety as may specified in the directions.
- b) Any such directions may also include - i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a state. ii) a provision requiring Money Bills or other financial Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.
- c) It shall be competent for the President during the period that any such operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts (Arts 360 (3) - (4) ).

The duration of such Proclamation will be similar to that of a Proclamation of Emergency; but the President can revoke it at any time, by making another Proclamation. No use of Art 360 has ever been made up to the end of 2002.

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## 26.4 LET US SUM UP

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It should be conceded that the emergency powers of the President are not in tune with the spirit of federation and the autonomy of the States. The suspension of fundamental rights of the citizens is certainly not a wholesome provision. But to say that these powers are liable to make the President a 'possible dictator' of India, is to carry the matter true far. It is true that these powers have made the union executive a dominant partner in the federation, but that has been the trend of federalism in general.

The justification of these emergency provisions lies in the past history of India. Whenever there was a weak Centre, it led to ruin and disaster. After independence, the country was facing separatist tendencies. The problem before the framers of the Constitution was not only to give a democratic Constitution but also provide a safeguard against antinational and anti-democratic forces. There is, however, a danger against misuse of these powers by the party in power for its political ends. This can be avoided only if the public opinion and democratic forces are very strong in the country.

### Check your progress

**Note:** a) Answer in the space give below.

b) Check your progress with those given at the end of the unit.

1. Define Emergency and state the different kinds of emergencies.

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2. Discuss the effects of proclamation of Emergency.

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3. Write a brief note on the uses of Emergency powers.

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### 25.5 KEY WORDS

- |                        |   |                                  |
|------------------------|---|----------------------------------|
| 1. Proclamation        | - | declare                          |
| 2. External aggression | - | when any outside state wages war |
| 3. Armed rebellion     | - | when there is athreat using arms |
| 4. Jurisdiction        | - | the scope of power               |



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**26.6 SUGGESTED READING**

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1. Government of India (Publication) The Constitution of India.
2. B.L.Fadia - Indian Government and Politics
3. Granville Austin - The Indian Constitution: Corner stone of a Nation.
4. Subhash Kashyap - Our Parliament
5. Basu D.O. - Introduction to the Constitution of India - 19th Ed.2001.
6. Pylee M.V. - Constitutional Government in India (2000)
7. J.C.Johari - Indian Government and Politics.

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**26.7 ANSWER TO CHECK YOUR PROGRESS EXERCISES**

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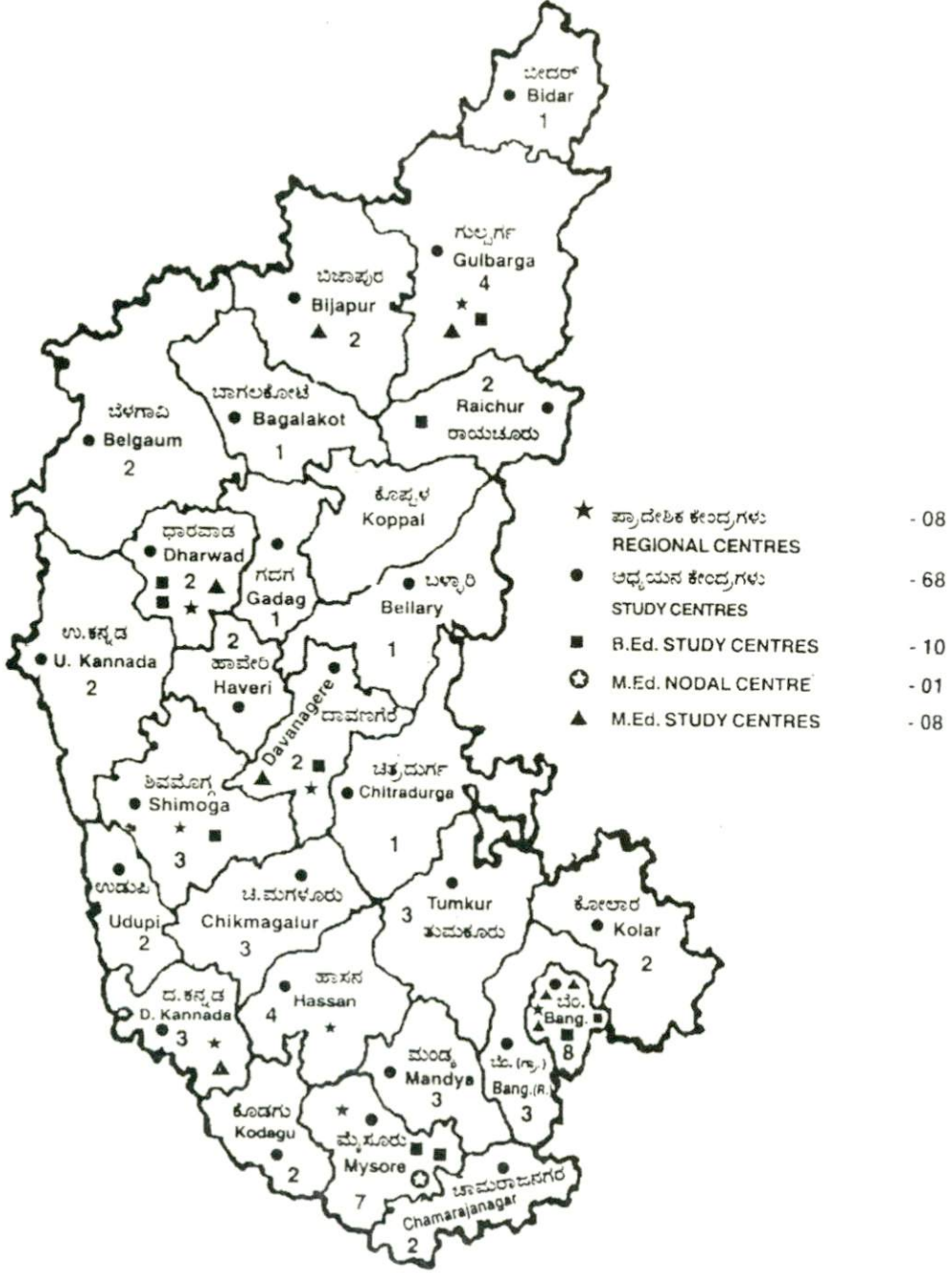
1. Refer 26.1.,26.1.1. and 26.1.2.
2. Refer 26.2.
3. Refer 26.3.







ಕರ್ನಾಟಕ ರಾಜ್ಯ ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯದ ಪ್ರಾದೇಶಿಕ ಹಾಗೂ ಅಧ್ಯಯನ ಕೇಂದ್ರಗಳು  
Regional and Study Centres of Karnataka State Open University



(ಸಮೂಹಿಸಿರುವ ಅಂಕಿ - ಜಿಲ್ಲೆಯಲ್ಲಿರುವ ಒಟ್ಟು ಅಧ್ಯಯನ ಕೇಂದ್ರಗಳ ಸಂಖ್ಯೆಯನ್ನು ಸೂಚಿಸುತ್ತದೆ.)  
(The Number indicate the total number of study Centres existing in that districts.)



