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5 Year B.A. LL.B., Course
Semester System

I - Year

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COURSE MATERIALS

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1. MODERN GOVERNMENTS

Unitary and Federal

The government in a state has many powers. The powers are exercised by government for the welfare of the state.

Unitary

A government system in which the national government alone has sovereign authority. France, Great Britain, Italy, Japan and Sweden all participate in some form of Unitary government.

Federal

A federal system of government is one that divides the powers of government between the national (federal) government and state and local governments. Powers of national interest are given to the federal government. e.g defence, currency and foreign policy are matters of national importance. Police, health, education are given to regional government. In federation the constitution is supreme. e.g U.S.A , Switzerland and India.

Quasi - Federal Constitution

A constitution which possesses some federal features and more unitary features is called a Quasi - Federal Constitution. India is the best examples. India has two sets of government. There is division of powers. The constitution is supreme in India.

Presidential and Parliamentary Forms

Presidential and Parliamentary forms of Govt are two different systems of Government, which are available in all countries of the world. These two systems are for good governance. System of Government in every country is functioning with either Presidential or Parliamentary form of Govt. Historically these two systems of Government are available in United States of America and United Kingdom.

The countries, remained under colonial system, had adopted the system left by their masters except of some, for example USA adopted Presidential form of Government after getting Independence from UK. On the other hand New Zealand is following the system of West minster model, which also remained colony of UK. Similarly, Nigeria also adopted the Presidential form of Government after getting independence from France. Like this, Pakistan and India had also adopted Parliamentary form of Government after getting independence from United Kingdom, which was there at that time.

Presidential Form of Government

Presidential system of Government in USA is very successful since long because of its Constitution. Constitution of the USA well defines the limitations of the three Institutes (1) Executive (2) Legislature (3) Judicature. Her constitution precisely contains the doctrine of Separation of Power between these three pillars.

Parliamentary Form of Government

Parliamentary form of Government is very historical and successful in United Kingdom. Many countries had adopted this form of Government because of its success in UK. In early days every word spoken by the King or Queen was the law and no one had power to contradict it. But gradually, a concept of personal freedom became popular and House of Common tried to become more powerful. Hence the doctrine of Supremacy of Parliament developed. The development of the supremacy of Parliament

stemmed from the English Civil War and expanded over since and is now a dominant theme in British politics. Majesty of King or Queen is now ceremonial. All the functions of Government are being controlled by the UK Parliament. This is too much independent Parliament in the world; therefore, there is a saying that "Parliament of Britain can do everything except to change the sex of a person"

Advantages of Presidential Form of Government

Salient features of Presidential system of Government are as under:-

- A strong and stable Government
- An able and mature ministry through direct induction of top professionals and technocrats
- Legislator's freedom from the fear or 'party whip' resulting separation of the Executive from the Legislature
- Gradual emergency of the two party-systems as a result of pre-election coalition of like-minded parties, before the very eyes of the electorate
- Bureaucracy remains under the mature surveillance of political leadership, and
- Rampant defections and uneasy post-election coalitions tend to disappear.

Advantages of Parliamentary Form of Government

Salient features of the Parliamentary form of Government are as under

- Selection of Prime Minister on the will of majority of members of the Parliament.
- Chosen of members by the voting power of people.
- Decisions on issues on the basis of consensus of majority.
- Option of citizen to choose best one.
- Interest of the people in the affairs of the country. Consequently, development of public opinion.
- Manifesto of the parties for the general public to decide mandate.
- Criticism by the opposition.
- Equal representation of all constituencies either urban or rural.
- Legislation according to the will of the people by the members representing them in the parliament.

Disadvantages of Presidential Form of Government

- No doubt that Presidential form of Government has many advantages and greater stability and sanity in the politics of a country. However, it has the following drawbacks:-
- By making the President and his colleagues independent of the Legislature, it makes the executive too powerful and this carries within it seeds of Dictatorship.
- President considers himself always right because of absolute power, which causes danger to the integrity of country.
- President selects always his closest friends even not intelligent and remote to their expertise and experience
- Sometimes President makes covenant against the country to save his regime
- In Presidential System, reign of Government remains in few hands. Resultantly few minds apply on some important issues.

Disadvantages of Parliamentary Form of Government

Drawbacks of the Parliamentary form of Government are as under:-

- Delay in decisions.
- Ministers are selected by the Prime Minister on the basis of influence in the party.
- Newly elected members sometimes neglected even competent in their fields.
- Misuse of authority by the members of Parliamentary because of majority.
- Members of Parliament cannot go against the party's policy. Even they cannot vote according to their conscience.
- Nomination of illiterate members as ministers causing strongest bureaucracy.
- Influence of small factions on the political parties.

Quasi - Presidential Form

Some features of a constitution give prominence to the parliament. The parliament controls the Executive. Such form of government is called parliamentary form. Some features of a constitution give prominence to the Executive. The President ids the form of government is powerful. This form of government is called the presidential form. The Constitution which contains important features of both the above forms is called quasi-Presidential. In this form of government there is an office of president with some important powers. There is also a premier and his council of ministers responsible to the parliament. The President shares some power with them. He is neither very powerful like the American president nor powerless like the British Queen. Best example is France.

STATE

The word state is originated from the term 'status' in Latin. These donate the position of a person in a society. According to Bluntschi, State is a politically organized people of a definite territory.

The Essential Elements for State

1) **Population** - A state fundamentally comprises of a permanent population over which it exercises its unlimited authority. The nature of the state depends upon the quality and quantity of its population. No ideal size of population can be stated. Aristotle stated "A population must be large enough to be self-sufficient, but small enough to be well-governed." A good population makes a good state; a bad one, a bad state.

2) **Territory** - A state cannot exist without territory. Territory refers to land, surrounding water up to 3 nautical miles, as well as the air above the land and water. Nomadic settlements did not possess any permanent territory. Hence, they cannot be called a state.

3) **Government** - It is a body of a few people who administer the population and are meant to express the will of the state. The government has limited power, as opposed to the state's unlimited authority. The government is subject to change and is bound to obey will of the people as well as state. To equate the Government with State is a dangerous, yet common mistake.

4) **Sovereignty** - It is the soul of a state. It implies that the state is independent from external interference, as well as can maintain integrity within itself. India could not be referred to as a state prior to 1947, as it did not have an independent government

American Federation

According to James Q. Wilson and John DiIulio, Jr., federalism is a system of government "in which sovereignty is shared [between two or more levels of government] so that on some matters the national government is supreme and on others the states, regions, or provincial governments are supreme.

Federalism in the United States is the evolving relationship between U.S. state governments and the federal government of the United States. Since the founding of the country, and particularly with the end of the American Civil War, power shifted away from the states and towards the national government.

There are three essential features that characterize a federal system of governance. First, there must be a provision for more than one level of government to act simultaneously on the same territory and on the same citizens. The American federal system is composed of a national government and the 50 states, both recognized by the Constitution. Local governments, creations of states, while not mentioned in the Constitution, are nevertheless key players in American federalism. Their power to regulate and legislate is derived from state Constitutions.

Second, each government must have its own authority and sphere of power, though they may overlap. When state and federal authority conflict, federal law is supreme under the Constitution. Article I, Sec. 8 of the Constitution delegates certain enumerated powers to the national government that includes the exclusive power to mint currency, establish and maintain an army and navy, declare war, regulate interstate commerce, establish post offices, establish the seat of national government, and enter into treaties. The Constitution reserves powers not granted to the national government to states, or the people, and it establishes certain concurrent powers to be shared between state and national governments including the power to tax. In addition, the Constitution prohibits the exercise of certain powers or actions by both state and national governments including taking private land without just compensation; establishing a national religion; or prohibiting the free exercise of religion.

Third, neither level of government (federal or state governments) can abolish the other. The Civil War was fought not only on the question of slavery but also central to the conflict were questions of states' sovereignty including the power to nullify federal laws or dissolve the Union.

President

The President of the United States is the head of state and head of government of the United States. The president leads the executive branch of the federal government and is the commander-in-chief of the United States armed forces.

Article II of the U.S. Constitution vests the executive power of the United States in the president and charges him with the execution of federal law, alongside the responsibility of appointing federal executive, diplomatic, regulatory, and judicial officers, and concluding treaties with foreign powers, with the advice and consent of the Senate. The president is further empowered to grant federal pardons and reprieves, and to convene and adjourn either or both houses of Congress under extraordinary circumstances. Since the founding of the United States, the power of the president and the federal government have substantially grown and each modern president, despite possessing no formal legislative powers beyond signing or vetoing congressionally passed bills, is largely responsible for dictating the legislative agenda of his party and the foreign and domestic policy of the United States. The president is frequently described as the most powerful person in the world

The president is indirectly elected by the people through the Electoral College to a four- year term, and is one of only two nationally elected federal officers, the other being the Vice President of the United States.

Eligibility

Article II, Section 1, Clause 5 of the Constitution sets the principal qualifications one must meet to be eligible to the office of president. A president must:

- be a natural born citizen of the United States;
- be at least thirty-five years old;
- have been a permanent resident in the United States for at least fourteen years.

A person who meets the above qualifications is still disqualified from holding the office of president under any of the following conditions:

- Under the Twenty-second Amendment, no eligible person can be elected president more than twice. The Twenty-second Amendment also specifies that if any eligible person who serves as president or acting president for more than two years of a term for which some other eligible person was elected president, the former can only be elected president once. Scholars disagree whether anyone no longer eligible to be elected president could be elected vice president, pursuant to the qualifications set out under the Twelfth Amendment.
- Under Article I, Section 3, Clause 7, upon conviction in impeachment cases the Senate has the option of disqualifying convicted individuals from holding other federal offices, including the Presidency.
- Under Section 3 of the Fourteenth Amendment, the Constitution prohibits an otherwise eligible person from becoming president if that person swore an oath to support the Constitution, and later rebelled against the United States. However, the Congress, by a two-thirds vote of each house, can remove the disqualification.

Campaigns and Nomination

The modern presidential campaign begins before the primary elections, which the two major political parties use to clear the field of candidates in advance of their national nominating conventions, where the most successful candidate is made the party's nominee for president. Typically, the party's presidential candidate chooses a vice presidential nominee, and this choice is rubber-stamped by the convention.

Nominees participate in nationally televised debates, and while the debates are usually restricted to the Democratic and Republican nominees, third party candidates may be invited, such as Ross Perot in the 1992 debates. Nominees campaign across the country to explain their views, convince voters and solicit contributions. Much of the modern electoral process is concerned with winning swing states through frequent visits and mass media advertising drives.

Tenure and Term Limits

The term of office for president is four years. Earlier there was no restriction on his being elected again for second or third term. However George Washington, the first president, set an unofficial precedent of serving only two terms, which subsequent presidents followed until 1940. Before Franklin D. Roosevelt, attempts at a third term were encouraged by supporters of Ulysses S. Grant and Theodore Roosevelt ; neither of these attempts succeeded. In 1940, Franklin Roosevelt declined to seek a third term, but allowed his political party to "draft" him as their presidential candidate and was subsequently elected to a third term. In 1941, the U.S. became involved in World War II, which later led voters to elect Roosevelt to a fourth term in 1944.In 1951, Twenty-second Amendment of the constitution came into effect which restricted the election of the president to two terms or 10 years .

Election

Presidents are elected indirectly in the United States. A number of electors, collectively known as the Electoral College, officially select the president.

Oath

The presidents takes an oath of office after his election .He can be removed by the congress by impeachment .

Vacancy or Disability

- Vacancies in the office of president may arise under several possible circumstances; death, resignation and removal from office.

- Article II, Section 4 of the Constitution allows the House of Representatives to impeach high federal officials, including the president, for "treason, bribery, or other high crimes and misdemeanors."
- Article I, Section 3, Clause 6 gives the Senate the power to remove impeached officials from office, given a two-thirds vote to convict. The House has thus far impeached two presidents: Andrew Johnson in 1868 and Bill Clinton in 1998. Neither was subsequently convicted by the Senate; however, Johnson was acquitted by just one vote.
- Under Section 3 of the Twenty-fifth Amendment, the president may transfer the presidential powers and duties to the vice president, who then becomes acting president, by transmitting a statement to the Speaker of the House and the president pro tempore of the Senate stating the reasons for the transfer. The president resumes the discharge of the presidential powers and duties when he transmits, to those two officials, a written declaration stating that resumption. This transfer of power may occur for any reason the president considers appropriate; in 2002 and again in 2007, President George W. Bush briefly transferred presidential authority to Vice President Dick Cheney. In both cases, this was done to accommodate a medical procedure which required Bush to be sedated; both times, Bush returned to duty later the same day.
- Under Section 4 of the Twenty-fifth Amendment, the vice president and a majority of the Cabinet may transfer the presidential powers and duties from the president to the Vice President once they transmit a written declaration to the Speaker of the House and the president *pro tempore* of the Senate that the president is unable to discharge the presidential powers and duties. If this occurs, then the vice president will assume the presidential powers and duties as acting president; however, the president can declare that no such inability exists and resume the discharge of the presidential powers and duties. If the vice president and cabinet contest this claim, it is up to Congress, which must meet within two days if not already in session, to decide the merit of the claim.
- The Constitution states that the vice president becomes president upon the removal from office, death or resignation of the preceding president. If the offices of president and vice president both are either vacant or have a disabled holder of that office, the next officer in the presidential line of succession, the Speaker of the House, becomes acting president. The line then extends to the president pro tempore of the Senate, followed by every member of the cabinet in a set order.

Compensation

The president earns a $400,000 annual salary, along with a $50,000 annual expense account, a $100,000 non-taxable travel account and $19,000 for entertainment. The White House in Washington, D.C. serves as the official place of residence for the president; he is entitled to use its staff and facilities, including medical care, recreation, housekeeping, and security services. Naval Support Facility Thurmont, popularly known as Camp David, is a mountain based military camp in Frederick County, Maryland used as a country retreat and for high alert protection of the president and his guests.

A president's executive authority under the Constitution, tempered by the checks and balances of the judicial and legislative branches of the federal government, was designed to solve several political problems faced by the young nation and to anticipate future challenges, while still preventing the rise of an autocrat.

Powers of Appointment

The President of the United States has several different appointment powers. Before getting office, the President-elect must appoint more than 6,000 new federal positions. The appointments range from

top officials at U.S. government agencies, to the White House Staff, and members of the United States diplomatic corps. The President also has the power to nominate federal judges, including members of the United States Courts of Appeals and the United States Supreme Court. The President must appoint judges for the United States District Courts, but he will not often defer to Senatorial courtesy in making these choices. As head of the executive branch, the President must appoint the top officials for all of the federal agencies.

Executive Clemency

Article II of the United States Constitution gives the President the power of clemency. The two most commonly used clemency powers are those of pardon and commutation. A pardon is an official forgiveness for an acknowledged crime. Once a pardon is issued, all punishment for the crime is waived. The person accepting the pardon must, however, acknowledge that the crime did take place.

The President can also commute a sentence which, in effect, changes the punishment to time served. While the guilty party may be released from custody or not have to serve out a prison term, all other punishments still apply.

Foreign Affairs

Under the Constitution, the president is the federal official that is primarily responsible for the relations of the United States with foreign nations. The president appoints ambassadors, ministers, and consuls—subject to confirmation by the Senate—and receives foreign ambassadors and other public officials. With the secretary of state, the president manages all official contacts with foreign governments.

Emergency Powers

Over the years, Presidents have claimed to have emergency powers in times of crisis. These Inherent Powers have been used both at home and overseas. The most common use of emergency powers is to declare a state of emergency which allows the Federal Emergency Management Agency (FEMA) to bypass normal administrative and jurisdictional rules. Declarations of emergency can also provide special federal aid such as during the Flood of 1993 along the Mississippi River or in New Orleans after Hurricane Katrina. President Abraham Lincoln used his emergency powers to suspend the writ of habeas corpus in Maryland during the American Civil War. President Harry Truman was also denied emergency powers by the Court in Youngstown Sheet & Tube Co. v. Sawyer when he tried to nationalize the nation's steel mills.

Executive Privilege

Executive privilege gives the President the ability to withhold information from the public, Congress, and the courts in matters of national security. George Washington first claimed privilege when Congress requested to see Chief Justice John Jay's notes from an unpopular treaty negotiation with Great Britain. While not enshrined in the Constitution, Washington's action created the precedent for privilege. When Richard Nixon tried to use executive privilege as a reason for not turning over subpoenaed evidence to Congress for the Watergate hearings, the Supreme Court ruled in United States v. Nixon that privilege did not apply in cases where a President was attempting to avoid criminal prosecution. Later President Bill Clinton lost in federal court when he tried to assert privilege in the Lewinsky scandal. The Supreme Court affirmed this in Clinton v. Jones which denied the use of privilege in cases of civil suits as well.

Constraints on Presidential Power

Because of the vast array of presidential roles and responsibilities, coupled with a conspicuous presence on the national and international scene, political analysts have tended to place great emphasis on the president's powers. Some have even spoken of "the imperial presidency," referring to the expanded role of the office that Franklin D. Roosevelt maintained during his term.

President Theodore Roosevelt famously called the presidency a “bully pulpit” from which to raise issues nationally, for when a president raises an issue, it inevitably becomes subject to public debate. A president’s power and influence may be limited, but politically the president is certainly the most important power in Washington and, furthermore, is one of the most famous and influential of all Americans.

The Separation of Powers devised by the framers of the Constitution was designed to do one primary thing: to prevent the majority from ruling with an iron fist. Based on their experience, the framers shied away from giving any branch of the new government too much power. The separation of powers provides a system of shared power known as Checks and Balances (see Separation of powers). For example, the President appoints judges and departmental secretaries, but these appointments must be approved by the Senate.

Powers and Duties

Article - I: Legislative Role

The first power conferred upon the president by the U.S. Constitution is the legislative power of the presidential veto. The Presentment Clause requires any bill passed by Congress to be presented to the president before it can become law. Once the legislation has been presented, the president has three options:

1. Sign the legislation; the bill then becomes law.
2. Veto the legislation and return it to Congress, expressing any objections; the bill does not become law, unless each House of Congress votes to override the veto by a two- thirds vote.
3. Take no action. In this instance, the president neither signs nor vetoes the legislation. After 10 days, not counting Sundays, two possible outcomes emerge:
   - If Congress is still convened, the bill becomes law.
   - If Congress has adjourned, thus preventing the return of the legislation, the bill does not become law. This latter outcome is known as the pocket veto.
4. Though the approval of budget is the responsibility of congress, it is the president under whose direction the budget is prepared .
5. He has the power to call special session of congress during urgent matters.

Administrative Powers

1. The president is the chief executive of the United States, putting him at the head of the executive branch of the government, whose responsibility is to “take care that the laws be faithfully executed.” To carry out this duty, the president is given control of the four million employees of the federal executive branch.
2. Presidents make numerous executive branch appointments: an incoming president may make up to 6,000 before he takes office and 8,000 more during his term. Ambassadors, members of the Cabinet, and other federal officers, are all appointed by a president with the “advice and consent” of a majority of the Senate.

Juridical Powers

1. The president, as the chief executive, he has the power to grant pardon and reprieves.
2. The president is immune from arrest.
3. The president also has the power to nominate federal judges, including members of the United States courts of appeals and the Supreme Court of the United States. However, these nominations do require Senate confirmation.

Legislative Power vested in Congress

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives

House of Representatives

The House of Representatives is the lower House of American Congress.

Composition

It consists of 437 members elected from all 50 states on basis of population.

Qualifications of Members

a) The candidate should be at least twenty-five Years of age:
b) Seven years a citizen of the United States:
c) He must satisfy legal qualifications of residence for voting purpose of the state in which he is chosen:
d) He must be a resident of the district, which he represents.

Term of the House

Normal term of the House of Representatives is 2 years.

Method of Election

There is no uniform method for elections as it differs from state to state. Every state has given seats according to its population.

Sessions

The 20th Amendment has abolished the 'Lameduck' session. Now the Congress Assembles each year on the third of January .The President can also call special sessions.

Vacancies

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies

Powers of the House

Legislature

House of Representatives enjoys equal powers with the Senate. Ordinary bills can be introduced in either house. But money bills can introduced in the Lower house. However the Senate has the power even to amend money bills. It can amend money bill to a great extend. It can change every thing in the bill except the title.

Executive

In America, lower house has no control over executive. In executive matters senate has more powers than the lower house. The lower house shares the control over budget with the senate. It can impose cuts on the budget proposal of the executive.

Judicial

House of Representatives may initiate impeachment. t may discuss proposals. If the proposals are passed by this House of Senate conducts the trial. All the federal courts below the supreme court have been created by the House of Representatives. In judicial aspects also this house is to some extent inferior to the Senate.

Other powers

The House of Representatives has share in the power of amending the constitution. The proposal for amendment are to be proved by 2/3 majority of both the Hit decides the election of the president when no candidate secures an absolute majority of electoral votes. It elects the president from among the first three candidates.

Speaker and other Officers; Impeachment

The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

Position of the House

It was meant to be the legislative centre of gravity by the constitution fathers but the senate has acquired more powers than the House.

Senate

The Senate is the Upper House of American Congress.

Composition

The Senate consist of one hundred members- two members from each state.

Qualifications of Members

a) The candidate should be at least thirty Years of age:

b) At least nine years citizen of the United States:

c) Should be the inhabitant of the state, which he desires to represent:

d) He must be a resident of the district, which he represents.

Term of the House

Senators are elected for 6 Years: one-third retiring every 2 years.

Method of Election

Originally the senators were elected by the state legislature but by the amendment of 1913 the election has become direct .

Vacancies

If Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

Powers of the Senate

a) Legislative

The Senate shares legislative powers equally with the House of Representatives. All the Bills are to be passed in both the Houses before the assent of the President. Money Bills cannot introduced in the Senate. However the Senate has the power to amend money bills. Even in case of disagreements between the two Houses the Senate manages to have an upper hand.

b) Executive

The executive powers of the senate are important. No other second chamber in the world possesses so much powers. It confirms all the appointments made by the president. The treaties made by the president are to be ratified by the Senate. The president is checked by the Senate. On many occasions the senate has disapproved the action of the President.

c) Judicial

The President of the U.S.A can be removed from power by impeachment. The trial of impeachment is conducted by the Senate .When the Senate conducts the trial the Chief-Justice of the Supreme court presides over it. The judicial power enhances the position of the Senate.

Presiding Officer

The Vice President of the United States is the Presiding officer of the Senate, but shall have no Vote, unless they be equally divided. The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of the President of the United States.

The Supreme Court of the United States

The Supreme Court of the United States, established in 1789, is the highest Federal court in the

United States, with powers of judicial review . Its existence is provided for in Article III of the Constitution, although Congress is given the power to determine the size of the Court. The size of the court is set by Congress and currently consists of a Chief Justice and eight Associate Justices.

Members of the Supreme Court are appointed for life by the President. They may be removed only by death, resignation or impeachment. The Supreme Court has the power of judicial review. It may declare acts of Congress or of state governments unconstitutional and therefore invalid. The Supreme Court decides cases by a majority vote and its decisions are final.

This power is based on the Supreme Court's ability to act as the interpreter and the power of the Supreme Court does fit in with the concept of checks and balances to all aspects of government.

Judicial review in the United States refers to the power of a court to review the constitutionality of a statute or treaty, or to review an administrative regulation for consistency with either a statute, a treaty, or the constitution itself.

At the federal level, there is no power of judicial review explicitly established in the United States Constitution, but the doctrine has been inferred from the structure of that document. At the time of the 1787 Constitutional Convention, five of the thirteen States included some form of judicial review or judicial veto in their state constitutions. Delegates at the Convention, including South Carolina's Charles Pinckney, spoke out against the doctrine of judicial review.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.... The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.... In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Political Parties

The modern political party system in the United States is a two-party system dominated by the Democratic Party and the Republican Party. These two parties have won every United States presidential election since 1852 and have controlled the United States Congress since at least 1856. Several other third parties from time to time achieve relatively minor representation at the national and state levels.

Democratic Party

The Democratic Party is one of two major political parties in the United States. It is the oldest political party in the United States and among the oldest in the world. The Democratic Party, since the division of the Republican Party in the election of 1912, has consistently positioned itself to the left of the Republican Party in economic as well as social matters.

In 2004, it was the largest political party, with 72 million voters (42.6% of 169 million registered) claiming affiliation. The president of the United States, Barack Obama, is a Democrat, and since the 2006 midterm elections, the Democratic Party is the majority party for the 110th Congress. The party holds an outright majority in the House of Representatives and the United States Senate. Democrats also hold a majority of state governorships and control a plurality of state legislatures.

Republican Party

The Republican Party is one of the two major contemporary political parties in the United States of America. It is often referred to as the Grand Old Party, GOP, and "Gallant Old Party". Founded in 1854 by anti-slavery expansion activists and modernizers, the Republican Party rose to prominence with the election of Abraham Lincoln, the first Republican president. The party presided over the American Civil War and Reconstruction but was harried by internal factions and scandals toward the end of the 19th century.

Former President George W. Bush is the 19th Republican to hold that office. Republicans currently fill a minority of seats in both the United States Senate and the House of Representatives, hold a minority of state governorships, and control a minority of state legislatures. It is currently the second largest party with 55 million registered members, encompassing roughly one third of the electorate.

Pressure Groups

The Pressure groups play an important role in the U.S.A. They are active at the national and state levels. There are about thousand of pressure groups in the United States. The American Farm Bureau Association, National Association for the Advancement of coloured people, the American veterans committee and the American Medical Association are some of the strong pressure groups, which have head quarters at Washington. The U.S.A has presidential form of government .The Congress and the President are separated from each other. Hence pressure group has to apply pressure on both. The pressure groups concentrate their attention on President. When they fear that the President may not yield, they apply pressure on Congress by lobbying.

THE CONSTITUTION OF THE FIFTH REPUBLIC

The current **Constitution of France** was adopted on October 4, 1958. It is typically called the **Constitution of the Fifth Republic**, and replaced that of the Fourth Republic dating from 1946. Charles de Gaulle was the main driving force in introducing the new constitution and inaugurating the Fifth Republic, while the text was drafted by Michel Debre. Since then the constitution has been amended eighteen times, most recently in 2008.

The preamble of the constitution recalls the Declaration of the Rights of Man and of the Citizen from 1789 and establishes France as a secular and democratic republic, deriving its sovereignty from the people.

It provides for the election of the President and the Parliament, the selection of the Government, and the powers of each and the relations between them. It ensures judicial authority and creates a High Court (a never convened court for judging the President), a Constitutional Council, and an Economic and Social Council. It was designed to create a politically strong President.

It enables the ratification of international treaties and those associated with the European Union. It is unclear whether the wording (especially the reserves of reciprocity) is compatible with European Union law.

The Constitution also sets out methods for its own amendment either by referendum or through a Parliamentary process with Presidential consent. The normal procedure of constitutional amendment is as follows: the amendment must be adopted in identical terms by both houses of Parliament, then must be either adopted by a simple majority in a referendum, or by 3/5 of a joint session of both houses of Parliament (the French Congress) (article 89). However, president Charles de Gaulle bypassed the legislative procedure in 1962 and directly sent a constitutional amendment to a referendum (article 11), which was adopted. This was highly controversial at the time: however, the Constitutional Council ruled that since a referendum expressed the will of the sovereign people, the amendment was adopted.

On July 21, 2008, Parliament passed constitutional reforms championed by President Nicolas Sarkozy by a margin of two votes. These changes, if finalized, introduce a two-term limit for the presidency, give parliament a veto over some presidential appointments, end government control over parliament's committee system, allow parliament to set its own agenda, allow the president to address parliament in-session, and end the president's right of collective pardon. The President of the French Republic is the head of state of France. The current President is Nicolas Sarkozy.

President

Like the constitutions of 1871 and 1946 ,the constitution of the The French Fifth Republic also has a provision for the President of the French Republic. Unlike many other European presidents, the office of the French President is quite powerful. The president holds the nation's most senior office, and outranks all other politicians.

Qualifications

Unlike the American and Indian Constitution, the French Constitution says nothing about the Qualifications of the president.

Election

The President is elected indirectly by an Electoral College consisting of the following categories of members:-

a) All the members of the French Prliament:

b) Member of the General Council of the Assemblies of the overseas territores;

c) And the representative of the Municipal Councils.

Term

The president of France is elected for a seven-year term, now this has been reduced to five years. This was done through Referendum held on September 24,1999.

Removal

President can be removed only by impeachment.The Parliament level charges against the president and the High Court of Justice enquire into the allegations.

Succession and Incapacity

Upon the death or resignation of the President, the President of the Senate acts as interim president. Alain Poher is the only person to have served this temporary position. The first time was in 1969 after Charles de Gaulle's resignation and a second time in 1974 after Georges Pompidou's death. It is important to note that, in this situation, the President of the Senate became an Interim President of the Republic; they do not become the new President of the Republic as elected and therefore do not have to resign from their position as President of the Senate.

The first round of a new presidential election must be organized no sooner than twenty days and no later than thirty-five days following the vacancy of the presidency. Because fifteendays can separate the first and second rounds of a presidential election, this means that the President of the Senate can only act as President of the Republic for a maximum period of fifty days. During this period of Interim president is not allowed to dismiss the national assembly nor are they allowed to call for a referendum or initiate any constitutional changes.

If there is no acting president of the senate, the powers of the president of the republic are exercised by the "Gouvernement", meaning the Cabinet. This has been interpreted by some constitutional academics as meaning first the Prime Minister and, if he is himself not able to act, the members of the cabinet in the order of the list of the decree that nominated them. This is in fact unlikely to happen, because if the president of the Senate is not able to act, the Senate will normally name a new president of the Senate, that will act as President of the Republic.

During the Third French Republic the President of the Council of Ministers acted as President whenever office was vacant.

If the President cannot attend meetings, including meetings of the Council of Ministers, he can ask the Prime Minister to attend in his stead (Constitution, article 21). This clause has been applied by presidents travelling abroad, ill, or undergoing surgery.

Pay and Official Residences

The President of the Republic is paid a salary according to a pay grade defined in comparison to the pay grades of the most seniors members of the French Civil Service .In addition he is paid a residence stipend of 3%, and a function stipend of 25% on top of the salary and residence indemnity. This gross salary and these indemnities are the same as those of the Prime Minister, and are 50% higher than the highest paid to other members of the government, which is itself defined as twice the average of the highest (pay grade G) and the lowest (pay grade A1) salaries in the "out of scale" pay grades. Using the 2008 "out of scale" pay grades this amounts to a monthly pay of *20963, which fits the 19000* quoted to the press in early 2008. Using the pay grades starting from 1 July 2009, this amounts to a gross monthly pay of 21131*.The salary and the residence stipend are taxable for income tax.

The official residence and office of the president is the Elysee Palace in Paris.

Powers of the President

The President under the Constitution of the Fourth Republic did not enjoy any real powers. The constitution of 1946 established a parliamentary form of government in France and the President ,therefore was only a titular executive. The real authority was in the hands of the Council of Ministers. The Constitution of the Fifth Republic has, however substantially changed the position of the President. Now he enjoys vast powers and has become a real executive.

Executive Powers

a) All the executive actions of the French Republic are taken in the name of President.
b) The President is responsible for the execution of the laws of the state.
c) The appoints the Prime Minister and other ministers.
d) The President of the Republic presides over the meetings of the Council of Ministers.
e) The President appoints civil and military officers.
f) He appoints 1/3rd members of the constitutional Council.
g) He also appoints Ambassadors and envoys extraordinary to foreign countries.
h) The President is the Commander of the armed forces.
i) The President negotiates nd ratifies international treaties.

Legislative Powers

a) The President promulgates the laws within fifteen days following the transmission to the Government of the finally adopted law. However ,within this period the President can call upon Parliament to debate it all over again, or in part and Parliament will have no right to refuse.
b) The President also submits to a referendum of the people a projected Bill concerning the organization of public power. When the referendum decides in favour of the bill, the President of the Republic promulgates it within 15 days.
c) The President of the Republic, after consultation with the Prime Minister and the Presidents of the National assembly and the Senate, can dissolve the National Assembly.
d) The President of the Republic signs all ordinances and decrees decided upon in the Council of Ministers.
e) The President can send messages to both the Houses of the French Parliament. He can also call a special seeion of the Parliament for thi purpose.

Judicial Powers

Article 64 says that " The President of the Republic shall be the guarantor of the independence of the Judicial authority". Thus he is the protector of the independence of the Judiciary. Moreover, the President has the right of pardon.

Emergency Powers

Article 16 of the Constitution gives the Emergency Powers of the President.

Position of President

Consequently the Presidency is easily the most powerful position in the French political system. Duties include heading the armed forces, appointment of the Prime Minister, power to dismiss the National Assembly, chairing the Council of Ministers (equivalent to the Cabinet in Britain), appointing the members of the highest appellate court and the Constitutional Court, chairing the Higher Council of the Judiciary, negotiating all foreign treaties, and the power to call referenda, but all domestic decisions must be approved by the Prime Minister. The President has a very limited form of suspensive veto: when presented with a law, he or she can request another reading of it by Parliament, but only once per law. The official residence of the President is the Elysee Palace.

Council of Ministers

The head of the government is the Prime Minister who is nominated by the majority party or coalition in the National Assembly and appointed by the President for an indefinite term.

The Prime Minister recommends Ministers to the President, sets out Ministers' duties and responsibilities, and manages the daily affairs of government. He issues decrees and is responsible for national defence.

The current Prime Minister is Francois Fillon of the UMP.

The Council of Ministers - typically consisting of around 15 individuals - is headed by the Prime Minister but chaired by the President. It is customary for the President, in consultation with the Prime Minister, to select elected representatives from the National Assembly for ministerial posts, but this is not a set rule. For example, there has been Raymond Barre, Prime Minister (1976-81), who prior to that appointment was a university economics lecturer, while Thierry Breton, Minister for Economy, Finance and Industry (2005-07) was a business man.

The Parliament

Under the French Fifth Republic of France the parliament is bicameral consisting of the National Assembly and the Senate.

The National Assembly

The lower house in the French political system is the National Assembly. This has 577 seats representing single-member constituencies.

Members of the National Assembly are directly elected in a two-stage voting system. A candidate who receives more than 50% of the vote in the first round is elected. However, if no candidate receives 50%, there is a second round which is a run-off between all those first round candidates who secured more than 12.5% of the votes in that first round. Members of the National Assembly serve five-year terms.

The National Assembly tends to specialize in scrutinizing day-to-day government business. In cases of disagreement with the Senate, the position of the National Assembly prevails. Critics have argued that the Assembly is weak in terms of setting its own agenda and holding the executive to account.

The Senate

The upper house in the French political system is the Senate. This has a total of 321 seats: 296 representing mainland France, 13 representing French overseas territories, and 12 representing French nationals abroad. Many French Senators are also high-level local officials.

Members of the Senate are indirectly elected by an electoral college. Members serve a six- year term - a reduction from the previous nine years - and one-half of seats (previously one- third) come up for election every three years.

The Judiciary

France uses a civil legal system; that is, law arises primarily from written statutes; judges are not to make law, but merely to interpret it. The basic principles of the rule of law were laid down in the Napoleonic Code. The highest appellate court in France is called the Court de Cassation and the six chief judges are appointed by the President. Unlike the supreme courts in other countries (such as the USA), it does not have the power of judicial review.

The power of judicial review is vested in a separate Constitutional Court, which is a unique creation of the Fifth Republic. The court consists of nine members: one appointment made by each of the President, the President of the Senate, and the President of the National Assembly every three years for a nine-year, non-renewable term. This contrasts with the US system where the President makes all appointments to the Supreme Court but then the appointments are for life. All former Presidents of the Republic are de jure members of the Constitutional Court. The Court meets infrequently, only upon referral of legislation by the President, the Prime Minister or the Parliament

Administrative law is that body of rules, which have been devised by the French executive for regulating the relations of state to its citizens In France there are two sets of courts and two different system of Law. A case of conflict between private citizens -will be taken to the ordinary courts and will be dealt under ordinary Law; whereas when there is a case between the ordinary citizen on the one side and a government official in his official capacity on the other side , it will be dealt by special courts known as Administrative courts and a special set of rules known in Administrative law .

Local Government

Traditionally, decision-making in France was highly centralized, with each of France's departments headed by a prefect appointed by the central government. In 1982, the national government passed legislation to decentralize authority by giving a wide range of administrative and fiscal powers to local elected officials. In March 1986, regional councils were directly elected for the first time, and the process of decentralization continues, albeit at a slow pace.

Three Tiers of Local Government

In France there are three main tiers of local administration: **the commune, department and region.** These are both districts in which administrative decisions made at national level are carried out and local authorities with powers of their own. Legally speaking, a local authority is a public-law corporation with its own name, territory, budget, employees, etc. and has specific powers and a certain degree of autonomy vis-a-vis central government.

The Communes

The commune, which dates from 1789, is the lowest tier of the French administrative hierarchy. There are nearly 37,000 communes, many more than are found in the other countries of the European Union. In France the term commune is applied to all municipalities whatever their size - 80 per cent of them have fewer than 1,000 residents.

As the state's representative, the Mayor is the registrar of births, marriages (at which he/ she officiates) and deaths and is an officer of the police 'judiciary' and so entitled to exercise special powers in connection with the repression of crime under the authority of the public prosecutor. Finally, he/she is responsible for various administrative tasks including publicising laws and regulations and drawing up the electoral register.

The Departments

There are 100 departments in France, 96 in metropolitan France and four overseas (Martinique, Guadeloupe, Reunion and French Guiana). Established in 1789, the department has developed from a partially decentralised local authority to one with full powers of its own (since 1982). It has played a prominent role in the country's administrative and geographical organization.

The department essentially has competence in health and social services, rural capital works, departmental roads, and the capital expenditure and running costs of colleges.

The Prefects

For almost 200 years (1800 to 1982), regional department Prefects held the executive power in the departments, but the law of March 1982 modified their powers. Appointed by the government, the Prefect is still the sole person empowered to act on the state's behalf in the department. Prefects represents the Prime Minister and all the members of the government, has authority over the state's external services in the department and ensures the administrative supervision of the department's local authorities.

The Regions

France has 26 regions, 22 in metropolitan France and four overseas. The latter have a special status, being at the same time departments and regions. Created in 1955 to provide a framework for regional town and country planning, the region became a local authority in 1982. Its main spheres of competence are planning, regional town and country planning, economic development, vocational training, and the building, equipment and running costs of schools.

Political Parties

The party system in France is multi party system. The parties are not as disciplined as those of Britain.The formation of parliamentary groups is also a strange factor in French party system. The French party system is an outcome of its political experiments and experience.

SWITZERLAND'S CONSTITUTION AND FEDERALISM

Switzerland has a long republican tradition, its modern democratic constitution dates back to 1848 only, however, and was put into effect after a short civil war in 1847 leaving a conservative minority in a position of losers for decades. The constitution was totally revised in 1874 and amended organically from time to time since. The 1999 total revision did not change anything of importance in substance, it's sole purpose was to establish a modern and more readable structure and language (there have been more substantial changes in small revisions of single items in the last five years than between the "old" and the "totally revised" constitution).

The federal constitution defines Switzerland as a **federal state composed of 26 cantons** (until 1976: 25 cantons) with far reaching autonomy. For historical reasons, six of the 26 cantons count as half-cantons (created by splitting three originally united cantons in two autonomous halves each), so the total number of 23 cantons given in some other sources is also correct in a way. Apart from voting arithmetic in referendums and in the small chamber of parliament, the half-cantons have exactly the same status as full cantons, however.

FEDERAL INSTITUTIONS

The Federal Legislature

According to the Swiss Constitution, the Federal Assembly is the supreme power in the federation, subject only to the powers of the people (Article 148 B-V). The Assembly functions either as one united chamber or as two independent chambers. It holds the legislative power to make all federal laws (with each chamber deciding independently) and appoints the members of the executive branch, the members of the Federal Court and other major federal bodies, and the commander-in-chief of the army in times of war (with the chambers deciding as a united body). Furthermore, the two chambers of Parliament, having exactly the same competences, supervise all the authorities of the Swiss federal government and approve the annual budget prepared by the Federal Council.

The Swiss Parliament consists of two equal chambers: the National Council representing the people and the Council of the States representing the cantons. This bicameralism reflects the equal importance of democratic and federal influences. Both chambers can initiate constitutional amendments

and bills and propose the revision of laws. Every bill must be approved by a majority of both chambers. If a bill, or some of its propositions, fails to gain a majority in one of the chambers, the two chambers try to find a compromise through a procedure that, finally, involves negotiation between delegates of the two chambers in a joint committee. In the absence of agreement, the bill does not get through. The internal organization of both chambers is modelled on the concepts of power sharing and inclusion. For example, the members of all parliamentary committees proportionally represent the different language groups and parties.

National Council

The National Council represents the people, and its 200 members are elected every four years on the democratic principle of one person, one vote. The National Council is elected from 26 districts, corresponding to the 26 cantons, and the seats are divided among the cantons according to their population shares. Each canton has at least one representative.

Council of the States

The Council of the States is composed of two members from every full canton and one member from each half-canton, resulting in a total of 46 members. The members of the Council of the States are considered to be the representatives (or even delegates) of the once-sovereign cantons. Therefore, elections to the Council of the States are cantonal elections, and the cantons have the competence to determine the mode of election (in contrast, in this respect, to the Senate of the United States). Before direct elections became the rule after the Second World War, in many cantons the two delegates to the Council of the States were nominated by the cantonal parliament. By now, however, the Council of the States is elected by the people in all cantons, usually following the principle of majority rule. This means that a candidate must gain the absolute majority of votes in order to win the seat.

THE FEDERAL EXECUTIVE

The Federal Council is elected by the Federal Assembly, the joint assembly of the 246 members of both houses of the federal Parliament. There is no vote of confidence, however, and members of the Federal Council are usually re-elected after the normal four-year period, if they so desire.

As a result, Switzerland fits neither of the ideal types of a presidential or a parliamentary system. Alois Riklin and Alois Ochsner call Switzerland “non-parliamentary” (because the executive is not dependent on legislative confidence) and “non-presidential” (because there is no head of state elected directly by the people). Conversely, one can say that the Swiss Constitution represents a mixed type of democratic system showing elements of both parliamentary and presidential models. On one hand, the Swiss system shares the election mode with parliamentary systems, where the executive is elected by Parliament: on the other hand, once elected, the Federal Council is independent from the legislature, as in a presidential system.

The Federal Council is the supreme executive and governing authority (Article 174 V-G), with far-reaching constitutional powers. It defines the general aims and instruments of federal policy and plans and coordinates the corresponding activities. It determines foreign affairs and defence policy and directs the administration and the implementation of all federal policies. In relation to legislation, it organizes the pre-parliamentary process and makes subordinate legislation.

Constitution of the Federal Council

Although the Federal Council is a collegial executive, each of the seven members is elected individually. After the parliamentary elections, which take place every four years, the councillors are each separately re-elected, requiring an absolute majority. Since 1959 the same four governmental parties of Radicals, Christian-Democrats, Social Democrats, and the People’s Party have shared the seats on the Federal Council. The proportional representation of political parties overlaps with that of language. In order to integrate the different linguistic regions, Parliament elects representatives from all of the three important such regions of the country, normally allocating two or three seats to the French-speakers and Italian-speakers collectively.

Political power sharing in the executive is the result not of a constitutional requirement but, rather, of a political arrangement among the ruling parties. Initially, the Radicals established a one-party executive, but gradually the other parties became part of the government. This process was influenced by the mechanism of direct democracy. The participation of different political forces was needed to prevent Opposition-led referenda from systematically blocking federal decisions.

As a result of political power sharing, the proportional composition of the Federal Council did not change until decades after 1959. Individual members normally could be confident of reelection. In 1999 and 2003, however, the People's Party increased its percentage of votes substantially, growing from the smallest to the strongest of the four parties. Holding only one out of the seven seats, the People's Party claimed a second federal councillor. This claim gave rise to highly controversial discussions and was eventually accepted in 2003, at the expense of the Christian-Democrats.

Head of the State

The most unusual characteristic of the Federal Council, as the Swiss executive, is that it is a collegial body, which decides collectively on all important issues. The seven members are elected as equals and without any attribution to a particular department. After their election, the members of the Federal Council decide on the (re) distribution of the departments. They state their preference in order of seniority; however, if there is a contest, the majority principle applies. There is no permanent head of government with special prerogatives. Every year Parliament elects one of the seven councillors as president of the federation. The president is merely primus inter pares, with no special political privileges and mainly formal duties. Essentially, the role of the president is to chair the meetings of the collegiate body. The Federal Council, as a collective body, is the Swiss head of state.

In fact, the diversity of Switzerland probably would not permit a head of state constituted by a single person. The Swiss system avoids the risk of concentrating power in the hands of a strong president, while the collegiate character of the Federal Council corresponds to the needs of a multicultural society. Many observers note that, in consequence, there is little continuity of purpose and that government action very often lacks coherence.

Administration

The Swiss federal administration is made up of seven departments, each headed by one of the federal councillors, in addition to a number of autonomous and semi-autonomous agencies. Concerning the scope of the federal administration, several points must be mentioned here.

The first is that, as the Swiss nation-state was built in the course of the nineteenth century, little attention was paid to the federal administration. Consistently, with the pattern of development from the bottom up, the cantons were designated to implement federal policies - a solution that allowed differences in implementation, reflecting cantonal concerns. Thus, the founders of the federation believed that there was no need for a special federal administration. Until the Second World War the federal administration was very small.

Events of the past 50 years, however, have increased both the influence and the size of the federal administration. With the development of the welfare state, the formulation of new policies and proposed legislation has become more complex. Having its own interest in the reform process, and using its particular expertise and resources, the administration defines priorities and options and also influences the choice of policies. Political scientists speak of the appearance of a "political administration" that not only implements the decisions of Parliament but that has also become a political actor. The role of the administration in the legislative process has been further strengthened, moreover, by the formalization of the pre-parliamentary process. The federal administration organizes this process. It proposes the participants for appointment to the expert committees that advise the Federal Council on many aspects of its activities, directs the hearings, and prepares the draft legislation on behalf of the executive for submission to Parliament. Finally, legislation itself often provides general rules in the nature of guidelines,

leaving the details open to specification during implementation. Discretion in the course of implementation not only serves the autonomy of the cantons but can also be used by the federal administration in enacting ordinances.

The federal administration has experienced less growth than have the cantonal and communal administrations. Its importance as an actor that influences policy at different stages, however, is not primarily a question of numbers but, rather, a consequence of the growing complexity of government and of the processes of centralization and internationalization.

Given the greater political role of the administration, it is not surprising to find that political criteria also play an increasingly important role in selecting people for administrative positions. The principle of equal treatment of the four official languages is particularly relevant. Most federal departments are subject to an agreement that provides for the proportional representation of ethnolinguistic groups in their organization, both quantitatively (i.e., the number of employees from each ethnolinguistic group) and qualitatively (i.e., the type of employment). This means that proportional representation must be respected at all levels in order to grant the linguistic minorities access to significant positions. In consequence, over the last 30 years the share of Italian-speakers in the top management of the federal administration has more than doubled. A similar phenomenon can be observed in relation to the expert committees, where the share of positions held by the French- and Italian-speaking minorities has also grown.

Other Institutions

This section deals with three other institutions that affect the operation of government in the federal sphere in Switzerland. The first concerns the historically important concept of “service public” and how it applies to the federal sphere. The concept implies that a supply of primary infrastructure and of good-quality services should be available at an appropriate price for the whole population - in all regions and on the same conditions. This idea has been central to Swiss federalism for many decades. As a result, communities in remote areas have also profited from the equal availability of postal services, public transport, roads and highways, telecommunications, and energy. The contemporary trend towards liberalization and privatization of government services, however, places a higher value on economic efficiency than it does on equality of access to public goods. Thus, privatization and the rationalization of public services have become a crucial issue and have given rise to contradictory tendencies. On one hand, remote and rarely used postal service offices or railway stations have been closed; on the other hand, decentralization of the federal administration has continued, in the sense that some federal offices have moved from the capital, Bern, to cities in other regions.

The second point concerns the party system in Switzerland. Like the Swiss nation-state itself, the Swiss party system developed from the bottom up. At the beginning of the nineteenth century, political parties originated in the communes and cantons before they coalesced around 1900 in national parties. Even today, political parties are organized in a federal manner, with every party having national, cantonal and communal organizations. The party system follows the logic of the decentralized political system in such a way that the lower levels can always exert substantial influence on the upper levels. Thus, even though the Swiss parties are national, their structure, their decentralized configuration of power, and the differences between the cantonal parties are endemic to the political system and have persisted.

In the communes and cantons the parties are important for recruiting political personnel. As a result of the decentralized structure of the party system, the members belong to the cantonal party first and to the national party second. In addition, elections to the federal Parliament are cantonal elections in the sense that it is the cantonal parties that nominate the candidates. Political careers normally start in the communes or cantons. Thus, success within the party at a sub national level is essential for candidates who want to climb the ladder to a further career, including political office in the federal legislature or the federal government.

The Federal Judiciary

The federal structure of Switzerland is also reflected in a dual judicial system, with the Federal Court in the national sphere and 26 cantonal court systems. The Federal Court is primarily the appellate court for matters of federal law. In addition, it functions as a constitutional court to protect the federal Constitution against the cantons. Thus, it can engage with cantonal law but only to the extent necessary to decide whether federal law, due process of law, and the human rights laid down in the Constitution have been respected. In an overwhelming majority of cases, the Federal Court confirms cantonal judgments.

The function of the Federal Court should not be underestimated. While the federal executive and legislative branches have neither the legal nor the political means to enforce the cantons to implement federal tasks, the Federal Court can compensate for this in several ways. In particular, it can review a cantonal policy or the cantonal implementation of a federal task on the grounds that it contradicts federal law. As a result, it is sometimes necessary for the court to deal with political rather than with strictly legal questions (e.g., such highly controversial matters as naturalization policy).

As the supreme authority interpreting the Constitution, the Federal Court and its decisions have an integrating effect in that they lead to a certain amount of homogenization between the cantons.

Nevertheless, the Federal Court cannot declare acts of the Federal Council or the Federal Assembly invalid on constitutional or legal grounds. As mentioned in the introduction, final authority lies with the people and is to be exercised in relation to legislation through the mechanisms of direct democracy. In the view of the Swiss, a law that has been accepted by the people either directly in a popular vote or indirectly by refraining from a referendum vote should not be corrected by judicial review.

Local government

Much of what has been said about the cantons applies also to the 2,867 communes. Communes have been guaranteed autonomy in the federal Constitution since the revision of 1999 (Article 50). No commune can be merged with another against its political will. Communes have their own political organization and their own policies with regard to the production and distribution of local public goods. Most important, they have a large degree of autonomy with regard to questions of local taxes and financial policy generally. There are some variations in the degree of autonomy, depending on cantonal law.

There are two basic models of political organization that apply in the communes, according to their size. In larger communities, the institutional structure is quite similar to that of the cantons: the people elect a communal parliament and a collegiate body as the executive. Decision making and legislative processes are complemented by instruments of direct democracy, both referenda and popular initiatives. As in the federal sphere, the collegial body normally represents an oversized coalition of several political parties, which leads to power sharing in the communes. In bigger communes, the members of the council are full-time professionals and have a professional administration at hand.

In small communes the political organization is mainly non-professional. The administration relies partly or entirely on the service of volunteers. The same can be said for the executive body, which is also a collegial council. Its members fulfill their tasks mainly on a part-time basis and, generally, are not paid for this work. In these small communes a type of “assembly democracy” is practised. Instead of a parliament, all Swiss citizens of a commune participate in a general assembly. This assembly meets once or twice a year to decide on the budget and on the most important issues.

CONSTITUTION OF THE UNITED KINGDOM

The constitution of the United Kingdom is the set of laws and principles under which the United Kingdom is governed. Unlike many nations, the UK has no core constitutional document. It is therefore often said that the country has an unwritten, uncodified, or de facto constitution. However, the word "unwritten" is something of a misnomer as much of the British constitution is embodied in the written form, within statutes, court judgments, and treaties. The constitution has other unwritten sources, including parliamentary constitutional conventions and royal prerogatives.

The bedrock of the British constitution has traditionally been the doctrine of Parliamentary sovereignty, according to which the statutes passed by Parliament are the UK's supreme and final source of law. It follows that Parliament can change the constitution simply by passing new Acts of Parliament. There is some debate about whether this principle remains entirely valid today. One reason for the uncertainty derives from the UK's membership of the European Union.

Key Features of the British Constitution

- Parliamentary Sovereignty
- Lack of Separation of powers (Fusion of Powers)
- Unitary nature
- Constitutional monarchy
- Royal prerogative
- Rule of Law

Sources for the British Constitution

1. Constitutional statutes (e.g. Devolution Acts, Human Rights Act)
2. Conventions (e.g. collective ministerial responsibility, prerogative powers)
3. Common Law
4. Customs and Procedures of Parliament
5. Treaties (e.g. European treaties)
6. Works of Authority (Dicey, Bagehot)

Conventions

Conventions form an important source for the British constitution. These are unwritten rules or a body of political ethics though lacking the force of law, yet observed with as much regularity as if they were a part of law, but not enforceable by courts. " The convention of the constitution" is the name given by professor Dicey to the indefinite number of customs, traditions and precedents, which form an integral part of the British constitution. J. S Mill calls them " unwritten maxims of the constitutions ". They are the flesh for the dry bones of law, from the warp and woof of the British constitutional fabric and provide the lubricating oil, which keep the wheels of the political machinery moving. The fact remains that they play a vital role in the actual working of British constitutional system. In fact, the system as it stands, cannot work without them. They are the fundamental rules and no one can hope to understand the working of British Government without paying as much attention to the customs and usages as to constitutional law.

Kinds of Conventions

They are categorized, into following heads:

i. Regarding the Monarch

The monarch must act on the advice of the minister: House of Commons is dissolved by the queen on the advice of the Prime minister; the Queen does not preside over the meetings of the cabinet; the monarch assents to the Bill passed by both the Houses.

ii. Regarding Cabinet

The Prime Minister belongs to the Commons; cabinet is responsible to parliament; collective responsibility; cabinet to take parliament in confidence in case of crisis.

iii. Regarding Parliament

Parliament must be convened once a year; Bicameralism; money bill must originate in the Commons; Every bill must have three readings; a speech from the government is to be followed by a speech from the opposition; "once a speaker always a speaker".

iv. Regarding the Dominions

The British Cabinet consults the dominions in matter of mutual interest; the recommendations of the dominion cabinet are respected by the British Government in the appointment of the Governor -General of a dominion.

Queen Cabinet

In the politics of the United Kingdom, the Cabinet is the collective decision-making body of Her Majesty's Government in the United Kingdom, composed of the Prime Minister and some 22 Cabinet Ministers, the most senior of the government ministers.

Ministers of the Crown, and especially Cabinet Ministers, are selected primarily from the elected members of House of Commons, and also from the House of Lords, by the Prime Minister. Cabinet Ministers are heads of government departments, mostly with the office of "Secretary of State for [Defence, or the relevant function]". The collective co-ordinating function of the Cabinet is reinforced by the statutory position that all the Secretaries of State jointly hold the same office, and can exercise the same powers.

The Cabinet is the ultimate decision-making body of the executive within the Westminster system of government in traditional constitutional theory. The Cabinet is the executive committee of Her Majesty's Privy Council, a historic body which has legislative, judicial and executive functions, and whose large membership includes members of the Opposition. Its decisions are generally implemented either under the existing powers of individual government departments, or by Orders- in-Council.

Composition

Cabinet Ministers, like all Ministers, are appointed and may be dismissed by the monarch at pleasure (that is, they may be dismissed without notice or reason given, although normally they are given a courteous option to resign), on the advice of Prime Minister. The allocation and transfer of responsibilities between ministers and departments is also generally at the Prime Ministers' discretion.

Any change to the composition of the Cabinet involving more than one appointment is customarily referred to as a reshuffle; a routine reshuffle normally occurs every summer.

Meetings of the cabinet

The Cabinet meets on a regular basis, usually weekly on a Tuesday morning, notionally to discuss the most important issues of government policy, and to make decisions. For a long period of time, Cabinet met on a Thursday, and it was only after the appointment of Gordon Brown as Prime Minister that the meeting day was switched to Tuesday. However, since becoming prime minister, David Cameron has held his cabinet meetings on Thursdays again.

Kitchen cabinet

Most Prime Ministers have had a so-called "kitchen cabinet" consisting of their own trusted advisers who may be Cabinet members but are often trusted personal advisers on their own staff. In recent governments, generally from Margaret Thatcher, and especially in that of Tony Blair, it has been reported that many or even all major decisions have been made before cabinet meetings.

Parliamentary accountability

There are two key constitutional conventions regarding the accountability of cabinet ministers to the Parliament of the United Kingdom, cabinet collective responsibility, and individual ministerial responsibility.

Cabinet collective responsibility means that members of the cabinet make major decisions collectively, and are therefore collectively responsible for the consequences of these decisions. Therefore, no minister may speak against government decisions, and if a vote of no confidence is passed in Parliament, every minister and government official drawn from Parliament is expected to resign from the executive.

Individual ministerial responsibility is the convention that in their capacity as head of department, a minister is personally responsible for the actions and failings of their department. Under circumstances of gross failure in their department, a minister is expected to resign (and may readily be forced to do so by the Prime Minister), while their civil servants remain permanent and anonymous. The closest example in recent years is perhaps Estelle Morris who resigned as Secretary of State for Education and Skills in 2002, following severe problems and inaccuracies in the marking of A-level exams.

Parliament of Great Britain

Composition and powers

The legislative authority, the Crown-in-Parliament, has three separate elements: the Monarch, the House of Lords, and the House of Commons. No individual may be a member of both Houses, and members of the House of Lords are legally barred from voting in elections for members of the House of Commons.

Royal Assent of the Monarch is required for all Bills to become law, and certain Delegated Legislation must be made by the Monarch by Order-in-Council. The Crown also has executive powers which do not depend on Parliament, through prerogative powers, which include among others the ability to dissolve Parliament, make treaties, declare war, award honours, and appoint officers and civil servants. In practice these are always exercised by the monarch on the advice of the Prime Minister and the other ministers of HM Government. The Prime Minister and government are directly accountable to Parliament, through its control of public finances, and to the public, through election of Members of Parliament.

The Monarch also chooses the Prime Minister, who then forms a government from members of the houses of parliament. This must be someone who could command a majority in a confidence vote in the House of Commons. The Upper House is formally styled The Right Honourable The Lords Spiritual and Temporal in Parliament Assembled, the Lords Spiritual being clergymen of the Church of England and the Lords Temporal being Peers of the Realm. The Lords Spiritual and Lords Temporal are considered separate “estates”, but they sit, debate and vote together.

Since the Parliament Acts 1911 and 1949, the powers of the House of Lords have been very much less than those of the House of Commons. All bills except money bills are debated and voted upon in House of Lords; however by voting against a bill, the House of Lords can only delay it for a maximum of two parliamentary sessions over a year. After this time, the House of Commons can force the Bill through without the Lords’ consent under the Parliament Acts. The House of Lords can also hold the government to account through questions to government ministers and the operation of a small number of select committees. The highest court in England & Wales and Northern Ireland used to be a committee of the House of Lords, but it became an independent supreme court in 2009.

House of Commons, currently consists of 650 members. Each “Member of Parliament” or “MP” is chosen by a single constituency according to the First-Past-the-Post electoral system. Universal adult suffrage exists for those 18 and over; citizens of the United Kingdom, and those of the Republic of Ireland and Commonwealth nations resident in the United Kingdom are qualified to vote. The term of members

of the House of Commons depends on the term of Parliament, a maximum of five years; a general election, during which all the seats are contested, occurs after each dissolution .

All legislation must be passed by the House of Commons to become law and it controls taxation and the supply of money to the government. Government ministers (including the Prime Minister) must regularly answer questions in the House of Commons and there are a number of select committees that scrutinise particular issues and the workings of the government. There are also mechanisms that allow members of the House of Commons to bring to the attention of the government particular issues affecting their constituents.

State Opening

The State Opening of Parliament is an annual event that marks the commencement of a session of the Parliament of the United Kingdom. It is held in the House of Lords Chamber, usually in November or December, or in a general election year, when the new Parliament first assembles.

The monarch reads a prepared speech, known as the **Speech from the Throne** , outlining the Government's agenda for the coming year. The speech is not written by the monarch, but rather by the Cabinet, and reflects the legislative agenda for which they seek the agreement of both Houses of Parliament.

After the Queen leaves, each Chamber proceeds to the consideration of an "Address in Reply to Her Majesty's Gracious Speech." But first, each House considers a bill pro forma to symbolise their right to deliberate independently of the monarch. In the House of Lords, the bill is called the Select Vestries Bill, while the Commons equivalent is the Outlawries Bill. The Bills are considered for the sake of form only, and do not make any actual progress.

Procedure

Both houses of the British Parliament are presided over by a speaker, the Speaker of the House for the Commons and the Lord Speaker in the House of Lords.

For the Commons, the approval of the Sovereign is theoretically required before the election of the Speaker becomes valid, but it is, by modern convention, always granted. The Speaker's place may be taken by three deputies, known as the Chairman, First Deputy Chairman and Second Deputy Chairman of Ways and Means. (They take their name from the Committee of Ways and Means, of which they were once presiding officers, but which no longer exists.)

Prior to July 2006, the House of Lords was presided over by a Lord Chancellor (a Cabinet member), whose influence as Speaker was very limited (whilst the powers belonging to the Speaker of the House of Commons are vast). However, as part of the Constitutional Reform Act 2005, the position of Speaker of the House of Lords (as it is termed in the Act) was separated from the office of Lord Chancellor, though the Lords remain largely self-governing. Decisions on points of order and on the disciplining of unruly members are made by the whole body in the Upper House, but by the Speaker alone in the Lower House.

Term

Following a general election, a new Parliamentary session begins. Parliament is formally summoned 40 days in advance by the Sovereign, who is the source of parliamentary authority. On the day indicated by the Sovereign's proclamation, the two Houses assemble in their respective chambers. The Commons are then summoned to the House of Lords, where Lords Commissioners (representatives of the Sovereign) instruct them to elect a Speaker. The Commons perform the election; on the next day, they return to the House of Lords, where the Lords Commissioners confirm the election and grant the new Speaker the royal approval in the Sovereign's name.

The business of Parliament for the next few days of its session involves the taking of the oaths of allegiance. Once a majority of the members has taken the oath in each House, the State Opening of Parliament may occur. The Lords take their seats in the House of Lords Chamber, the Commons appear at the Bar (immediately outside the Chamber), and the Sovereign takes his or her seat on the throne. The

Sovereign then reads the Speech from the Throne—the content of which is determined by the Ministers of the Crown—outlining the Government's legislative agenda for the upcoming year. Thereafter, each House proceeds to the transaction of legislative business.

By custom, before considering the Government's legislative agenda, a bill is introduced pro forma in each House—the Select Vestries Bill in the House of Lords and the Outlawries Bill in the House of Commons. These bills do not become laws; they are ceremonial indications of the power of each House to debate independently of the Crown. After the pro forma bill is introduced, each House debates the content of the Speech from the Throne for several days. Once each House formally sends its reply to the Speech, legislative business may commence, appointing committees, electing officers, passing resolutions and considering legislation.

A session of Parliament is brought to an end by a prorogation. There is a ceremony similar to the State Opening, but much less well-known. Normally, the Sovereign does not personally attend the prorogation ceremony in the House of Lords; he or she is represented by Lords

Legislative functions

Laws can be made by Acts of the United Kingdom Parliament. While Acts can apply to the whole of the United Kingdom including Scotland, due to the continuing separation of Scots law many Acts do not apply to Scotland and are either matched by equivalent Acts that apply to Scotland alone or, since 1999, by legislation set by the Scottish Parliament relating to devolved matters.

Laws, in draft form known as bills, may be introduced by any member of either House, but usually a bill is introduced by a Minister of the Crown. A bill introduced by a Minister is known as a "Government Bill"; one introduced by another member is called a "Private Member's Bill". A different way of categorizing bills involves the subject. Most bills, involving the general public, are called "Public Bills". A bill that seeks to grant special rights to an individual or small group of individuals, or a body such as a local authority, is called a "Private Bill". A Public Bill which affects private rights (in the way a Private Bill would) is called a "Hybrid Bill".

Each Bill goes through several stages in each House. The first stage, called the first reading, is a formality. At the second reading, the general principles of the bill are debated, and the House may vote to reject the bill, by not passing the motion "That the Bill be now read a second time". Defeats of Government Bills are extremely rare, the last being in 2005.

Once the House has considered the bill, the third reading follows. In the House of Commons, no further amendments may be made, and the passage of the motion "That the Bill be now read a third time" is passage of the whole bill. In the House of Lords further amendments to the bill may be moved. After the passage of the third reading motion, the House of Lords must vote on the motion "That the Bill do now pass." Following its passage in one House, the bill is sent to the other House. If passed in identical form by both Houses, it may be presented for the Sovereign's Assent. If one House passes amendments that the other will not agree to, and the two Houses cannot resolve their disagreements, the bill fails.

A special procedure applies in relation to bills classified by the Speaker of the House of Commons as "Money Bills". A Money Bill concerns solely national taxation or public funds; the Speaker's certificate is deemed conclusive under all circumstances. If the House of Lords fails to pass a Money Bill within one month of its passage in the House of Commons, the Lower House may direct that the Bill be submitted for the Sovereign's Assent immediately.

Judicial functions

Prior to the creation of the Supreme Court of the United Kingdom in October 2009, Parliament also used to perform several judicial functions. The Queen-in-Parliament constituted the highest court in the realm for most purposes, but the Privy Council had jurisdiction in some cases (for instance, appeals from ecclesiastical courts). The jurisdiction of Parliament arose from the ancient custom of petitioning the Houses to redress grievances and to do justice. The House of Commons ceased considering petitions to reverse the judgements of lower courts in 1399, effectively leaving the House of Lords as the court

of last resort. In modern times, the judicial functions of the House of Lords were performed not by the whole House, but by a group of "Lords of Appeal in Ordinary" (judges granted life peerage dignities under the Appellate Jurisdiction Act 1876 by the Sovereign) and by "Lords of Appeal" (other peers with experience in the judiciary). However, under the Constitutional Reform Act 2005, these judicial functions were transferred to the newly created Supreme Court in 2009, and the Lords of Appeal in Ordinary became the first Justices of the Court. Peers who hold high judicial office are no longer allowed to vote or speak in the Lords until they retire as Justices.

Privileges

Each House of Parliament possesses and guards various ancient privileges. The House of Lords relies on inherent right. The ceremony observed by the House of Commons dates to the reign of King Henry VIII. Each House is the guardian of its privileges, and may punish breaches thereof. The extent of parliamentary privilege is based on law and custom. Sir William Blackstone states that these privileges are "very large and indefinite", and cannot be defined except by the Houses of Parliament themselves.

The foremost privilege claimed by both Houses is that of freedom of speech in debate; nothing said in either House may be questioned in any court or other institution outside Parliament. Another privilege claimed is that of freedom from arrest; at one time this was held to apply for any arrest except for high treason, felony or breach of the peace but it now excludes any arrest on criminal charges; it applies during a session of Parliament, and 40 days before or after such a session. Members of both Houses are no longer privileged from service on juries.

Both Houses possess the power to punish breaches of their privilege. Contempt of Parliament—for example, disobedience of a subpoena issued by a committee—may also be punished. The House of Lords may imprison an individual for any fixed period of time, but an individual imprisoned by the House of Commons is set free upon prorogation. The punishments imposed by either House may not be challenged in any court, and the Human Rights Act does not apply.

The Rule of Law is an aspect of the British Constitution that has been emphasized by A V Dicey and it, therefore, can be considered an important part of British Politics. It involves: The rights of individuals are determined by legal rules and not the arbitrary behavior of authorities. There can be no punishment unless a court decides there has been a breach of law. Everyone, regardless of your position in society, is subject to the law. The critical feature to the Rule of Law is that individual liberties depend on it. Its success depends on the role of trial by jury and the impartiality of judges. It also depends on Prerogative Orders.

Prior to the mid-19th century politics in the United Kingdom was dominated by the Whigs and the Tories. These were not political parties in the modern sense but somewhat loose alliances of interests and individuals. The Whigs were associated with the newly emerging moneyed industrial classes, and the Tories were associated with the landed gentry, the Church of England and the Church of Scotland. By the mid 19th century the Tories had evolved into the Conservative Party, and the Whigs had evolved into the Liberal Party.

These two parties dominated the political scene until the 1920s, when the Liberal Party declined in popularity and suffered a long stream of resignations. It was replaced as the main left-wing party by the newly emerging Labour Party, who represented an alliance between the trades unions and various socialist societies.

Since then the Conservative and Labour Parties have dominated British politics, and have alternated in government ever since. However, the UK is not quite a two-party system since a third party (recently, the Liberal Democrats) can prevent 50% of the votes/seats from going to a single party. The Liberals merged with the Social Democrats because they had very similar views and became the Liberal Democrats which is now a sizeable party whose electoral results have improved in recent years. As of 24 June 2010 (2010 -06-24)[update] it shows the number of registered political parties as 398 in Great Britain, and 45 in Northern Ireland.

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2. POLITICAL AND CONSTITUTIONAL HISTORY OF INDIA

LEGISLATIVE AUTHORITY OF THE EAST INDIA COMPANY UNDER THE CHARTERS OF 1600, 1661 AND 1726.

On the last day of the year 1600 Queen Elizabeth granted a charter authorizing 'the Governor and Company of Merchants of London trading into the East Indies' to trade with the East. This right was to ensure for fifteen years, but might be terminable on two years notice, if the trade appeared profitable to the realm, further a renewal for fifteen years was allowed. It was to be an exclusive right, but the company might grant licences to trade. Unauthorized trades were to be liable for punishment. The Company's constitution was simple, falling within the type of 'regulated companies' as opposed to 'joint-stock companies'. In such companies members were subjected to certain regulations and enjoyed certain privileges, but traded on their own capital. The number of subscribers was 217. The first Governor, Thomas Smith, and 24 'Committees were nominated in the charter, and were afterwards to be annually elected.

The control of the Company's business was democratic in principle. The Company was authorised to elect annually a Governor and twenty four committees, who were to have the direction of the Company's voyages. Other officers were soon added, including a deputy Governor, Secretary and Treasurer. The company was having certain limited powers of a legislative character, based on those recognised at the time as appropriate for municipal and commercial corporate bodies. The Company might assemble themselves in any convenient place and there hold court for the Company and its affairs, and might "make... reasonable laws.... for the good government of the Company." They were further authorised to impose punishments and penalties. Both laws and punishments must be reasonable and not contrary to the laws of England. It will be seen that the power given is essentially a power of minor legislation, forbidding any fundamental alteration of English law.

Under the charter of 1661 the Company was established on a regular permanent joint stock basis, and voting power at its meetings was accorded to each member on the basis of one vote for every Pound 500 subscribed by him. It was also recognized that the Company owned fortresses and not merely trading factories. They were authorized to send ships of war, men, and ammunition for the security of their factories. They might choose commanders and officers and give them commission under their common seal or otherwise to make peace or war with any non-Christian people of any place of their trade for the advantage and benefits of the Company and their trade. They were to appoint Governors and other officers. They might govern their employees in a legal and reasonable manner and punish them for misdeameanour and fine them for breach of orders.

In addition to the authority over their servants a general judicial authority was given to the Governor and council of each factory to judge all persons belonging to the said Governor and Company or shall live under them, in all causes, whether civil or criminal, according to the laws of this kingdom and to execute judgement accordingly. This extended authority, both political and judicial, was further reinforced on the occasion of the transfer to the control of the Company of the island of Bombay, which was ceded by Portugal by the marriage treaty 1661 . The company, therefore, was authorized through their general court or court of committees to make laws, orders ordinances and constitutions for the good government of the port and island and of the inhabitants there of. They were authorized by their Governors and other

officers to exercise judicial authority. They were also empowered to take into their service such of the King's officers and soldiers on the island as might be willing to volunteer, thus forming the nucleus of the company's first European regiment.

The charter of 1726 authorized the setting up of Mayor's Courts in the three chief settlements, Madras, Bombay and Calcutta and gave them testamentary jurisdiction, which would be recognised to English Courts. More over, a regular system of appeal from these Courts to the governor and council and hence to the King in Council marked the definite establishments of justice on a duly ordered basis. But charter was put in abeyance by the French conquest of Madras in 1746, and to remove doubts of its validity on the recovery of the town by the treaty of Aix-la- chapelle of 1748 but was surrendered and a new charter issued in 1753 which embodied certain improvements on the former instrument.

These charters are of special interest, as they rest on the doctrine that acquisition of territory by conquest necessarily vested not merely the sovereignty but also the property therein in the crown, while peaceful acquisition gave the crown the sovereignty only but not proprietary rights. But it was felt proper to grant the right to cede conquered territory as a logical and necessary complement of the right to make war and peace which the company had enjoyed under successive charters.

Administration of Justice in the Presidency towns of Madras, Bombay and Calcutta (16001726) and the development of courts and Judicial institutions under the East India Company.

Madras : It developed in three stages : (1) 1639 -1678; (2) 1678 -1683 and (3)1683 -1726

1) 1639 - 1678

Establishment of Factory at Madras-Francis Day acquired land from the Hindu Raja of Chandragiri and founded Madras in 1639. It was known as Madras Patnam. The company constructed a factory on this land called Fort St. George in 1640. This Fort was known as White Town..

Agent and Council : In the White Town area, the agent and council were authorised to decide both civil and criminal cases of English People residing at Fort. St. George. Judiciary was vague and referred cases to England.

Choultry court : In the Black town (area inhabited by the native Indians) there was no judicial tribunals. The primitive and native choultry court functioned there. This Court was presided by a native judicial officer called Adikar. This Court had not tried serious offences like murder but tried other cases only.

Governor and Council : The company was empowered to appoint Governor and council to decide civil and criminal cases of all persons of the company. English rule was followed in this stage.

2) 1678 - 1683 :

High Court of Judicature : The Governor reorganized the whole judicial system in 1678. The Governor and council sat twice in a week and tried all civil and criminal cases with the help of 12 Juries. They tried appeals from the Choultry Court.

Choultry Court : The old choultry court was reconstituted Adigar was replaced by three English Officers. They sat twice in a week and tried all civil cases up to the value of 50 pagodas. Their decision was appealable to the Governor and council of High Court of Judicature.

3) 1683-1726

Admiralty Court : This court was established in Madras in 1686 by the Charter of 1683. It consisted of one person learned in civil(law and two merchants appointed by the company. This court decided 1) Bail cases of mercantile or maritime nature 2) Trespass, injuries and wrongs committed on high seas. 3) forfeiture and seizure of ships or goods. This court applied the rules of equity, good conscience and the laws and customs of merchants. This court became the general court of the city for all practical purposes in setting all civil and criminal cases. This court functioned till 1704.

2) MAYOR'S COURT : The company charter of 1687 established a Mayor's court at Madras. It consisted of a Mayor, 12 Aldermen and 60 or more Burgesses. The first Mayor and Aldermen were

nominated by the charter. The Mayor hold office for one year. The Aldermen elected the Mayor annually. The Mayor and Aldermen selected Burgesses whose strength was not to exceed 120. The Mayor and 3 Aldermen were to be English servants of the company and others were to be any nations.

A man learned Law called Recorder was attached to the Mayor's Court. This court tried 1) All civil cases upto the value of 3 Pagodas. 2) All Criminal cases with the help of Jury and punished the offenders by fine or imprisonment.

Appeals were allowed to the Admiralty Court. In civil matters, the Admiralty Court had decided more than the value of 3 pagodas. In criminal matters, it had decided when the punishment was to loose life of limbs.

Appeals from the Mayor's Court and the Admiralty Court were heard by the Governor and Council.

Under the Charter of 1726 established Mayor's Court at Madras, Bombay and Calcutta. This was consisted of a Mayor and 9 Aldermen. The Mayor and 7 Aldermen were to be English person and the rests, were subjects of princely Indian States friendly with Britain. The Mayor hold office for one year. The Aldermen hold office for life and long. They resided in the Presidency Town. Every year the outgoing Mayor and Aldermen elected a new Mayor out of the Aldermen.The Mayor and Aldermen filled up the vacancy of Aldermen from among the inhabitants of the Presidency Town. The Governor in Council could dismiss the Aldermen on reasonable ground.

This court tried only civil matters. This court granted probation of wills and letters of administration in case of intestate and decided cases according to justice and right. During the proceedings the parties were required to take oath, produce and examine witnesses and plead their cases.

Sheriff : Sheriff was appointed by the Governor and council. He was executed the judgements as in English Law.

Governor-in-council : Heard appeals from the Mayor's Court upto the value of 1000 pagodas.

King-in-Council : Was empowered to hear second appeals more than the value of 1000 pagodas.

Justice of Peace : The Governor and five senior members of the council tried criminal offences

Some cases were finalized in these Courts.

1. Arab Merchants Case (1746)
2. Hindu Women's Case (1730)
3. Pagoda Oath case (1736)

Distinction between Company's Charter 1687 and Crown's Charter of 1726

Company's Charter 1687	Crowns Charter 1726
1. The Mayor's Court was established at Madras only.	It established at Madras, Bombay and Calcutta.
2. This court was Company's Court was recognized by the Courts of England.	This Court was King's Court, That is Royal Court. This was recognized by the English Courts.
3. This court was decided all civil and criminal cases. Appeals were to be allowed in the Admiralty Court.	This Court was decided only civil cases. Governor-in-Council were the appellate authority.
4. There was no specific rules of lawand procedure	English Law was followed.

5. A Law learned person was appointed in the Court. So it was called Recorder's Court.	There was no such officer in this Court.
6. Some Indians sat as judges together with English Aldermen in this Court.	Out of 9 Aldermen, 7 were to be British subjects and 2 were required to be subjects of Indian princely states friendly with Britain.
7. The administration of Justice was entrusted only to the Mayor's Court and the Admiralty Court in Madras. The executive had no power in this respect.	This Charter 1726 mixed executive and junidicary. It granted original criminal jurisdiction and appellate civil jurisdiction to the Governor and Council who were already entrusted with all the executive powers of the each presidency town.

Bombay : The Portuguese king transferred Bombay infavour of the English King Charles II when married the Portuguese Kings sister in 1661. King Charles II leased Bombay to the company in 1668. An executive Govt. under a Deputy Governor and Council was established to administer Bombay.

The judicial administration of Bombay developed in three stages. (1) 1668-1683; (2) 16841690; (3) 1718-1726

1) 1668-1683 :

Judicial plan of 1670 : Bombay was divided into Divisions. Each division had a court, consisted of 5 judges. The presiding judge was an English customs officer of the division and the rest were Indians. The Quorum was three judges and sat once in a week and decide petty civil and criminal cases.

Judicial Plan of 1672 :

1) All cases were tried only in English Law.
2) Central Court of Judicature was established in Bombay.
3) Justice of peace acted as committing Magistrate, recorded the necessary proceedings and sent the accused to the court of judicature for trial.
4) The appellate authority was Deputy Governor and Council.
5) Court of conscience was established, sat once in a week and decided petty cases summarily without charging fees from the litigants.

2) 1684-1690 :

Admiralty Court was established at Bombay which was similar to that of Madras.

3) 1718-1728

Court of Judicature : Consisted of a Chief Justice and 9 judges. The Chief Justice and five judges were to be English. The quorum of the Court was 3 English judges. This Court sat once in a week and tried all civil and criminal cases accordingly to equity, good conscience principles. Appeal was heard by the Governor and Council.

Calcutta : The company established Fort William at Calcutta in 1700. Calcutta became a presidency with the Governor and Council to manage its affairs. A member of the Governor's Council was appointed as Collector to act as Zamindar on behalf of the company in 1700.

Faujdari Court : The Collector decided all criminal cases. The capital punishment for capital offences was executed only after confirmation by the Governor in Council.

Collector's court of cutcherry : The collector decided all the civil cases in this Court. All the revenue and other civil matters were decided in this Court. Governor and council was the appellate authority.

3) Warren Hastings Plan of 1772 and the Adalat system of Courts Reforms made under the plan of 1774 and re-organisation in 1780.

Warren Hastings Plan of 1772 was to regulate the administration of justice. Under this plan the whole of Bengal, Bihar and Orissa were divided into districts. The district was selected as the unit for the collection of revenue and for the administration of civil and criminal justice. In each district, an English Officer, called Collector of the district was appointed.

i) **Civil Justice :** This plan established Mofussil Diwani Adalat in each district. Collector was the presiding authority over the Court. This Court was empowered to decide all civil cases dealing with property, inheritance, caste, marriage, debts, contracts, partnerships and demands of rent etc. Its decision was final in all suits upto the valuation of 500 rupees. Sadar Diwani Adalat was established at Calcutta to hear appeals from all Mofussil Diwani Adalats where the value of the suit was more than 500 rupees. The Sadar Diwani Adalat was presided by the president and atleast two other members of the council.

   Besides these courts, the Head farmers of parganas were authority to decide petty disputes relating to property upto the value of 10.

ii) **Criminal Justice :** Mofussil Faujdari Adalat was established in each district for the trial of all crimes misdemeanours under the collector. In each district, a Qazi and Mufti with the help of two Maulvies who were appointed to expound the law, were to hold trials for all criminal cases. A Sadar Nizamat Adalat was established at Calcutta to hear appeals from the Mofussil Faujdari Adalats of the districts and to control their working. It was presided by a Darogha appointed by the Nawab. A chief Qazi, a Chief Mufti and three Maulvies were to assist the Darogha in performing his duties.

iii) **Recognition of Personal Laws :** This plan was to direct the Diwani Adalats to decide all cases of inheritance, marriage, caste and other religious usages and institutions according to the laws of the Koran with regard to Mohammedans and the laws of Shaster with respect regard to Hindus.

iv) **Other Provisions :** This plan prescribed the procedure for the trial of civil suits by framing definite rules. It was provided that no case could be heard except in the open court. Proceedings and the decrees passed by the courts were maintained by each Diwani Adalat of the district and a statement was periodically submitted to the Sardar Diwani Adalat.

v) **Some defects in this plan :** This plan provided for a civil and criminal court in each district. The head farmers were given power to decide petty cases upto Rs.10/-. In fact it was necessary to have more subordinate court keeping in view the population and the area of each district. Another defect was Collector was responsible for revenue as well as judicial functions.

Reforms made under the Plan of 1774 : New plan of 1774 was planned to bring down all the revenue collections to the presidency to be there administered by a committee of the most able and experienced of the covenanted servants of the company under the immediate inspection and with the opportunity of instant reference for instruction to the President and council.

This plan divided the provinces into 6 Divisions consisting of four or five covenanted servants of the company. They were called the Provincial Councils which established in Burdwan, Murshidabad, Dinajpur, Dacca and Patna. Board of revenue at Calcutta was authorised to issue instructions to all the six provincial councils. All chiefs of the councils were required to submit their periodical reports to a separate department, the council of Revenue. A Diwan was appointed to maintain accounts.

Each division was divided into several districts. Naibs were appointed to control the collection of revenue and to decide civil cases according to the rules under the plan of 1772.

The provincial council was also empowered to administer justice in civil cases by rotation of members. The provincial Sadar Adalat was authorised to hear appeals from Mofussil Diwani Adalats where the valuation of suit is upto Rs. 1000/-. If it exceeds 1000 Rupees it was appealed to Sadar Diwani Adalat at Calcutta.

The Reorganization of Adalats in 1780 :

i) Separation of revenue from judiciary : The Provincial councils of revenue continued at Six divisions for collection of revenue and the provincial court of Diwani Adalat and the Sadar Diwani Adalat were governed judicial functions.

ii) Defects of the reorganization Plan : Judicial reforms were omitted in this plan of 1780. Zamindars and public officers were appointed to decide petty civil cases upto 100 rupees. The were expected to do this work honorary and no salary was paid to them

iii) Appointment of Elijah Impey as Chief of the Sadar Diwani Adalat.

4) Supreme Court at Calcutta, its composition, power and functions-The settlement Act of 1781.

Under the provisions of the Act 1773, the King issued a charter on 26th March, 1774 establishing the S.C. at Fort William, Calcutta. The S.C. consisted of one Chief Justice arid three Puisne Judges. All of them had to be Barristers and to be appointed by the Crown: All the judges were appointed to be justices and conservators of the peace and coroners with in the provinces of Bengal, Bihar and Orissa. Sir Elijah Impey was appointed as Chief Justice. The S.C. was authorised to try and determine all actions and suits that might arise within Bengal, Bihar and Orissa against British subjects and against the inhabitants of India residing at the said provinces. The S.C. was a court of equity, court of oyer and Terminer and Goal Delivery for Calcutta, a Court of Ecclesiastical jurisdiction and a Court of Admiralty.

For the removal of defects under this act an Act of settlement was passed in 1781. This Act restricted the territorial limits of jurisdiction of the SC for the town of Calcutta. Personal Laws were followed. The powers and jurisdiction of the company's court and SC were thus separated and independence of each was specially preserved.

The Act of 1781 : The Parliament had inquired by a committee into the administration of justice and an Art of 1781 effected important changes in the system of 1773. It assured the

necessity of supporting the government, the importance of the regular colletion of the revenue, and the maintenance of the people in their ancient laws.

It was enacted that the Governor-general and council were not to be subject to the jurisdiction of the court for anything done in their public capacity, and their order could be pleaded in justification of his action by any subordinate; this rule was not to apply to matters affecting British subjects. A further vital change was the rule that the Supreme Court was noted to have or to exercise any jurisdiction in any matter concerning the revenue or any act done in the collection thereof according to the custom of the country or the regulations of the Governor-general and Council. Moreover, the extent of its general jurisdiction was precisely defined. It was declared that no one became liable to jurisdiction because of being connected as land-owner or farmer of land revenue with the collection of rent, and that persons servants of the Company or of European British objects should not be subject to such jurisdiction but only in actions for wrongs or trespasses and in civil suits- by agreement to submit. Over all inhabitants of Calcutta, the Court had jurisdiction, but in cases affecting Hindus and Muhammadans the law and customs of the defendant were to be applied in matters of inheritance and contract.

The act also recognized the validity of the actions of the provincial councils by for bidding actions in the Supreme Court against judicial officers of the country courts or persons executing their degrees. Those imprisoned in the Patna case were to be released. Moreover, the appellate jurisdiction of the Governor-General and Council as the Sadar Adalat was recognized, and its continuance authorised, with appeal in civil suits to the kind in Council.

5) Judicial Measures of Corn Wallis 1787, 1790, 1793 progress of adalat system under Sir John Shore :

Lord Corn Wallis came to India in 1786, he was dissatisfied with the existing system of the administration of justice. So he reformed in three periods.

1) **Judicial Plan of 1787 :** Each district was in the charge of a Collector, an English man. He was responsible for both revenue as well as judicial functions. Mal Adalat was established for revenue matters. The Moffussil Diwani Adalat heard cases upto Rs. 1000/- if it was more than Rs. 1000/- it was appealed to Sadar Diwani Adalat. If it was more than Rs. 5000/- it was again appealed to King-in-council; Indian Registrar was appointed to hear cases upto Rs. 200/- in each district.

2) **Criminal judicature :** Reforms in 1790 : Sadar Nizamat Adalat was the highest Court presided by the Governor-General and councils. Chief Kazi, Muftis were assisted to his court. Court of circuit was established. This court was a moving court presided by the covenanted servants of the company. Magistrate court was the lowest court to hear petty offences.

   Mohammedan Criminal Laws were also reformed by Corn Wallis.

3) **Judicial Plan of 1793 :** Lord Corn Wallis prepared a set of regulations, known as "Corn Wallis Code." His reforms are :

   1. Separation of judicial and revenue functions.
   2. Reorganizations of civil courts.
   3. Native Law Officers
   4. Courts authorised to control executive machinery.
   5. Abolition of court fees
   6. Reforms in criminal courts
   7. Uniform pattern of regulations
   8. Legal profession
   9. Permanent settlement of Land Revenue.

Corn Wallis reforms in 1787 aimed economy, modification and purification. Reforms of 1790 introduced criminal justice. Reforms of 1793 was the separation of revenue from judiciary.

1. EVOLUTION OF HIGH COURTS

Conflicts arising out of the dual judicial system - tendency for amalgamation of the system of two courts :

The King's courts and the company's courts formed to dual system of courts having their separate jurisdictions. The King's courts were established in Madras, Bombay and Calcutta. The Company's courts were established in outside the presidency towns. Hierarchy civil and criminal courts were established in each of the presidency towns.

The King's courts and the company's courts applied different laws. The King's court were followed English rules while the company's courts were followed regulations of the Govt, by part from English rules. Personal laws were followed.

Defective state of system : The existence of the dual system of court i.e. kings courts and company's courts created many difficulties and conflicts. Jurisdiction was not clearly mentioned. Laws were different. So these courts were amalgamated into one court, called as High Court.

High Courts Act of 1861 : This court consisted of one Chief Justice or not more than 15 judges. Judges hold office until 62 years. Barristers, advocates, pleaders, judicial officers were appointed as judges. They hold office during the pleasure of the crown. Every High Court shall have superintendence

over every court and has power to call for returns, to make rules, to prescribe forms for regulating the practice and proceedings and to fix the fees for sheriff, attorneys and clerks and officers in such courts. All the proceedings were to be in English. The powers, authority and jurisdiction of the High Courts are found in the letters patent issued on 28th Dec. 1865.

They are as follows :

I. Civil Jurisdiction :

i) Ordinary original civil jurisdiction
ii) Extra ordinary original civil jurisdiction
iii) Appellate Jurisdiction
iv) It exercises the same power over the persons and estates of infants, idiots and lunatics.
v) The High Court was to function as Insolvency court.
vi) Equity and good conscience principles were followed in civil matters.

II. Criminal Jurisdiction :

i) Ordinary original criminal jurisdiction
ii) Extraordinary original criminal jurisdiction
iii) Appellate jurisdiction
iv) Indian Penal Code was applied for criminal proceedings.

III. Admiralty and vice-admiralty Jurisdiction

IV. Testamentary and Intestate jurisdiction

V. Matrimonial Jurisdiction over Christians

The Govt. of India Act 1865 and 1911-Refer.

High Courts under the Govt. of India Act 1935-Refer.

2. DEVELOPMENT OF RULE OF LAW :

One of the basic principle of the English Constitution is the Rule of Law, Sir Edward Coke, the C.J. in James I's regirne was the originator of this concept in a battle against the King, he maintained that the king should be under God and the Law, he established the supremacy of the Law against the executive. Dicey developed this theory of coke in his book, "The Law of the Constitution" published in the year 1885.

Meaning : Dicey gave three meanings regarding rule of Law.

i) Supremacy of law passed by the Parliament.
ii) Equality before Law
iii) Predominance of legal spirit.

Sir Ivor Jennings opposed the three meanings given by Dicey in his book Law and the Constitution.

Kenneth Culf Davis gave several meanings

1. Law and Order.
2. Fixed rules.
3. Due process of laws
4. Law of Nature
5. Preference of judicial decisions.
6. Judicial review.

This principle was accepted by the International Commission of Jurists at Delhi in the year 1959. This rule is not accepted in France but in other countries this rule of law have been followed.

Separation of powers : The doctrine of separation of powers had an intimate impact on the thinking on administrative process and administrative law in the U.S.

There are three main function imposed on Govt.

i. Legislative; ii. Executive and iii. Judicial. At the same time there are three main organs of the govt. in a State i) the legislature ii) the executive and iii) the judiciary. According to the theory of separation of powers there are powers and functions of the Govt. must be kept separate and

be exercised by separate organs of the govt. Thus the legislature cannot exercise executive or judicial power, the executive cannot exercise legislative or judicial power and the judiciary cannot exercise legislative and executive power of the Govt.

According to wade and Phillips in his book constitutional law, separation of powers may mean three different things :

i) that the same person should not form part of more than one of the three organs of Govt.
ii) that one organ of the govt. should not control or interfere with the exercise of its function by another organ.
iii) that one organ of the govt. should not exercise the functions of another.

Montesquieu wrote, Spirit of Laws in the year 1748 and proformed the theory of separation of powers.

Aristotle, John Locke, Black Stone, Adam, Jean Bodin followed this theory. In England Blackstone in his book 'Commentaries on the Laws of England' defined this theory. In U.S. Madison in his book'Federalist' defined this theory.

This theory was followed in U.S. Constitution. But in practice this theory has not been followed like India. In England this theory has not been followed.

Independence of Judiciary : An impartial and independent judiciary can protect the rights of the individual and provide equal justice without fear or favour. The Constitution has made several provisions to ensure independence of judiciary.

i) Security of tenure;
ii) Salary of judges fixed, not subject to vote of legislature;
iii) Parliament can extend, but cannot curtail- the jurisdiction and power of the supreme court;
iv) No discussion in legislature on the conduct of the judges;
v) Power to punish for its contempt;
vi) separation of judiciary from executive;
vii) judges of the supreme court are appointed by the executive with the consultation of legal experts.

Thus the position of the SC is very strong and its independence is adequately guaranteed

4. THE PRIVY COUNCIL IN ENGLAND

Judicial committee of Privy Council as a court of appeal and its jurisdiction to hear appeals from Indian divisions. Abolition of the jurisdiction of the Privy Council to hear appeals from Indian divisions.

The origin of the word Privy, Council has been traced from 'feudal curia' which has been brought by Norman kings ruled over England. This feudal curia consisted of two bodies one was Magnum concilium and another was Curia Regis. The former was a consultative body to the king the second was an advisory body to the king regarding legislative, executive and judiciary functions. Lord chancellor was the head of this body and gave advise to the king. So he was as keeper of King's conscience. King was considered as the fountain of justice. This council was considered as king-in-council or privy council.

Acts establishing judicial committee of the privy council.

This Privy Council composed of the Lord Chancellor, the existing and former Lords President of the council (who do not attend), Privy councillors who hold or have held high judicial office (including retired English and Scottish judges) the Lords of appeal in ordinary and such judges or former judges of the superior courts of the Dominions and colonies as the crown may appoint.

Every appeal is addressed to 'The Kings Most Excellent Majesty in Council' and is sent to the judicial committee for their advice under a general order passed in 1909.

Appeals from India to the Privy Council :

1. Early charters and appeals to privy council 1726 - 1860.
   i) Charters of 1726 and 1753.
   ii) The Regulating Act and subsequent charters.
2. Indian High Courts Act 1861 , and appeals to Privy Council.
3. The Govt. of India Act, 1935
4. Abolition of the Privy Council jurisdiction in respect of Indian cases.
   i) The Federal Court (Enlargement of jurisdiction) Act was passed in 1948. The Act enlarged the appellate jurisdiction of the Federal Court in all cases.
   ii) Abolition of the Privy Council Jurisdiction Act was passed in 1949. The cases which were pending before the Privy Council were transferred to the Federal Court of India

Conclusion : The Privy council played a very important role in making unique contribution to the Indian Law and the judicial system as a whole.

5. HISTORY OF LAW REPORTING IN INDIA

The system of precedent has been a powerful in the development of common law in England. This precedent has come to prevail in India as well since the advent of the British System of Justice. Statutory recognition was given to this theory under section 212 of the Government of India Act, 1935, laid down that the law declared by the Federal court and by any judgement if the privy council must, as far as applicable, be binding on, and must be followed by, all the courts in British India. Article 141 of the present Indian Constitution laws down that the law declared by the Supreme Court shall be recognized as binding on all courts within India.

Law reports : Earlier Supreme Courts - Sadar Diwani Adalats - High Courts - The Indian's Law Reports Act 1875 - Official High Court Reports - Non-Official Reports - Reports of the Privy Council - Reports of the Supreme Courts in India.

Regulating Act, 1773

Circumstances : Through the latter half of the eighteenth century one may trace the gradual growth of a feeling that England itself through parliament, rather than through a private trading Company must ultimately be responsible for British rule in India. During the fifteen years that followed the battle of Plassey, immense wealth was brought back from India by retired servants of the Company and expected to be received on terms of social equality with the old aristocracy. Two important events sprang from their incursion : Politicians conceived the idea of converting to the exchequer some portion of this wealth, and the proprietors of East India stock clamored that a great share of the profits of the trade should come to them, and less to intercepted by their servants in the East. After the news reached England of the acquisition of the Diwani, the proprietors could no ~ longer be restrained, and in spite of the opposition of the Court of Directors, they raised the dividends on their stock from 6 to 12.5 percent, Meanwhile, the hostile interest of England in the affairs of the Company had not diminished. A great outcry was raised when the Directors were forced to inform Lord North in 1722 that, unless they could obtain a loan of one million pounds from the state, they could not carry on their business. In that year, both a select and a

secret parliamentary Committee, of 31 and 13 respectively, were appointed and began to publish their exhaustive reports. The reports of the two committees drove home the conviction that the independence of the Company must yield to the supremacy of parliament.

The Regulating Act was the first enactment passed by the British Parliament to regulate the working of the territorial acquisitions of the English Company in India during the time of Lord North.

Provisions of this Act :

1. Previously the Directors used to be elected for one year. This act extended their term to 4 years, one fourth of them retiring every year. The retired Directors were not eligible for reelection. The Directors were required to lay the correspondence with the Indian authorities regarding civil and military administration before the Treasury. Voting qualifications of the Court of Proprietors was increased. Only those who hold a stock of Pounds 1000 for the preceding 12 months would be to vote at the elections. Share holders who possessed Pounds 3000 worth of stocks were given two votes and those possessing Pounds 10,000 as stocks were given four votes.
2. A new Govt was constituted under the Governor-General and Council of four members. Governor's annual salary would be Pounds 250,00 and four members annual salary would be Pounds 10,000. They hold office for five years. In meeting, majority opinion was considered. If it was equal position, a casting vote was given to the Governor General.
3. Governor-General was given the power to make rules and regulations consistent with English rules to be registered with the Supreme Court.
4. The Governor-General and council was given the powers of ordering the management of Govt. of all territories, acquisitions and revenues of the Kingdom of Bengal, Bihar and Orissa.
5. The Regulating Act provided a Supreme Court with a Chief Justice and three puisne judges. It was empowered to try civil, criminal, admiralty and ecclesiastical cases. It has given both original and appellate jurisdiction.
6. The Regulating Act prohibited the receiving of presents and bribes by the servants of the company.
7. No British subject was to charge interest at a rate higher than 12%. If the Governor General, Governor and Member of Council, a judge of Supreme Court or any other servant of the company committed any offence, he was liable to be tried and punished by the King's Bench in England. This Act fixed the salaries of Chief Judge and other judges also. The salary of the Chief Judge was fixed at Pounds 8000 and that of an ordinary judge Pounds 6000.

Cases Refer :

1. Trial of Rajanand Kumar (1775)
2. Case of Kamaluddin (1775)
3. The Patna case (1777-79)
4. The cossijurah case (1779-80)

Defects : The Act was a half-measure, and disastrously vague in many points. The titular authority of the Nawab of Bengal was left intact, and no assertion was made of the sovereignty of the Crown or Company in India. The Council had the power to bring about a dead-lock in the executive by overruling the Governor-General. The control of the supreme government at Calcutta over the other presidencies only applied to their powers of making war on, or concluding peace with, Indian States, and was qualified by the provision that, in the event of having received special orders from home or in the case of urgent necessity the subordinate governments could act without leave being first obtained field of jurisdiction of the Supreme Court nor the law it had to administer, nor its relations to the Council, were defined with sufficient accuracy. Some of the particular appointments made by parliament were very unfortunate. Francis and Clavering had no Indian experience, and they seem to have sailed for India with the Idea deeply rooted in their minds that the government was corrupt and tyrannous. Francis believed himself to be on the road to the Govenorship of Bengal.

The Pitt's India Act of 1784 : Pitt's famous statute was the culminating point of one of the recurrent periods of state inspection into East Indian affairs. For seven years after the passing of the Regulating Act, popular attention had been mainly occupied with the rebellion of the North American colonies and the war with France, but from 1780, India again attracted the notice of the politicians. In the year 1781 , Parliament appointed two committees, the first 'select' and the second 'secret' to inquire into the administration of justice in Bengal, and to investigate the causes of the war in the Carnatic. After much difficulty at last, he carried his Indian Act in 1784.

This act practically made the East India Company, in everything except in patronage and commerce (now rapidly dwindling) a subordinate department of State. Civil and military matters were to be controlled by six commissions for the affairs of India, popularly known as the 'Board of Control', consisting of the Chancellor for the Exchequer, one of the principal Secretaries of State, and four Privy Councillors. In practice the commission soon become a phantom body and all real power passed into the hands of the senior commissioner (other than the Chancellor of the Exchequer and the Secretary of State), who was known as the President of the Board of control. The orders of the commissioners were to be transmitted to India through a secret committee of the directors, and the court of proprietors was deprived of any right to annul or suspend any resolution of the directors approved by the Board. The government of India was placed in the hands of a Governor General and Council of, three and the subordinate presidencies were made definitely subject to Bengal in all questions of war, revenue, and diplomacy.

Charter Act of 1793, 1813, 1833, and 1853

The English East India Company was given a new charter in 1793. It replaced many old laws and consolidated the existing laws. The Governor-General and Governors were given the power to over-ride their councils. The Governor General was given the power to appoint Vice President of his Executive Council from the members of the Council. No leave of absence out of India was to be allowed to the Governor-General, Governors, the Commander-in-Chief and a few the high officials during their tenure of office. The Admiralty Jurisdiction of the Calcutta Supreme Court was extended to the high seas. The Charter of the Company was reviewed for 20 years. 3000 tons were allowed for private trade, but this right was never exercised.

Act of 1813 : The year in which Lord Hastings began his period of office marked a new stage in the history of the company. Since 1808 the question of the renewal of their charter had been to the fore, and a Parliamentary committee was engaged in inquiring into every branch of their administration. Two great questions were involved, the commercial monopoly and the political or territorial rights of the company. It was fairly plain that neither Parliament nor public opinion would tolerate a further grant of the full monopoly of the Indian trade. On the other hand this was practically no desire to out the company from its political position and that for two reasons. The people felt that the immense patronage of the Indian services would be less corruptly administered by the court of Directors; while politicians themselves were disposed to be well content with a constitution which gave them a very real control over Indian affairs, and yet enabled them to shift a good deal of the responsibility upon the shoulders of the company.

The charter Act was eventually passed which confirmed the Company in the government of India for twenty years, and then open the trade to India but left them the monopoly of the profitable commerce with China. The highest offices in India were already practically in the gift of the crown, and appointment to the civil service should be made by competition from the great public schools and universities. The company's military forces should be absorbed into the King's service, and the Indian markets should be thrown open to British capital and enterprises. A small sum annually (Pounds 10,000) was allotted for the encouragement of education, literature and, sentence. For many years this fund was badly administered, but the clause marked the first open recognition by the government of the duty of ancillerating the moral intellectual condition of the people of India.

The Charter Act of 1833 : The monopoly of Indian trade had gone in 1813. It soon became clear in the long debates in parliament, and negotiations between the Court and the Board of Control, that the company could not hope to save its monopoly of the China trade. Ideas of Reform and free trade were everywhere triumphant. It was not even permitted to complete in the China trade on level terms with private traders, but was forced to divert itself on its commercial character altogether, and to part with us assets at a valuation. At one time it hardly appeared probable that it would retain its existence as a governing body, but ministers shrank from taking over the whole administration of India, and the company remained in an anomalous position, half a private Corporation, half a Government department.

The Company's dividend now fixed at 10.5%, a charge upon the revenue of India. The act also constituted fourth presidency of Agra (soon afterwards, 1835, reduced to the Lieutenant Governorship of the Northwest provinces)., conferred on the government of India the power of passing Acts instead of Regulations; added a fourth (legal) member to the council of the Governor- General, gave the head of the supreme government for the first time the title of Governor-General of India (instead of Governor-General of the presidency of Fort William in Bengal), and definitely and finally subordinated the presidency of Bombay and Madras to his control. The Act further gave the stamp of national and parliamentary approval to the liberal policy of the reigning Governor- General in laying down the famous principle the "nonnative of India", not any natural-born subject of his Majesty, should be disabled from holding any place, office, or employment, by reason of his religion, place of Birth, descent or colour. Finally, every British subject was to enjoy the right of proceeding to the principal seats of government in India without licence, and of purchasing and holding lands. Therefore, there was no legal barrier to the colonization, in the ordinary sense of the word of the presidency towns.

All real power had long passed to the president of the Board of control, and the Directors had been for some time in the position of an advisory Council, through with considerable powers of initiative. The last charter Act of 1853, by throwing open the civil service to competition, had deprived the Directors of their most valued privilege the patronage of India, it had also reduced their numbers from 24 to 18, and made 6 of them nominees of the Crown. This enabled the Government to appoint to the Court retired servants of the Company, men who had little chance of being elected under the old system and thus to leave the directorate with first hand Indian experience. The Act was obviously preparing the way for the assumption by the crown of the government of India in name as well as in fact, for it gave no definite renewal of the charter for a term of years, as former measured had done, but merely provided that the India's territories should remain under the administration of the Company in trust for the crown until the Parliament should determine otherwise.

The Government of India Act 1858, The Indian Councils Acts of 1861 and 1892.

The Act of 1858 completed the process thus begun. A secretary of State for India was to take its place of the president of the Board of control: He was to be advised by a Council of 15 appointed in the first instance for life, afterwards for 10 to 15 years; 8 members were selected by the Crown, 7 by the court of Directors, subsequent vacancies in these seven places being filled by the council itself. Though some of the old powers of the Court of Directors passed to the Secretary of State, its influence mainly lingered on in the council. One of the Chief advantages of the transfer of government from the Company to the Crown, though it caused it at the time of serious disaffection among the white troops, and especially among the officers, lay in the end of the awkward dualism of the Company's and the Queen's army, the Indian and the Royal Navy.

The Indian Councils Art of 1861 : The change from Company to crown government made few changes in the Indian administration. The charter Act of 1853 had already enlarged the Governor-General's Executive Council for legislative purposes to 12 members, namely the Governor-General and commander-in-chief the four ordinary members of the Executive Council, two judges, and four representative members nominated by the Government of Bengal, Madras, Bombay, and the North-

West provinces. The Executive Council, and to the Legislative council not less than six or more than twelve additional members, atleast one-half non-official to be nominated by the Governor General. Legislative Councils were also established in the other provinces and Lieutenant Governorships. The Act also empowered the Governor-General to delegate special business to individual councillors, and the various members of council had each of his own portfolio and dealt on his own initiative with all but the most important matters. These were placed before the Governor-General and if any differences of opinion appeared were considered by the whole council.

The Indian Councils Act of 1892 enlarged the Legislative councils of the Indian Governments. In the imperial council of viceroy the additional members were to be at least ten ,and at most' sixteen, and not more than six were to be men holding official postings. The Act gave the Governor- General in council the power of lay down conditions under which the members should be nominated so as to be representative of different classes in interests. In accordance with this provision it was decided to appoint ten nonofficial members; four selected by provincial legislatures, one by the Calcutta chamber of commerce, while the remaining five were nominated by the Governor- General. The provincial legislature of Madras and Bombay were also enlarged by twenty members each not more than nine of whom were to be official. The non-official members were nominated by municipalities, University senates, and various trading associations. Thus representative, if not the elective, principle was continuously introduced in the councils, though as yet both in the supreme and in the Provincial legislatures an official majority was guaranteed. The functions as well as the constitutions of the councils were enlarged. Upto this time the Viceroy's council had only the right to discuss the governments financial policy when fresh taxation was imposed. Hereafter, the budget was to be laid each year before the council and every member rising in turn could discuss and criticize it. The right of interpretation, i.e. of questioning the executive officers as to their administrative acts, was also granted under much the same kind of restrictions that are imposed in the British House of Commons.

1) THE MINTO - MORLEY REFORMS OF 1909

The Act was the further development of the Act of 1892. It provided for an increase in the numbers of the vice-regal and provincial Legislative Councils. The executive Councils of Madras and Bombay were also to be enlarged and such councils were to be established in provinces ruled by Lieutenant-Governors. In the constitution of the Legislative Councils the principle of election was to be introduced side by side with that of nomination. The Act was mainly permissive in form, for almost everything depended on the actual Rules and Regulations which had still to be drawn up, and it has been rather oppositely describe as little more than a blank cheque drawn in favour of the Secretary of State, leaving in his hands the ultimate shape of the rules and regulation on which everything depended.

The Rules and Regulations defining the operation of the Act were too long and intricate to admit of an easily intelligible summary. The most elaborate arrangements were made for the representation in the Legislative councils of various classes and minorities. The Imperial, legislative council was increased from twenty one members to a maximum of sixty; the other legislative councils being generally rather more than doubled. In Madras and Bombay the members of the executive councils were increased in number from two to four. The secretary State supplemented these reforms by the striking in innovation of appointing an Indian member to the Viceroy's Executive Council, other Indians to the Executive councils of Bombay and Madras; and two to the Council at the Indian office.

Though in this way a great deal and notable advance was made, especially in the fact that an Indian sitting in the Viceroy's Cabinet was necessarily admitted to the most secret counsels of the government yet the Act failed to satisfy the Indian National Congress, who hoped that the whole of India would be divided into large popular constituencies. They criticised especially the principle of class representation on the ground that it created a distinction between the different classes of their interests impossible.

2) THE MONT-FORD REFORMS OF 1919 :

The Act established the following constitution : In the provincial governments an executive was set up with two sections (unofficially styled dyarchy) connected only by the fact that the Governor presided over both one consisted of two to four members of council appointed by the crown, half-normally to be Indians; it was ultimately responsible to the Secretary of State, and would handle certain matters called reserved subjects.' The other consisted of ministers appointed by the Governor from elected Indian members of the legislative council and dealt with the 'transferred subjects.' The line of democration between reserved and transferred subjects was in effect that between the more and the less vital spheres of opportunity for local knowledge and social services, those on which Indians have shown themselves to be keenly interested, and those which stand most in need of development. Ministers in charge of transferred subjects hold positions a analogous to those of members of the British cabinet. They were appointed by the Governor, and the letter by the crown, but they retained office only as long as they kept the confidence of the legislature and continued to be members of it. The line of democration drawn between reserved and transferred subjects was not an arbitrary one; It was hoped that these would be a gradual transference of subjects from the first category to the second, until the distinction vanished and all departments were in the hands of ministers responsible to the legislature.

The United Provinces, the Punjab, Bihar and Orissa and later Burma and the North west Frontier province were each given a governor and council. The provincial legislative councils were largely enlarged, Bengal to 139 members, Madras to 127, and Bombay to 111. At least 70 percent of the members were to be elected. Communal electorates were constituted for Muhammadans, the Sikhs in the Punjab, Europeans Anglo Indian and Indian Christians. The Councils were given power to vote, and withhold supplies, but the Governor had power to demand grants for reserved subjects if he certified that the expenditure was essential. After four years the councils had the right to elect their own president.

In the supreme Government these was no dyarchy, and the Governor-General was no dyarchy responsible to the Secretary of State and Parliament. The Executive council was enlarged indefinitely. It was understood that half should consist of men of Indian birth. The Indian legislature was entirely remodelled and made bicameral. The upper chamber, called the council of State, was to be mainly a revising body. The majority of its 61 members wee to be elected, so that the former official were no longer existed. The franchise for the assembly was wider than for the council, and was granted to woman. The period of the council was five, and of the assembly three years. The Governor-general in the event of a deadlock between the two houses, might summon a joint session. The assembly had a general control over finance, but the Governor- General could, at his discretion to authorize any expenditure which he considered essential for the safety or tranquillity of British-India. In a similar way he was empowered, in the last resort, to ensure the passing of other bills as emergency measures.

After ten years, a commission was to be appointed by Parliament to inquire into the working of the constitution, and to report whether the degree of responsible government was to be extended, modified and restricted. The general result of the legislative and executive reforms has been summed by A.B. Keith : The Assembly was made a more effective means of criticizing and holding the government within lines of action approved Indian feeling. The executive, however, remained wholly free from director authority of the legislature.

3) GOVT. OF INDIA ACT OF 1935.

The Act was the last major constructive achievement of the British in India. Its significance matches both its bulk and the deliberation of its preparation. The act continued and extended all the existing features of the Indian constitution. Popular representation, which went back to 1892, dyarchy and ministerial responsibility, which dated from 1921, provincial autonomy, whose chequered history went back to the eighteenth. Century Presidencies, communal representation, which first received over recognitions in 1909, and the safeguards devised in 1919, were all continued and in most cases tended. These were the federal principle, with the corollary of provincial autonomy, and the principle of popular responsible government in the provinces.

The Act made certain administrative changes. Sind was separated from Bombay to become a separate province. A new province of Orissa was formed from the Orissa division of the former province of Bihar and Orissa and adjacent portions of the Madras and central provinces. These became Governor's province along with the North-West Frontier province, which had been promoted to the same status in 1932. At the same time Burma was separated from India and a separate Constitution on the lines of the Mont ford Reforms enacted for it. These changes represented in India concessions to growing provincial self consciousness.

The most striking innovation was the introduction of the federal principle. Indian federation was conceived as a double process by which autonomy was conferred on previously subordinate provinces on the one hand and the separate princely states, and individually by direct with the Crown, were to be integrated with the rest of Indian on the other. Federation in the provinces was matter of legislative enactment, but since the position of the princes was regulated by separate treaties, their adhesion could only be brought about by consent. Accordingly it was provided that the central portion of the scheme should only come into force when Rulers representing half the total princely population had acceded to the Federation. The princes were to nominate one-third of the representatives of lower federal chamber and two-fifths of the Upper, and the powers surrendered by them in each case be regulated by their respective instruments of accession. Until their accession, the old Central government would continue to operate.

Though the new central executive depended upon princely accession, the federal principle as such existed independently and was solved by the preparation of three detailed lists, one federal; one provincial and one concurrent. The allotment of powers' still unforeseen was not confided to either branch of government, but to the discretion of the Governor-General. The corollary of federation was provincial autonomy. The federal structure was completed by the creation of a federal court for interpretation and the resolution of disputes and a federal Reserve Bank.

The next great innovation was the introduction of responsible government in the provinces. Dyarchy was swept away, to be replaced by a system of popular governments appointed by the Governor but responsible to a popularly elected assembly Chief Ministers or premiers became the effective heads of provincial administration and Governors were enjoined to act on their advice so long as their reserved powers weren't invaded. Dyarchy, which had been banished from the provinces, reappeared at the Centre where ministers depending upon popular support controlled the whole administration except Finance, Defence and Foreign Affairs. For these subjects, the Governor-general would appoint councillors who were analogous to the nominated 'Members' of Governor's former executive council.

Other feature of the constitution were not new, but represented large developments from previous practice. The provincial assemblies were recast and second chambers were added in six provinces out of eleven. These popular assemblies were backed by popular electorates. Though a small property qualification was retained, nearly a sixth of the adult population became eligible to vote. Women received the franchise on the same terms as men. The principal of communal representation was accepted as a regular feature in 1935.

The existence of safeguards and special powers was also a 'carry-over' from the previous practice. At the centre, the Governor-General and controls the reserved departments, the power of certifying legislation in the form of Governor-General's Acts and the power to issue Ordinances with the force of law for six months at a time. The Governors were vested with special powers for the discharge of their' special responsibilities;. The most import of these were the prevention of discrimination, the protection of the legitimate interests of minorities, and the continuance of the administration in the event of a break down of the machinery of self government. Other safeguards preserved the rights of the All-India services and their control by the Secretary of state.

The secretary of state was retained with a number of Advisers in place of the India council. They remained the symbol of the surviving ultimate control of parliament. This Massive constitutional

document, with its Celebrate instrument of instructions and its complicated schedules .marked a major step towards the goal of Dominion Status. But it was not That Dominion Status in itself. It fell short of Dominion Status in certain important respects. The first was the proposed existence of Dyarchy at the centre. In the reserved part of the administration, which controlled foreign affairs and defence, there was still to be found an executive irremovable by the people of India and responsible to the British Parliament. The Viceroy continue to combine the function of Head of State and Prime Minister, and to be dependent upon the British Cabinet.

The Act of 1935, however, formed an organic connection link between the old and the new. It contained within itself the seeds of independence. The irresponsible elements were no longer the essence of the systems; they formed no longer the trunk or roots of the political roof tree of India, but branches which could be lopped away without injury to the whole. Or the men elements could be likened to the branches of the banyan tree of India, which take root in the ground so that the original stem can be cut away without injury to the tree as a whole. Secondly, the element of continuity, the vitality in development, may be held responsible for the avoidance of violent revolution in India.

The Act was not however, free from defects, and these had their consequences no less than its merits. It depended on the Princes for the Implementation of its central federal provisions; It did not prevent partition. The provision that not less than one-half of the Princes representing half the population must accede to the federation before the central sections became operative proved in fact a fatal obstacle. The still slander powers of aristocratic cooperation were too severely strained and the ever latent centrifugal forces were unduly stimulated. The absence of Princely cooperation involved the stili birth of the central federal legislature and executive and the continuance of its irresponsible predecessor. This in its turn made the control of communal and the conciliation of national forces much more difficult than it might have been. Partition was certainly encouraged but another defect in the Act. While provision was made for minority representation by means of communal electorates and devices such as weightage and second chambers, the theory of sovereignty was that of a national state. Minority decision was the ultimate criterion of all questions, be their nature what they might. There was no recognition in the non political institutions of the fact of plural society in India. The fact that two cultures as will as two religions existed side by side in India was over looked, and it was assumed that one society would be willing to accept direction from a government based on a majority from a different society.

INDIAN INDEPENDENCE ACT, 1947

The Indian Independence Act provided for the partition of India and for the Legislative supremacy of the two Dominions. On July 4th 1947, the Indian Independence Bill was introduced in the of House Commons and was passed by both the House of Parliament within a fortnight. This Act did not provide any Constitution for either to India or to Pakistan. In the words of Attlee, the Act did not “day down a new constitution for India, -providing for every detail. It was for more in the nature of an ‘enabling bill, a bill to enable the representatives of India and Pakistan to draft their own Constitution.”

With regard to Provinces, it was very simple and a brief one containing only twenty clauses and three Schedules.

1. It provided for the establishment of two Dominions India and Pakistan on August 15, 1947. The powers that had been exercised by the British Parliament and the Government in the British Provinces were transferred to Government of India and Pakistan on the due date.
2. The Dominion territories were demarcated on the recommendations of the Bombay Commission which was set up under the Chairmanship of Rad cliff. Accordingly Punjab and Bengal was divided.
3. It abolished the office of the Secretary of State for India and provided a Governor General for each Dominion. The Governor-General was to be appointed by His Majesty King on the

advice of the Dominion and not on that of the British Cabinet. The Governor- General was no longer to be called the Viceroy. He was divested of his special powers and responsibilities and also power of acting in his individual judgement and in his direction. In other words he was to be a more Constitutional ruler.

4. It provided to have a sovereign Legislature for each Dominion with full powers of making laws for the Dominion concerned. The Acts passed by the British Parliament will no longer be applied to either of the Dominion after 15th August 1947. The crown could hot disallow any Bill passed by the Legislature of either Dominion. The Constituent Assemblies of the two Dominions were to serve as their respective legislatures. Until the constitution framed by each of the Constituent Assembly was enforced, each Dominion was to be governed as nearly as possible according to the provisions of the Government of India Act, 1935 as adopted to the new circumstances by the Governor - General.

5. The Governors of the Provinces were to be nominated by the Dominion Cabinets. They were to follow the advice given by their ministers under all circumstance In other words, the Governors were to be more Constitutional heads of their respective Provinces.

6. Appointment to Civil Services and reservation of posts by the Secretary of State were to be discontinued in the Dominions. Moreover compensation was to be given to those of then existing services who might like to resign their services after the transfer of power. The Act made a provision for the maintenance of the then existing conditions of service as well as pensionary rights, as regards those services who had to continue service under the government of either of the new Dominions or of any province. The Government was however empowered to revise the conditions as the circumstances demanded.

7. According to the Act, the paramountey of the British Crown over the Indian Native States and also its connection with Tribal Areas came to an end with effect from August 15, 1947. The States were therefore to be independent. The British Government in fact did not intend to have over powers and obligations under paramountcy to the government of the Dominions Hence, the States were declared free to accede to India or Pakistan or remain independent. All treaties and agreements .entered into between the British Crown and the States and all the obligations of His Majesty's Government towards the Rulers of the states ended with the lapse of Paramounting.

8. It was further provided with Act that relations of the British Government with the new Dominions were to be conducted through the Commonwealth Relations Office.

9. The title of "Emperor of India" was to be dropped from the royal style and titles of king of England.

The Act closed the chapter of British rule and opened a new one of free India. This was the last milestone on the highway leading in the ultimate destination of a subject nation. It was the noblest and greatest law ever enacted by the British: Parliament speaking before the Constituent Assembly on August 15th 1947, Jawaharlal Nehru said, "Long years ago, we made a trust with destiny and now the time comes when we shall redeem on pledge, not wholly or in full measure but very substantially. At the stroke of the midnight hour when world sleeps, India will awake to life and freedom".

INDIA SINCE INDEPENDENCE

At zero hour on August 15, 1947 all the members of the constituent assembly were assembled in the Central Hall of Parliament to hear the formal announcement by Viceroy Lord Mounbatten of the end of the British domination in India and the birth of her National Freedom. It was a historic occasion. After a thousand years India had secured the right to rule herself through her own elected representatives. It

was true that a large portion of Indian territories had been detached and constituted into an independent State of Pakistan. However, the area and population left to free India made her the biggest nation to make on experiment of the principles of democracy. Since, 1947 kept the Indian leaders extremely busy, they also considered it worth while to devote their energies to the constitution making task.

Role of the Constituent Assembly

The constituent assembly which was set up in 1946 according to the Cabinet Mission Plan was not a sovereign body. Its authority was limited both in respect of the basic principles and procedure. The Indian Independence Act, 1947 established the sovereign character of the constituent assembly which became free of all limitations. The method which the constituent assembly adopted in making the constitution was first to lay down its objectives. This was done in form of an objective resolution moved by Pandit Nehru. It said:

1. This constituent assembly declares its firm and solemn resolve to proclaim India an Independent Sovereign Republic and to draw up further Governance a Constitution.
2. Wherein the territories that now comprise British India, the territories that now from the Indian States, and such other parts of Indian as are outside British India and the States as well as such territories as are willing to be constituted into the Independence Sovereign India, shall be a Union of them all; and
3. Wherein the said territories, with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the construction shall possess and exercise all powers and retain the status of autonomous units, together with residuary powers and functions to the Union, or as are inherent on implied in the Union or resulting therefrom; and
4. Wherein all power and authority of the Sovereign Independent India, its constitutent parts and organs of government, are derived from the people; and
5. Wherein shall be guaranteed and secured to all the people of India justice, social economic and political equality of status, of opportunity, and before the Law; freedom of thought, expression, belief, faith, worship, vocation, association, and action, subject to law and public morality; and
6. Wherein adequate safeguards shall be provided for minorities backward and tribal areas, and depressed and other backward classes; and
7. Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations; and
8. This ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

The Constituent Assembly then proceeded to appoint a number of committees to deal with different aspects of the constitutional problems.

The reports of the various committee were considered by the Assembly and their recommendations were adopted as basis on which the Draft of the Constitution had to be prepared. The Drafting Committee was appointed by a resolution passed by the Assembly on August 29, 1947.

It was charged with the duty of preparing a constitution in accordance with decisions of the Constituent Assembly on the reports, made by the various committees. The Draft Constitution, as it emerged from Drafting Committee, contained 315 Articles and schedules. It was considered at great length at the second reading stage, and a number of amendments were made to the Draft Constitution. The Assembly finalized the constitution on November 26, 1949. It came into force on January 26, 1950.

Sources and Salient Features of the Constitution Sources of the Constitution

1. The constitution of India cannot be studied merely from that document which was adopted by the members of the Constituent Assembly on November 26, 1949 and which came into force on January 26, 1950 The picture has to be complied from various sources. Constitutional Amendments which is the law of the land today are one of the sources of the Constitution.
2. Many Articles of the Constitution empowered the Parliament of India to legislate on certain matters which deal with the Constitution.
3. Another source of the Indian Constitution is the large number of decisions given by the Supreme Court of India from time to time on various aspects of the Indian Constitution.
4. The opinions of the great constitutional writers on the Indian Constitution are also a source of the Constitution.
5. The important decisions of the countries are also a source of our Constitutional Law.
6. The reports of the debates in the Constituent Assembly of India are also a source of our Constitutional Law.
7. Many Articles of the Constitution of India have been borrowed from the Government of India Act, 1935. No wonder, the decisions given under the Act are also an important source of our Constitutional Law. Like wise, the Government of India Act, 1935 and the Government of India Act, 1958 and the decisions given under them are also an important sources of our Constitutional Law.
8. During the last few years that our Constitution has been in operation, many conventions have grown up and those are a part of our Constitutional Law.

Salient Features

1. The Indian Constitution is a written one. The Constitutional documents contain 395 Articles and Nine Schedules. The Indian Constitution is a bulky one and probably it is the lengthiest constitution in the whole world.
2. The Indian Constitution declares India to be a Sovereign Democratic Republic.
3. The Constitution emphasized the sovereignty of the people of India.
4. The Preamble of the Constitution says that it is the people of India who have solemnly resolved to constitute India into a sovereign socialist secular Democratic Republic and to secure to all its citizens justice, liberty, equality and fraternity.
5. The Directive principles of State policy relate to those matters which the Government of India has to keep in view the welfare of the people of the country.
6. The Constitution provides for a President. But this does not mean that we have a Presidential form of Government. The fact is that the Constitution provides for a Parliamentary form of Government. Under the new Constitution. The President is authorised to suspend the Constitution of a State and take over all powers in his own hands. Under the circumstances, it may be stated that the new constitution provides for a Parliamentary-run-Presidential form of Government.
7. Our Constitution is flexible. The Constitution can be amended easily. For the purpose of amendment the various Articles of the Constitution are divided into three categories.

1. Amendment by Simple Majority

Articles that can be amended by Parliament by simple majority as that required for passing of any ordinary law Articles 5, 6, 239A are specifically excluded from the purview of the procedure prescribed in Article 368.

2. Amendment of Special Majority

Articles of the Constitution which can be amended by special majority, as laid down in Article 368. All Constitutional amendments other than those- referred to above, come within category, and must be effected by a majority of the total membership of each House of Parliament as well as by a majority of not less than 2/3 of the members of that House present and voting.

3. By Special Majority and Ratification by States

Articles which require in addition to the special majority mentioned above, ratification by not less than 1/2 of the State Legislatures. The States are given an Important voice in the amendment of these matters. These are fundamental matters where States have important power under the Constitution and any unilateral amendment by Parliament may vitally affect the fundamental basis of the system built up by the Constitution. This class of Articles consist of amendments which seeks to make any change in the provisions mentioned in Article 368.

The following provisions require such ratification by the States:

1. Election of the President-Articles 54 and 55.
2. Extent of the Executive Powers of the Union and the State Articles 73 and 162.
3. Articles dealing with judiciary, Supreme Court, High Courts, in the State and Union territories-Articles 124 to 147, 214 to ~ 31, 241 .
4. Distribution of Legislative powers between the Centre and the States-Article 245-255.
5. Any of the Lists of the VII Schedule.
6. Representation of States in Parliament IV Schedule.
7. Articles 368 itself.

Procedure for Amendment

A Bill to amend the Constitution may be introduced in either House of Parliament. It must be passed by each House by a majority of not less than 2/3 of the members of that House present anti voting. When a Bill is passed by both Houses it shall be presented to the President for his assent, who shall give his as sent to Bill and there upon the Constitution shall stand' amended. But a Bill which seek to amend the provisions mentioned in Article 368 requires in addition to the special majority mentioned above the ratification by the 1/2 of the States.

8. No Indian Constitution provides for a federal form of Government, like the Government of India Act 1935, the Constitution of India provides for three Lists. The Federal Government is given control over matters which are given in the Union List. The States and Union Territories have control over matters given in the State List. As regards the concurrent List, both- the Federal Government and the States have power to make laws on the subjects included in that List. However, when the Parliament makes a law on a subject in the concurrent list the state law is superseded.
9. An independent and impartial judiciary with a power of judicial review has been established under the Constitution of India. It is the custodian of the right of citizens.
10. The Constitution (42nd Amendment) Act, 1976 has introduced a vote of ten "Fundamental Duties" for citizens. The fundamental duties are indeed to serve as a constant reminder to every citizens that the constitution specifically conferred on those certain fundamental rights, it also requires citizens to observe certain basic norms of democratic conduct, and democratic behaviour.

POLITICAL PARTIES -
NATIONAL AND REGIONAL PARTIES

1. NATIONAL PARTIES

1. THE INDIAN NATIONAL CONGRESS

The Congress party from its very inception in 1885 was a "Grand Coalition" accommodating people of all shades of opinion and political ideologies under the grab of freedom struggle. Differences of opinion in the party leadership were thus but natural, and this caused splits in the party on many occasions. The Surat split in 1907 between the Extremists and the Moderates, the formation of the Swaraj party by Motilal Nehru and C.R. Das in 1920 and the Forward Bloc by Subash Chandra Bose in the treaties the split on 1969 and 1978 are some of the notable instances. Tilak was a dominating personality, and his death in 1920 brought Mahatma Gandhi to the forefront of the freedom struggle. Gandhi never agreed to sacrifice his fundamentals, but was always ready to make compromises. The exit of Jinnah from Congress is ascribed to this trait of Gandhi. He threw open the doors of the party to the masses, and through his weapons of non-co-operation and civil disobedience movement, the message of the Congress reached the remote corners of the country.

Congress after Independence

The aim of the Congress, according to Gandhiji, was fulfilled with the achievement of freedom in 1947. He therefore, advised the Congress leaders to convert the party into a non-political "Lok Sevak Sangh" to do constructive work. But, his followers who were out to enjoy the trammels of power did not heed to his advice. Though Nehru and Patel differed on many things both were united in opposing Gandhiji's suggestion to dissolve the Congress. With the death of Patel in 1950, Nehru began to assert himself. He removed Purushotoham das Tandon as the President of the party. On this Morris Jones said, "Nehru emerged more clearly than before, a determined political fighter". Nehru himself became the Congress President which position he held upto 1954. Even after that, he continued to dominate in the party affairs and had a decisive voice in the selection of incumbents for the presidentship of the Congress till his death. In 1953 Nehru went to the extent of declaring that the Congress is the country and the country is the Congress.

In the pre-independence days, Congress was a source of strength. In 'the post independence days, it became transformed into a source of weakness. According to Paul, "organizationally, Congress is a collection of district and state factions forming alliances and developing hostilities in a constant struggle for position of power and stakes in Congress-controlled institutions". The spectacle of constant bickering amongst Congressmen, the public display of inner-party controversies and open defiance of the party discipline brought discredit to the party. The organizational wing encouraged the ministerialists and overthrew many a governments of their own party in States. In 1954 Kamaraj replaced Rajaji in Madras. C.B. Gupta in U.P. Biju Patnaik in Orissa and Nijalingappa in Mysore were all anti - ministerialists who toppled the ministerialists from power. The 10-year rule' enunciated by Sanjiva Reddi in 1961, which required that those who had been in power continuously for 10 years should step down from power, to devote themselves for party work and the much-publicized Kamaraj Plan under which many senior leaders both at the Centre and in the States resigned to devote themselves for organizational work were instances of the efforts of the organizational wing to assert over the governmental wing of the party.

Party Organization

"Congress did not embrace all sections of the Indian people with equal thoroughness", says Morris Jones, but membership of its Working Committee or even of its lower organs at provincial and district levels was an excellent introduction not simply to nationalist affiliation, but many of the higher constituent elements of Indian society and therefore Indian political life. These elements had to be reconciled and adjusted. Congress had since been an Aristotelian party, a party of the middle way'. Naturally, the party

has its strength in rural areas. The unity and coherence in the party is provided by its organization, which is pyramidical in structure. The lowest party unit is the Block Committee; above it are the District and Pradesh Congress Committees. The District Congress Committee recommends candidates for Assembly and Lok Sabha elections. The Pradesh Congress Committee is the top body at the state level. At the national apex of the organization there are two bodies-the All India Congress Committee (A.I.C.C), consisting of the Congress President and members elected by the PCCs and accepted by the Congress President and the Annual Session which lays down the basic policy of the party. The Working Committee is the permanent executive of the party.

Organizational Wing v. Parliamentary Wing

The relation between the organizational wing and the parliamentary wing of the party has not been smooth since Congress was installed in power at the Centre. J. B. Kripalni, who succeeded Nehru as the Congress President when the latter became Prime Minister, insisted that political decisions must be made only in consultation with the Working Committee of the party. Nehru and Patel opposed him vigorously. Tandon, another Congress President was forced to quit office when he tried to establish the organizational supremacy over the Government. The victory of the parliamentary wing, as Frank Moraes says, led to he overwhelming bulk of the party to look to the Prime Minister and not to the President of the Congress for political guidance". Under the Kamaraj Plan, six Central ministers and an equal number of Chief Ministers had to resign. Kamaraj who, as Congress President, installed Lal Bahadur Shastri as Prime Minister after Nehru's death in May 1964 and then Indira Gandhi in January 1966 after Shastri's death lost control over the parliamentary wing, because of the fact that Mrs. Indira Gandhi, once in saddle "showed a determination to be independent of those responsible for her elevation" and in this she was successful.

Congress Split of 1969

Through his charismatic leadership and magnetic personality Nehru exercised unrivalled authority and kept the Congress party free from factionalism. But towards the close of his life, a central faction popularly known as the syndicate came into being. An alliance of non-Hindi State leaders gradually emerged and its original purpose was to prevent the election of Morarji Desai to the Prime Ministership in the event of Nehru's death. Although it played a useful role in securing the unopposed election of Shastri as Prime Minister it virtually introduced factionalism into the central council of the party and this wrought havoc in the party by the time of 1967 elections. A rival faction who supported Morarji Desai for the Prime Ministership against Mrs. Gandhi came into existence. This faction though less powerful was hardly less damaging. Thus, even before the 1967 General Elections the stage was set for subsequent party split and, Indira Gandhi's personality and ambitions accelerated the process and finally brought about the split in 1969 over the Presidential candidate.

In the Congress Parliamentary Board, Mrs. Gandhi proposed the name of Jagjiwan Ram for the Presidentship which was opposed by the Syndicate; instead Morarji Desai proposed the name of Sanjiva Reddi and was approved; Mrs. Indira Gandhi disapproved of the choice. She demanded the right to vote according to one's "conscience", and supported V.V. Giri and ensured the official candidate's defeat in August 1969. When Parliament reassembled in mid November the split became clear and 60 members of the Lok Sabha sat as separate group as Congress Party (Opposition) under Dr. Ram Subah Singh. This reduced the strength of the Congress in the Lok Sabha, which seriously handicapped her in the implementation of her "radical" and "socialist" policies. At an opportune time, she advised the President to dissolve the Lok Sabha. In the midterm poll held in March 1971 the Ruling Congress was returned with a two-third majority with 352 members in the House of 518. And in the General Elections held in 1972 to the State Assemblies, the Ruling Congress gained a landslide victory in many States except Meghalaya. Thus Mrs. Indira Gandhi emerged as an unrivalled leader.

The verdict against Mrs. Indira Gandhi's election by the Allahabad High Court, the deteriorating economic conditions and the planned agitation of the opposition parties to force Mrs. Indira Gandhi to step down, prompted Mrs. Gandhi to declare internal emergency on June 25, 1975. All the opposition leaders were detained, press censorship was imposed and vigorous efforts were taken to put economy on a sound footing through the 20-point programme. But, some excesses committed especially in the field of family planning in the North, alienated people. In the election to the Lok Sabha held in March 1976, the Congress was voted out and worst of all, Mrs. Gandhi was also defeated . The Janata party, which was swept to power, formed the Government with Morarji Desai as Prime Minister. But, the fighting within the party led to a split and the Janata Government led by Morarji Desai fell. The Government formed subsequently by Charan Singh was a minority Government. To avert a prolonged political instability in the country, the President dissolved the Lok Sabha. The mid-term poll held in January 1980 returned Mrs. Indira Gandhi's Congress to power with nearly two-third majority. After the death of Indira Gandhi and her son and successor Rajiv Gandhi, the party was considerably weakened under the leadership of Narasimha Rao who had to step down as party president and Sitaram Kesari was elected as party president.

Ideologically, the Congress party stands for socialism, secularism and democracy. It avoids the extremes of rightism or leftism. It follows a 'left of the centre' policy in the economic field. In foreign affairs, the party steadfastly adheres to nonalignment.

2. COMMUNIST PARTIES

In pursuance of the programme of the "Communist International" the Communist Party of India was formed in 1923 to spread communism in India. It was in 1927 that the party formulated its Constitution and appointed an executive committee. The party was, however, banned in 1934 because of its revolutionary activities. Most of its leaders went under ground while some others joined the Congress Socialist Party. In 1939, it characterized the Second World War as 'imperialist War' but changed its position the moment the Soviet Union entered the war in 1940 on the side of the Allies. It then described the war as 'people's war'. Thereafter it supported the war efforts and the Government of India lifted the ban. The period between 1940-45 is termed as a honeymoon period between the Communist Party and the Government of India.

In its efforts to help the Government the Communists Party opposed tooth and nail the 'Quit India Movement' of 1942. It also took up and pleaded the cause for the creation of Pakistan. The Congress expelled the Communists from the party, at the close of the wars. During the years 1948-50 the party under the leadership of B. T. Ranadive tried to seize power by violent means in South India. But Sardar Patel, the then Home Minister, took so strong measures against them that the membership of the party dwindled from 90,000 in 1948 to 20,000 in 1950 and it was forced to alter its tactics.

However, the changing attitude of the Communist International in favour of the Indian Government, The Bandung Conference, Nehru's visit to Moscow, Soviet leaders' visit to India, the Avadi resolution of the Congress and the changing trend of India's foreign policy compelled the Communist Party of India to follow a liberal policy. "After a highly varied political past, which involved support of the war efforts between 1941 and 1945 and a vigorously revolutionary and terrroristic episode between 1946 and 1952" Hanson and Douglas say, "it committed itself to parliamentary road to socialism" at its Conference of 1958. This involved important organizational changes of which the most important was the replacement of the work place as the basic unit by the residence based branch. These changes both ideological and regularization were never fully accepted by the party's leftists.

Rajni Kothari says, 'Ever since their ideological differences in the early sixties the Communists have lost their former unity and self discipline. The split is partly connected with the outbreak of hostilities between India and China in 1962. Certain sections of the Communist party defended Chinese action, which others opposed. It is also partly to be explained in the death of Ajoy Ghosh, the most prominent

leader of the party. It was also partly due to the alleged scandals that were discovered in the political record of his successor, Dange. Dange's leading opponents, E.M.S.Nambudiripad and Jothi Basu, the leaders of the parties in Kerala and West Bengal respectively, were responsible for the split, which resulted in the creation of a new Community Party (Marxist). This action appeared to be pro-Peking. The C.P.I. (M) established itself as a major party, both in Kerala and West Bengal and emerged as the dominant party in the U.F. Governments in these states after the 1967 General Elections. However, it lost subsequently before the end of the sixties, but in West Bengal, it is still the most powerful party electorally. In Kerala it had to yield office to C.P.I. led Government enjoying Congress (R) support, in the mid - term elections to the Lok Sabha in 1971, it could secure only two out to Kerala's nineteen Lok Sabha seats. But in the subsequent elections the L.D.F. led by the C.P.I. (Marxist) and the U.D.F. led by the Congress (I) came to power alternately.

The mid-term poll of 1980 returned Mrs. Gandhi to power with a massive mandate. But her assassination in October 1984 and the decision to legitimatize Rajiv's accession to power necessitated election to the Lok Sabha. The election held in January 1985 gave a massive majority to Rajiv's party.

But on the eve of the 1989 general election to the Lok Sabha a multi - party alliance called the National Front, consisting mainly of the Janata Dal, the Telugu Desam the A.G.P. and the D.M.K. was formed with N.T. Rama Rao as chairman. The Front entered into seat adjustments with the B.J.P., fought the election and emerged as the single largest entity in the Parliament. The Front formed a coalition Government with V.P. Singh as the Prime Minister. But the withdrawal of support to Government by the B.J.P. and the internal contradictions within the Janata Dal led to the fall of the 11 month old V.P. Singh Government. The breakaway group of the Janata Dal styled itself as the Samajwadi Janata dal.

In West Bengal a new faction emerged out of the C. P. I. (M) in 1967, which came to he known as CPI (ML).

The notable communist successes have, however, been in areas with high literacy rates. The educated unemployed have provided them with consistent support. The chief objective of Communist patty is the establishment of people's democratic state, led by the working class for the realization of the dictatorship of the proletariat and building up of socialism according to the teachings of Marx and Lenin. It advocates the nationalization of all key industries and banking and general insurance as well as foreign capital in India without compensation. It is in favour of linguistic states. It was opposed to Hindi but changed its position in 1951, accepting Hindi as national language to be introduced in a slow and gradual manner.

3. JANATA PARTY

In 1977 when Mrs. Indira Gandhi, then Prime Minister, announced ' fresh elections to the Lok Sabha, the opposition parties got together to offer a united challenge to the dominating Congress party, under Jayaprakash Narain's inspiring leadership. Four parties-the Jan Sangh, the Congress (O), the Socialist party and the Bharatiya Lok Dal decided on 23, January 1977, to merge themselves to form the Janata party. On 2, February, Jagjiwan Ram resigned from the cabinet of Mrs. Indira Gandhi and supported by other dissidents from the Congress, formed the 'Congress For Democracy' (C.F.D.). The C.F.D. allied with the Janata party to present a united front to fight the Congress, led by Mrs. Gandhi. The Janata - C.F.D. combine swept the polls. The Janata captured 265 seats and C.F.D. 28 seats in the Lok Sabha. The Congress could manage to capture only 153 seats. On March, 24, 1977, Morarji Desai, as the leader of the Janata Parliamentary party, assumed office as the first non-Congress Prime Minister. By the end of April, all the four constituents of the Janata party met separately, decided to dissolve themselves, to merge together to form the Janata party and on May, 1, 1977 the Janata party was formally launched. On May 5, the C.F.D dissolved itself and merged with the Janata party. The Janata party functioned more as a "federation of parties" than as a united and unified single party. Its five constituent continued to maintain their individual identities. This prevented the party from becoming a strong one. The struggle

for power between Morarji Desai and Charan Singh further weakened the party. Charan Singh accused the party of being communal. The party was split and brought down the Janata Government and Charan Singh got himself installed in power as Prime Minister. He ordered the dissolution of Lok Sabha and the mid-term poll was held. This affected the fortunes of both the Janata party and the Lok Dal of Charan Singh in the mid-term poll held in January 1980.

Since the 1990's the Janata dal, the BJP and many small and big regional parties try to hold a balance in the absence of big parties or strong leadership.

II. REGIONAL PARTIES

Regionalism means love of a particular region in preference to the country. Regionalism in India is a countrywide phenomenon. Its growth has been mainly due to three factors. The foremost among them is economic and industrial growth with little bene it to the common man. The people were told during the national struggle that the cause of their sufferings was the British rule which when ended would and the people got nothing but disappointment, hardships and exploitation. Secondly, there was growing realization among the people of the backward areas that they were being reflected in the setting up of plants and factories, in the construction of dams, bridges, in the creation of job opportunities and in the allocation of central funds. Thirdly, the national leaders in Congress indulged in naked struggle for power propagating some time regionalism above the national interest. Contagious diseases, as if it were, it spread to other political parties also Regionalism is like a kind of sectarian outlook, which has resulted in emotional cleavages among the susceptible sections of Indians.

Regional politics in India

Regional politics has been quite dominant in the Indian political system. It has generally assumed four forms for its working. These forms are:

1. Demand for secession from the Indian Union;
2. Demand for separate Statehood;
3. Demand for Statehood; and
4. Inter-State disputes.

1. SECESSION FROM THE INDIAN UNION

Demand for formation of Dravidastan

This was the most dangerous demand made by the D.K. party of Tamil Nadu. The whole history of this party from the origin was based on secession from the Indian Union as they considered themselves altogether of a different stock, as distinguished from the North Indians. The D.K. party originated from the Justice party in Madras. The Justice party stood for the rights of non-Brahmins against the monopolistic hold of the Brahmins on the administrative and political positions. The more militant among the members of the Justice party formed Dravida Kazhagam (D.K.) which called upon the Dravidan people of South India "to guard against a transfer of power from the British to the Aryans". It demanded a separate South Indian State, Dravidastan. E.V. Ramaswamy Naicker, who led the movement, interpreted the Hindu scriptures as non-Dravidian and the sole fabrication of the Brahmins. Under his leadership, the South Indians burnt copies of the Ramayana, as being the story of a conflict between the North represented by the Aryans and the South by the Dravidians. It pleaded for the eradication of Sanskrit words from the South on the plea that the two represented basically separate and distinct cultures.

By 1954, however, political power shifted from the Brahmins to a distinctly indigenous "Tamilized" non-Brahmin leadership under the new Chief Minister, Kamaraj Nadar. The D.K. threw its support to the Congress ministry. But the D.M.K. which was formed in 1949 due to acute differences with E.V. Ramaswamy Naicker, pledged again for the attainment of Dravidastan. In June 1960 the D.M.K. and the "We Tamil" movement organized a joint campaign for the secession of Madras from India for making it

an independent sovereign state of Tamil Nadu. They burnt the maps of India. Then, they proposed that the States of Madras, Andhra, Kerala and Mysore should secede from India and form an independent "Republic of Tamil Nadu".

In April, 1961 several leading members of the D. M. K. resigned and formed the Tamil National Party under the leadership of E.V. K. Sampath, a member of Parliament. It rejected the D. M. K.'s secessionism and instead advocated a radical amendment to the Constitution so that India should become a highly decentralized federation of autonomous linguistic states each of which could "have the right to secede". Several D. M. K. members of the State Assembly and of Madras Corporation including the Mayor of Madras joined he new party.

The D. M. K. under the leadership of C. N. Annadurai, made heavy gains in the third General Elections in 1962. It, therefore, intensified its agitation for an independent Dravidian State. During a debate in the Rajya Sabha in may, 1962, C. N. Annadurai, asserted that the people of southern India were of different stock from those of the North. He alleged that the South had been "ignored" by the Union Government.

In view of the growing strength of the disintegrating forces in the country, the parliament adopted in October, 1963, the Sixteenth amendment to the Constitution which

1. Enabled Parliament to make law providing penalties for any person questioning the sovereignty and integrity of the Indian Union; and
2. Laid down that a candidate for election to Parliament or a State Legislature wouldhave to undertake by oath or affirmation to have true faith and allegiance to the Indian Constitution and to uphold the country's sovereignty and integrity. Consequently, the DMK in November 1963, dropped from is programming the demand for a sovereign independent. Dravidian Federation and its secession from the Indian Union. Instead, it declared the formation of a "Dravida Union" of the four States mentioned above "with as large powers as possible within the frame work of the sovereignty and integrity of India and of the Constitution".

The D. M. K.'s posture against Hindi as the official language continues unabated. The opposition to Hindi is very strong in Tamil Nadu. On the question of introduction of Hindi, violence broke out in parts of Madras state in 1965. The result was a crisis that took the turn of an unprecedented act of self immolation by a few DMK members.

The agitation for autonomy within the Indian Union continues. In mid September, 1970, DMK held in Madras city a "State Autonomy Conference" which criticized Delhi for using its "financial strings" to control the States. Various other regional parties, including the Akali Dal, were invited to attend the Conference. It did not make much headway in the matter of autonomy as desired, as the extent of Autonomy could not be defined.

Demand for formation of Akhalistan or Sikh State

Master Tara Singh as the leader of the Akali Dal in Punjab raised the question of the formation of Akhalistan as early as 1946 when the Cabinet Mission visited India. But he met disappointment on securing no special recognition. Migration from newly formed Pakistan further added bitterness to the community's sufferings. Then he demanded a 'Sikh State'.

Demand for separate state far Mizos and Nagas of Assam

The people of the Mizo Hill district of Assam demanded secession not only from Assam, but from India also and the formation of an "independent Mizo State". This led to insurrections and repressions. The Government had made the Mizo Hill a Union Territory and was inaugurated on September 4, 1962. The hostile Nagas, however, continued their designs and got arms, ammunition and training in Pakistan and China. Phizo even threatened to take the Naga question to the United Nations. But, there was a let up in the hostilities of the rebel Nagas after the formation of BanglaDesh.

2. SEPARATE-STATEHOOD

Certain selfish politicians wanted to grind their own axe. This could be possible only raised a bogey a demand for a separate statehood. Only then could their dreams of leadership be realized. The demand for separate statehood arose from time to time in different parts of India.

Formation of Andhra

The insistent voice within the Congress, especially from the South where Telugu people were living in three States (Madras, Hyderabad and Mysore demanded an Andhra State of their own. The Congress party was obliged to appoint in 1948 a 'JVP'. Committee consisting of Jawaharlal Nehru, Vallabhai Patel and Pattabhi Sitarmayya to look at the question presumably from a more purely political stand point. Their report also went, in general, against the linguistic state, but made 'an exception in the case of Andhra where a strong case could be made'. "A sentiment for Andhra soon mounted to the extent that the Congress Working Committee was obliged to endorse the demand and recommend in 1949 the creation of a new State. The Central Government was, however, reluctant since the creation of Andhra would encourage demands from other linguistic groups in the various multilingual states and promote linguistic nationalism. Potti Sriramulu undertook a fast unto death on this and died. To overcome the eventualities, a separate Andhra State for the Telugu speaking people was created in October, 1953.

Telengana Agitation

The States Reorganization Commission recommended the splitting up of the multilingual state of Hyderabad and added that the Kannada - speaking areas should be merged with Mysore, and the Marathi - speaking areas with Bombay. The Commission observed that there were strong arguments in favour of the union of the Telugu - speaking areas of Hyderabad known as Telengana by merging it with Andhra to form a single Telugu - speaking state. But it did not suggest this step immediately because of a feeling that existed among the people of Telengana that they might be swamped and exploited by the more highly educated people of Andhra. The Commission, therefore, recommended to make Telengana a separate, state but with a provision for its union with Andhra after the third general elections, if a two - thirds majority of the state legislature expressed itself in favour.

The Union Government, on the other hand, decided to unite Telengana with Andhra on the plea that uncertainty about the future of Telengana as a distinctive state would hamper its economic progress. Consequently, the Congress leaders of Andhra and Telengana concluded the following accord:

1. All members of the State Assembly from Telengana would form a Regional Committee to deal with matters relating to that region.
2. The entire revenue from Telengana would be spent on the development of that region, of course after meeting its proportionate share of the common expenditure of the state.
3. The recruitment to Government posts in the region carrying a salary of upto Rs. 500/-a month be made for five years only from among persons who had lived in Telengana at east for fifteen years.
4. When the Chief Minister of the State comes from Andhra, the Deputy Chief Minister would be drawn from Telengana and vice versa.

This agreement paved the way for the merger of Telengana area into Andhra Pradesh, but this system did not work longer. The people of Telengana began to express their dissatisfaction and resentment. They began to demand the formation of a separate Telengana State. The agitation was launched with peaceful intentions but turned violent as usual. The Government relented and transferred all the Andhra appointed on posts reserved for Telengana to the Andhra region and agreed to honour the other commitments also. The mass transfer for Andhra officials from the Telengana region triggered an agitation in Andhra. The Telengana agitation was spearheaded by the Praja Samiti. The Samiti demanded a separate Telengana. A "Six-Point Agreement" which provided for a Telengana Regional

Committee, separate Five Year Plan for Telengana and Chief ministership to Telengana was concluded. Consequently, P.V. Narasimha Rao , replaced Brahmananda Reddi as Chief Minister.

It was the force of regional feeling that compelled the Government of India to agree to bifurcate the bilingual Bombay State into two States in 1960, Maharashtra and Gujarat. Likewise, the formation of Nagaland in 1963 and the Punjabi Suba in 1966 can be attributed to the growing regional sentiment.

3. DEMAND FOR FULL STATEHOOD

This is the third manifestation of regionalism; and to satisfy this demand the Constitution Fourteenth Amendment Bill was passed in 1962, which created local legislatures; for the territories of Himachal Pradesh, Manipur, Tripura, Pondicherry, Goa etc. When the Union Territories of Delhi and Andaman Nicobar were denied this privilege they also began to agitate. Full statehood was conferred on Himachal Pradesh in 1970 and on Manipur and Tribura in 1972. Delhi was granted Metropolitan Council in 1970. It has now become the National Capital Territory.

4. INTER - STATE DISPUTES

The fourth and last manifestation of regionalism is the tendency to create interstate-disputes. For instance Chandigarh became a bone of contention between the Punjab and Haryana when Punjab was divided into two states. Thereupon, the Central Government made Chandigarh a Union Territory and it continues to be so. Then, there was the demand of Haryana for 10 districts of UP and two districts of Rajasthan in order to fulfill the dream of Vishal Haryana. Similarly, there is a long-standing boundary dispute between .Karnataka and Maharashtra and the Cauvery water dispute between. Tamil Nadu and Karnataka.

Regionalism is a cancerous growth in the body politics of India. The unity and integrity of India depends on the extent to which the growing sentiment of regionalism is held in leash. This calls for able and dynamic leadership at the national level, redressal of regional grievances and removal of regional imbalances, which will go a long way to curb this menace of regionalism.

PRESSURE GROUPS AND INTEREST GROUPS

Introduction

Pressure groups are of different kinds and they operate in every political system. The most prominent pressure groups are the groups of the business people and that of labour groups. These two groups are the most important in industrialized countries. The farmers' groups are very important in agricultural countries. In addition to these groups, there are always a very large number of professional groups, representing different professions-and there are other groups based on limited and parochial interests like ethnic groups, language groups etc. Some groups acquire important due to their numerical strength, some due to their money power and some others due to their expert knowledge, (e.g. Medical Associations). These pressure groups provide a supplement to the modern legislature. They provide for functional representation. They act as the third house of the legislature. The following are the important pressure-cum-interest groups that operate in the Indian political system.

A) THE BUSINESS GROUPS

The business group is the most important pressure group in a free economy or a mixed economy. They are also the most effective. They are independent of the political parties that exist and they have enough resources with which they can safeguard their interests, Business associations have existed in India even before independence. In fact, the first business association came into being in India in 1801 when the British traders and merchants established their own business association. In 1890, the traders association was established which again was the association of European traders and merchant. In 1884 the Chamber of Commerce was established in Calcutta and this was the first major businessmen association of the British traders. The Indian businessmen established their first Indian Chamber in South India in the year 1885. In 1887 the Indian Chamber of Commerce was established. The purpose of this Chamber was:

"To aid and stimulate the development of commercial enterprise in Bengal and to protect the interests of all persons trading therein; to promote unanimity of practice among members of the commercial community, to arbitrate when occasions arise between parties willing to submit their differences to the decision of the association; and generally to do all such things as may be conducive to the interests of the commercial classes, of Bengal".

A review of these purpose clearly shows that the Chamber was created for the purpose of acting as a pressure group and the purposes of later Chambers had continued to be about the same as listed above. In 1900, the Marwari Chamber of Commerce came into being; it was later on renamed as Bharat Chamber of Commerce. In 1907, the Indian Chamber of Commerce was established; also the Muslim Chamber of Commerce was founded.

After independence, businessmen have been better organized than before. There are thousands of chambers of commerce spread all over the country. Practically every town has got a chamber of commerce or something similar to it. There is also a federation of these chambers, which is known as the Federation of Indian Chambers of Commerce and Industry. This is truly a national organization of the business people. Among the business the business groups this is a paramount organization. If has got its office at New Delhi; it is very comprehensive in its scope and includes all kinds of business activities. The All India Manufacturers Organization was started in 1941. It represents the small industrialists of India, whereas the Federation of the Indian Chambers of Commerce and Industry represents big business as well as small business people. The All India Manufacturers Organization has also its office in New Delhi.

Techniques and Targets

Before Independence, the strategy of the business groups was to keep in contact with the Government and to establish links at different levels of Government: but they were also supporting the national movement. At that time they had representation in Legislative Assemblies and they were represented on the consultative bodies of the Government. After independence, the same strategy persists. Their main target, of course, is the Government, but they do keep contacts with the parties of the opposition as well. Since the nature of politics in India is federal, they operate at all levels of politics. They are no loner represented in the Legislative Assemblies as of right. But some businessmen are always there in Legislatures at the national as well as the state level. Every ministry of the Government of India has some kind of Consultative Committee and business groups are represented there and they get a chance of being heard. Communication links between business and the Government are also maintained through their office in New Delhi which is very active during the time of its annual meetings. The Prime Minister as well as the Finance Minister usually agree to meet the business people at the time of the annual meeting of the Federation. Business groups are not as effective in India as they are in countries like the United States of America or even in Britain in pressurizing policy making. Whatever influence they have on the legislative or the executive wing of the Government is quite negligible. Professor Myron Weiner has pointed out that the strategy of the business community in India has been directed towards the administration of policy. This is so because their influence on policy making is negligible.

B) TRADE UNIONS

The All India Trade Union Congress was established in the year 1920. Lala Lajpat Rai presided over the annual meeting. It came into existence as a national federation of trade unions. At that time the union was dominated by the Indian National Congress; by 1929 the AITUC was under the control of the Communist Party of India: in 1931, the Communist Party of India established a separate federation of trade unions. In 1935, they were once again in control of the AITUC. In 1948, the Indian National Trade Union Congress was established. This is the trade union wing of the Indian National Congress. The Socialist Party established its own trade union federation known as the Hind Mazdoor Sabha. Other national political parties have got their own federation of the trade unions. In this manner, what we find is that trade unions in India are closely affiliated with the political parties. This affiliation does not exist in case of the business groups but in case of the trade unions, this close affiliation exists at all levels of

organization. For some time, there was some amount of dissociation between trade union organization and the party organization but slowly close associations were established between the different trade union organizations and the political parties. No amount of independence from political parties exists in the trade unions. In this sense, the trade unions do not act as independent pressure groups, but they only represent an extension of the various political parties that are on the Indian political scene.

C) THE PEASANT GROUPS

In 1920, there were a number of peasant movements that were led by Gandhiji and Patel. However, it was in the year 1936 that the All India Kisan Sabha was established. In the year 1939, the National Convention of the All India Kisan Sabha was presided over by Acharya Narendra Dev. In his Presidential address, Acharya Narendra Dev pointed out that there was a need for a separate Kisan Sabha, though the Congress was there as the representative of peasants. He pointed out that within the Congress, the peasant was not able to exercise his full influence. There were other groups within this Congress that was able to frustrate the efforts of the peasants. A separate Kisan Sabha was necessary in order to keep pressure on the Indian National Congress and he concluded that this Sabha would work not in competition with the Congress party, but would help to supplement the work that the Congress party was doing. After 1942 the Communist Party of India acquired control over the All India Kisan Sabha. Different political parties have got their own peasant organizations. As in the case of the trade unions, there is no peasant organization that is independent of party control. In a country where a majority of people are peasants, it is very difficult to have a peasant organization, and in no case, can we have a pressure group representing the peasants because of organizational difficulties, lack of resources and other factors. But at present, here and there some peasants' associations are coming up. (For e.g. Gujarat, Rajasthan and Tamil Nadu).

D) STUDENT GROUPS

In 1928, a student organization was formed in the Punjab under the leadership of Lala Lajpat Rai. In the same year All Bengal Students Association was presided over by Shri Jawaharal Nehru. In 1936 the All India Student's Federation was established. Mr. Mohammed Ali Jinnah was the first president of this organization. In 1940 there was a conflict within this organization. The Communists acquired control over the Students Federation. The Congress people, in 1945, established another organization known as the All India Students Congress. In 1950 this organization was dissolved and it was decided by the Congress leadership that students should be advised not to involve themselves in the politics of the country. Another organization was established which is known as the National Union of Students. This was to be a non-political students body. In the same year, the Indiain National Congress also established a Youth Congress. Different political parties have got their own branches of the student organizations.

E) COMMUNITY ASSOCIATIONS

A distinction is made between the pressure groups based upon class and occupational distinction, which have been discussed above, and the other kind of organizations, which are known as the Community Associations. It is generally believed among the Western scholars that the formal type of pressure groups are more prominent io that Western-countries whereas in the case of the under - developed countries the Community associations are more powerful. In the case of India Myron Weiner has pointed out that there are four major types of Community Association. There are based on religion, caste, language and tribe. He says, "Indian social system has both hierarchical (Caste and Class) and horizontal (tribal, religious, linguistic) groupings and political expression follow suit; and since both hierarchical and horizontal divisions tend to be local or regional character, there is a multiplicity of nations. Here we may point out that the religious caste and linguistic groups are not purely horizontal divisions in the India society, and they are not contained within a well defined territory. These divisions also cross each other; for example, there are Muslims in different linguistic areas and within the same language area in the Punjab, there are different religions. Therefore, these divisions do not always reinforce each other, but also have the effect

of contradicting each other. Moreover, interest groups of this type are by no means peculiar to India. In fact there are as many community associations in the United States as there are in India. A study of the Michigan Legislature in 1964, revealed that there were a very large number of ethnic associations in the State of Michigan and that they were better organized than the Indian Community Associations and had greater effect in politics.

Professor Myron Weiner has pointed out that the demands made by these Community Associations are of two types:

1. For changes in political boundaries or the status of political entitles. These many range from a demand for complete independence (Nagas and Mizos) to one for regional autonomy (Akali Dal, Jharkhand Party and, perhaps the Dravida Munnetra Kazhagam in the fifties.)

2. For greater opportunities from the existing Government more seats in the legislative assembly, more seats in the Colleges, or in the economic sphere and greater State investment in the areas in which the community predominates. Such demands are made by tribal organizations of West Bengal, Kamma and Reddi castes in Andhra, Lingayat and Okkaliga castes in Karnataka, Na.ir, Christian and Ezhava communities in Kerala, Rajput, Bhumihar and Kayastha castes in Bihar, the Scheduled Caste Federation, the Anglo Indian association, the Gurkha League in West Bengal, the Shoshit Sangh in Uttar Pradesh, and the Lok Sevak Sangh in Purulia district of West Bengal. It may be pointed out here that the demand for complete independence is no longer significant in India and the demand for regional autonomy has been more or less satisfied after the linguistic reorganization of India has been carried out. These demands of the minorities are likely to persist because minorities have more or less permanent sense of insecurity and the interest that they represent are more or less continuous.

There are other organizations of which Myron Weiner talks about: He described them as caste organizations. Actually, they are class organization. In this category are the Scheduled Caste Federation or the Backward Caste Federation. First of all, these Federations do not represent one-caste organization; they are caste federation. Moreover in their castes, caste and class seem to merge. The Scheduled Castes are also the most poor class of the people in India, and therefore, their interests are more or less continuous because they are based not only on caste consideration, but also on class divisions. The same is true of backward castes. He also talks of the Lingayat and Okkaliga castes in Karnataka and of Rajput, Bhumihar and Kayastha castes in Bihar. Here again castes seems to merge with the class because most people of these castes belong to the peasant class. The peasant is not a caste, i~ is a class division. What they are really demanding is the safeguard of the interests of the peasants. It is true that there have been conflicts and there have been divisions on the basis of castes among the peasants themselves. But it is a temporary and passing fact of Indian politics. When confronted with the landless labour, the peasant acts, not as a caste, but as a class.

THE ELECTION COMMISSION AND ELECTORAL REFORMS

Features of Indian Electoral System

The electoral system adopted in India is borrowed from Britain. It is regulated by the Representation of the Peoples Act and is described as the simple majority system. It is also described as the First-Past-the Post system i.e., the horse that goes past the winning post. First is the winner, the candidate who gets even one vote more than the other is declared elected. The only difference between the English and the Indian electoral system is that we have reserved certain constituencies for the Scheduled Castes and Scheduled Tribes. Some of the salient features of the Indian electoral system are discussed below:

1. India has been divided into single member territorial constituencies (at present 542). There are no functional or plural constituencies. Originally introduced had been abolished and today even the reserved constituencies are single member ones.

2. Electing are determined on the basis of relative majority of the valid votes polled. It is not necessary for a candidate to secure an absolute majority. As most of the contests are multi - cornered, a candidate who secures 30 to 40 percent of the valid votes polled in a constituency is declared elected,. Even if one candidate secures one vote more than others, he is declared elected and the majority votes polled by other candidates are ignored.

3. Constituencies are delimited by a Delimitation Commission appointed once in. 10 years, after every census. Parliamentary constituencies are delimited in such a way they consist of an integral number of assembly .constituencies and no assembly constituency is split and placed under more than one parliamentary constituency. It is gratifying to note that there have been no complaints of Gerrymandering. (Arranging a constituency in such a way as to get majority for a particular party or individual is called Gerrymandering).

4. After independence we have introduced universal adult franchise without any qualifications of conditions. All citizens of India above the age of 18 are given the right to vote and those who have attained the age 25 have the right to contest elections. In the matter of right to vote and right to contest, no discrimination on grounds of caste, colour, creed, religion, sex or domicile is practised.

5. Up to 1971, elections to the Parliament and to State Assemblies were linked and there used to be one General Election for both. However, in 1 971, elections, to the Parliament were de-linked from election the State Assemblies. This change had tremendous effect which affected voting behaviour of the people considerably. It changed the political complexion- of various States and Centre.

6. The number of election petitions challenging the election of the winning candidates is large in India. The Representations of People Act places a large number of restrictions on the conduct of election campaign. It prescribes minimum standards of electoral behaviors. However, too many election petitions impair the prestige and the capacity of victors in the performance of their public duties. Election petitions remain of ten undecided for practically half of the term and this keeps and elected member distracted, occupied and entangled so as to prevent him from plunging into his work with full devotion.

7. Voting in India is optional; yet the percentage of polling is fairly high. Even though higher voting turn-out need not be a sign of political advancement, yet it does indicate that people are interested in and are aware of their right to vote which is a ting as an instrument of social change.

8. In the Indian electoral system, there is no provision for recall of elected representatives. This enables he elected members to feel free to use their own judgment in taking their decisions on issues that come before them, of course, they have to obey the party whip and respect the wishes and aspirations of their constituency: yet, with in reasonable limitations, they are free to act according to their own wishes.

9. In the U.S. there is virtually the system of double elections. First of all, a person who wished to contest for the Congress, the Presidency or for any other public office has to contest an election with- in his own party and then he has to face the second election. This is known as Primaries. But in India parties select candidates and even a person representing no party or group can contest elections.

Electoral Reforms

Experience during the past years' electoral system has shown it limitations and drawbacks. The various amendments made to the Representation of people' act of 1951 from time to time has not solved the problem of electoral defects. Some of the basis weaknesses and limitations of the present system require radical reforms urgently. The power of money including the black money, which has invaded the present electoral system on a dangerous scale, constitutes a major challenge to the Indian electoral system. Some of the main points of reforms thought necessary for our electoral system are discussed below:

1. Lower voting age and qualifying age for membership

In the political, economic and social life of the country, the general people between the ages of 18 and 21 play an important part and their role is steadily growing. But the minimum voting age in India was 21 years ill 1989. This excluded a large number of young people from the democratic process. Countries like the U.S.A., Soviet Russia , Britain and Sri Lanka have lowered the voting age to 18 years and in India under pressure from the youth, many States had extended voting rights to those who had attained the age of 18 in the Panchayat and Municipal elections. This privilege was finally extended to the youths for the Assembly and Parliament elections by reducing the voting right to 18 years from 21 years. Likewise the minimum age to contest general elections should also be reduced form the present 25 to 21 years.

2. Majority System

The present majority system and single-member constituency suffers from serious limitations and distortion and is heavily loaded in favour of the moneyed class. Under this system, it is possible for a party to secure 70% of the seats in legislature by polling 40% to 50% of the valid votes. Under this system, a few parties may not get even a single seat. Take the case of the failure of two Communist parties in Tamilnadu where they did not get even a single seat in elections to the Parliament held in January 1980. Moreover, this system feeds the monopoly of political power by a single party, regionalism and caste tendencies. This system is particularly vulnerable to money power and to numerous corrupt practices in the elections.

In view of the above drawbacks, the present "majority system" must be replaced by system if proportional representation. Of all the systems of representation, proportional representation will be best suited to or our conditions to ensure that the legislative bodies more correctly reflect the popular support which the different political parties enjoy among the people. Sets will be allotted in proportion to the polled valid votes of the different political parties! Proportional representation ensures representation to different minorities, regions and different shades of opinion in the country.

Of the various forms of proportional representation, the most feasible one for India is the List System. The voters vote for the party list as a whole. The list of candidates is presented in the order of preference the party wants them to be elected. The voter votes for any one of party lists. Under the List System, the voter is called upon to accept the list of this party or that party and also the parties in the order of preference indicated in the list. Suitable provisions may be made for the reservation of seats for the Scheduled Castes and Scheduled Tribes. But it should be remembered that the List System is a highly complex procedure which could not easily be understood by the backward Indian electorate; further this system may lead to proliferation of political parties. Retaining the symbols in the List System also can climate the first drawback. In the case of the second drawback, we have only to point out that even without the List System India has already a multiplicity of parties.

3. Reorganized Election Commission

The Election Commission and its organization should be strengthened all over the country. The Election Commission should not be a one-man body and should not include former I.C.S. or I.A.S. or I.P.S. officers. Now the Election Commission has three members including the Chief Election Commissioner, appointed by the President .

4. Electoral Rolls-Correction

The errors in the voting lists have to be rectified and revised periodically to get the new names enrolled. For this, there should be an effective machinery to conduct an enquiry into serious allegations about the false entries in the rolls. Once in six months the voters list has to be revised in order to enable those who have attained the voting age to enroll their names in the list.

5. Speedy Disposal of Election Disputes

The election disputes should be settled with in a maximum period of six months through effective machinery after the results are announced. The Courts, which try the election petitions, should be instructed by the Government to take speedy actions regarding elections.

6. Influence of money in Election

The most important electoral reform is curbing the growing influence of money in election. The candidates who have enough resources to meet the election expenditure is given the party ticket. Sometimes, the party either supplements the candidate or it meets the entire expenses to be incurred in the election. The Government has not taken any strict action over this aspects.

But the Election Commission submitted a list of recommendations on the eve of the fourth general election to lessen the influence of money in the elections. It suggested that

a) A limit be imposed on the number of vehicles that may be used for elections

b) Processions and demonstrations be banned during elections

c) The use of loud speakers on roads be prohibited

d) Paid canvassers be allowed

e) Parties be made to account for the expenses incurred by them in promoting the election of particular candidates.

7. State must share election expenses

The States should create a fund to meet the election expenses in order to reduce expenditure incurred from private or form the party funds progressively. For this, consultations should be held between the political parties and the Government.

The following facilities may be provided by the State for a candidate:

1. The State may supply free of cost five copies of electoral rolls of the constituency from which of candidate is seeking election. The candidates who forfeit their deposits may be required to reimburse the Government the cost of the rolls so supplied.
2. The State may issue to the candidates voters' identity slips for the polling with names and other particulars free of cost
3. The state may provide postage for a specific amount of value as printed symbols, hands bill, posters, etc. upto a fixed quantity.

8. Abuse of official machinery and position

Ministers and other legislators must not available to use any official agency or facility which is not available to the other candidates for use. Further, one election notification is issued by the Election no new economic or social welfare programme or project be announced or launched by the party in power till the elections are over and the ruling party must be denied governmental resources or agencies or media to tom its achievements from the date of issue of election notification. During the above period the ruling party and the opposition parties must have equal access to public media such as radio and television. Since 1977 elections, system of allotting equal time to all parties in radio and television to air their programmes is being tried in India.

9. Disqualifications

The Representation of People's Act lays down the grounds for disqualification membership of legislature. These grounds are not comprehensive enough and sometimes they are fraudulently bypassed. The grounds for disqualification may be extended to include conviction for economic offences such as hoarding, black marketing, smuggling etc. for practicing untouchability, for spying for foreign power and for dismissal from Government service on corruption charges.

10. Election Expenses and Election Returns

Experience has shown that by putting a legal ceiling on the election expenses, the power of money in election can never be checked. Some other drastic steps are urgently called for, however, the present ceiling may be maintained subject to periodic modifications, warranted by general price level and other relevant factors.

All expenses incurred by the candidate and by any other individuals or associations or organizations except his political party should be brought within the ceiling and shown accordingly in the election returns. The election expenses incurred by the party specifically for a candidate must be included in the return expenses of that candidate.

Expenses incurred by a political party for its general election propaganda such as publication of election manifestoes, poster, hand bills and other materials which do not mention any individual candidate or constituency may not computed as election expenses within the~ prescribed limit.

Donations by companies to political parties of individuals must be banned totally and attempt to circumvent the ban must be made a cognizable offence.

The Election Commission must be given power to hold instant enquiry if the Commission feels that a candidate has exceeded the prescribed ceiling for his election.

11. Review of Delimitation

Charges of manipulating and gerrymandering in- the delimitation of the constituencies are not wanting although some Parliament and Assembly members are associated with the work of delimitation; the final decision rests with the Delimitation Commission appointed by the Central Government. To make the work of the Commission more impartial, all political parties must be given due representation in the Commission and the work of the Commission must be reviewed by a consultative committee consisting of representatives of all recognized parties.

12. Expeditious Fresh Election

Neither the Constitution nor any other statute prescribes time limit for holding fresh elections to the State Assemblies when they are dissolved. So is the case with bye-elections to the Parliament or to the State Assemblies. Provisions should be made in the Representation of People's Act to hold such elections within a specified period, say, six months. If postponement of such elections becomes unavoidable due to some extraordinary circumstances it must only be done on a resolution of the Parliament passed with a prescribed majority.

13. Anti-Defection Law

The problem of defection has assumed alarming proportion at present. There was defection galore both at the Centre and in many States. With enactment of the Anti-Defection law this menace has considerably disappeared.

14. Prevention of impersonation

Impersonation and bogus voting has been on the increase, especially in metropolitan areas- to check this' malpractice effectively identity cards with photograph must be issued to all bonafide voters. The cost and labour should not stand in the way of implementing this most urgent measure to check impersonation.

15. Conduct of Elections

The elections including the polling should be conducted in such a way as to enable the people exercised their franchise freely without, intimidation, conercion, interference and undue inducements by political parties and other. The anti-democratic methods include the use of force against weaker sections of the society to compel them form going to the Palling booths. Booth capturing, rigging etc. are other criminal methods employed to sabotage fair and free elections.To put down these criminal activities, laws must be enacted providing for stringent punishments to the culprits.

Further, the number of polling booths in a constituency must be increased. The pooling booths must be located in such a way that the maximum distance from the residence of a voter and the booths should not be more than a kilometer and trained personnel should man the booth. The private holders of licensed firearms should be made to deposit their weapons with the local police station atleast 7 days before the polling days.

In the case of vehicles there must be strict restrictions on the number and use of motor vehicles by the candidates and' their agents in a constituency all cases of such use must carry authorization from the appropriate electoral authorities. The desirability of banning , all private vehicles on the polling day except those used by the personnel connected with the conduct of the election and those used by the candidates must be seriously examined. In the elections held in January 1980 the Election Commissioner issued an order banning movement of private vehicles on the polling day. But many State governments expressed their inability to carry out the Commission's order. In this respect Commissioner's order must be made binding on the States. The candidates or their agents must have the right to accompany the ballot boxes from the polling booths to the place of counting and they should also be allowed to keep watch on the seal boxes in order to avoid any possible attempt at tempering with those boxes.

Leaders like the late Jayaprakash Narayan as well as M.G. Ramachandran and parties such as the C. P. I. have advocated that the right to recall the elected representatives must be provided for in the electoral system in order to ensure effective accountability of the legislators to the electorates However, the pros and cons of conceding this right to the electorates must be examined thoroughly before taking a final decision. This right likely to be abused by some irresponsible parties.

Finally, before we conclude, we suggest that the feasibility and the desirability of introducing compulsory voting in the election be examined seriously. Compulsory voting operates in many countries notably in Malaysia where the system functions smoothly compulsory voting, if introduced in India may after the complexion of Parliament and many State Assemblies substantially, besides making citizens participate in the process of electing Government.

Major Reforms:

The Election Commission has been reorganized with a Chief Election Commissioner and two other Commissioners. The voter-photo identity Card is now introduced. The Supreme Court has now suggested that a declaration be made by candidates on matters relating to their public life including criminal antecedents at the time of filing their nominations.

Model questions for guidance

1. What are the main features of the Indian electoral system?
2. What changes do you suggest in the Indian electoral System?

MAJOR ISSUES IN INDIAN POLITICS

Caste, Religion, Languages, Region and Poverty Alleviation

At the down of Indian independence, the billion dollar question before every nationalist was whether India will remain united after few decades. This question cropped up as India is a country integrated into a somewhat loose manner by incorporating 632 princely states and 11 British presidencies. The federal provisions of the Government of India Act, 1935 were a total failure even at the trial stage. India had to face several pernicious complex and intricate issues at the time of independence. Religion is a major issue which divided the sub-continent into two. Caste is another issue which adds to the religious divide. Thus this language and religious diversities make India a highly divided society. There are other divisive forces to add to the existing turmoil. It can be mentioned that regionalism also contributes a lot to make this division even more market.

Poverty is all pervasive in India and poverty alleviation programmes should be the primary objective of any free state without which democratic system of governance could be meaningless. In this chapter, the legacies India inherited from the British along with its grim reminders from the past like caste, religion, language and regional issues are to be analyzed in the context of poverty alleviation.

Caste in Election:

This democratic country has nearly 60 years of electoral experience. In all elections whether Lok Sabha or Legislative Assemblies or even Panchayat Raj, cast is the vital determinant that decides the out come of election. Rudolf and Rudolf in their book “Political Development” contemplated that democracy could not sustainable in a society highly segmented by caste. However, they also acknowledge from their experience in India that this caste factor encourages members of a particular to vote only for their caste candidates. Therefore what is theoretical is not possible practically, especially relating to elections. Recent electoral experience highlights the fact that it is not possible to root out the caste influence in electoral practices. It is the dominant caste of the constituency that determines the electoral outcome. After Mandalisation, other backward classes unitedly raised their voice on every issue in the legislature. Nevertheless Schedule Caste and Schedule Tribes federations by utilizing the reservation in the Constitution, protested against such legislature whenever their interests were affected. Indian democracy is limping forward with all these handicaps.

Religion in Election :

Fundamental rights provide that there shall not be any discrimination only on grounds of religion. Electoral also advocate that it must be free from the influence of religion. These are the constitutional expectations, but in practice religion prevails in every walk of life in India. Of course, next to the caste factor, religion dominates the attitude of the Indians. Experience in the working of Indian democracy brings to the fore the united stand of the religious minorities who dictate terms and conditions to majority parties while bargaining their role at the time of election as well as at the time of passing beneficial legislations. Article 29 and 30 of the Constitution, aims at protecting liberty of the minorities including the religious minorities. But at present, a section of the majority felt that interests of the minorities alone are taken care of and the majority is left in lurch. Similar to caste, religion also dominates the electoral politics. There are several events that happened in the recent past which highlighted how volatile this issue of religion is. Even a small rumor or news would paralyze the system of governance. Of late it has become possible to achieve many things through the misuse of the freedom of religion. Mumbai and Pune attacks are just few illustrations to point out how sensitive the issue of religion is.

Languages :

The Constitution itself recognizes 21 official languages. Besides these official languages, regional dialects also dominate the political sphere. Linguistic minority is a recognized concept in the Constitution. The rights of linguistic minorities appear prominent during the time of election. The term Linguistic minorities suggest that they are a single integrated language group and they command the respect of political parties. Since these parties aim at ensuring their victory in the forthcoming elections, the demands of linguistic minorities are well taken care of.

Region :

Bifurcation and Trifurcation of states have become the fashion these days. Even linguistic states are proposing separate states within their region. In the recent past Uttar Pradesh, Madhya Pradesh and Bihar were bifurcated into two states. There is a demand for separation of Telengana from Andhra Pradesh and similar demands for Vidharba, Marathwada, Gurkaland and so on. These demands are central issues in the forthcoming election. Therefore the success of democracy is based on such populist issue.

Poverty Alleviation :

At the time of independence, statistics revealed that around 40 percent of the population were below the poverty line. Poverty has been defined to mean any person who is unable to afford food stuffs which provides him 2400 calories per day. Physiologically speaking it amounts to the inability of the person to take even one square meal a day. The freedom fighters and other nationalists gave a rosy picture during the freedom struggle that once India obtained independence, poverty would be eradicated from the Indian soil. British left India 60 years back, but poverty still prevails widely. India is a multi-party democracy. Lofty ideals like 'garibi hatao' and other slogans were heard to alleviate poverty. But, innumerable poverty alleviation programmes filled the pages of policy books and these only helped to gain political popularity for some leaving poverty at the grass root level. Farmer suicides in various parts of the country can be categorized as poverty deaths. Unless poverty is alleviated completely, democracy would be meaningless.

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3. INDIAN ECONOMY

UNIT: 1

1. Introduction

The entire world economy has been broadly classified into two different groups: (a) Under developed (or) Developing Countries and (b) Developed Countries. This distinction between these two types of economy is more or less arbitrary. Moreover, it is not quite easy to define an under developed economy. Eugene Staley defined an under developed country as "A country characterized by (i) mass poverty which is chronic and not the result of temporary misfortune, and (ii) obsolete methods of production and social organization which means that the poverty is not due to poor natural resources and hence could presumably be lessened by methods already proved in other countries".

2. India as a typical under developed economy

India is an under developed economy. There is no doubt that nearly one-fourth of its population lives in conditions of misery.

Basic characteristics of under developed economy:

(1) Low per capita income
(2) Heavy population pressure
(3) Low rate of capital formation
(4) Incidence of poverty
(5) Mal-distribution of national income
(6) Large number of people depends onagriculture
(7) Disguised unemployment
(8) Under utilization of resources
(9) Low level of technology
(10) Foreign trade orientation
(11) Poor economic organization.

3. Concept of Growth and Development

According to schumpeter explains the distinction between economic development and economic growth, according to him, "development is a discontinuous and spontaneous change in the stationary state, which for ever alters and displaces the equilibrium state existing; while growth is a gradual and steady change in the long run which comes about by a general increase in the range of saving and population".

4. Economic and Non-Economic factor affecting economic growth

Economic development of any country depends upon its non-economic determinants - Politics, Social, Educational, Religious, Moral and Norms.

Economic determinants - Natural Resources, Transport and Communication, Capital Formation, Capital - Output ratio, Technological Progress.

5. India as a mixed economy: Role of Public Sector, Private Sector and Joint Sector:

Mixed economy is a system in which the public sector and the private sector are allotted this respective roles in promoting the economic welfare of all section of the community.

Important role of Private Sector:

(1) Innovation and Modernization
(2) Incentive of Small Sector
(3) Generation of Income and Employment
(4) Resulted Sector.

Important role of Private Sector:

(1) Provide Mass Capital
(2) Self-Sufficiency
(3) Removing Regional Disparities.
(4) Improving Standard of Living to all
(5) Improving Infrastructure Facilities
(6) Generation of Income and Employment

UNIT: 2

1. National Income of India - Poverty, Unemployment and Population Problems:

National income refers to money value of goods and services produced in a country during a period of time. It is called National Income.

Methods of calculating national income: (1) Product method (2) Income method (3) Expenditure method.

Trends in National Income in India: The National income committee was appointed for the calculation of National income in 1949. The National income estimates of India have been prepared and published regularly by the central statistical organization.

Difficulties in the calculation of National income: (1) Inadequate data (2) Non-monetised sector (3) Illiterate people (4) Illegal activities.

2. Poverty:

Poverty means those people who fail to reach a certain minimum level of consumption standard should be regarded as poor. According to planning commission, a person is below the poverty line if his daily consumption of calories is less than 2400 in rural areas and 2100 in urban areas.

Causes of Poverty:(1) High rate of population (2) Low per capita income (3) Unemployment (4) Inequality (5) Inflation (6) Predominance of Agriculture (7) Low technology (8) Lack of capital (9) Social factor.

Poverty Eradication Programme: PMGSY, IAY, SGSY, SGRY, NFFWP, NREGP, RLEGP, IRDP, TRYSEM, EAS.

3. Unemployment:

The word unemployment is used is a special sense “By unemployment we mean that state of affairs when in an economy there are large number of able bodied persons of working age, who are willing to work, able to work, but can not find employment at the current prevailing wage rate.

Types of Unemployment: (1) Seasonal unemployment (2) Structural unemployment (3) Frictional unemployment (4)Disguised unemployment (5) Technological unemployment.

Causes of unemployment: (1) Under development (2) Poor employment planning (3) Mass output of Graduates from Indian Universities (4) Lack of employment policy (5) Over population.

Generation Scheme : IRDP, PMRY, RLEGP, SGSY, IAY, JRY (11, 1989), 20 Point Programme (July 1, 1975)

4. Population ;

Population refers to the number of people living in a defined are. India is a rich country but Indians are poor. India has 2.4% of the total land area of the world. India is the second largest country in the world. The rate of growth of population is 2.5% per year.

India’s population provisional list (2011) 1,21,01,93,422

Causes of Population: (1) Increase in birth rate (2) Declining death rate (3) Joint family planning (4) Lack of family planning (5) Child marriage (6) Poverty (7) Illiteracy (8) Weather condition, immigrations.

Effects of Population: (1) Shortage of food (2) Unemployment (3) Reduction of saving and investment (4) Ecological degradation (5) Declining national income.

National population policy - 2000.

UNIT: 3

Agriculture

1. Salient features of Indian Economy

Generally Indian economy is developing economy. Agriculture is the main occupation of its people. Population is growing at a high rate, techniques of production are backward, incidences of unemployment and poverty are high and there are wide spread income inequalities and soon.

If we observe growth of national income are raise, per capita income, occupational structure, capital base, social overhead also increases.

2. Land Reforms:

Land reform refers to the reforming of a defective structure of the land holding. Land reform is a planned and institutional reorganization the relation between man and land.

Objectives of Reforms: (1) To increase the agricultural productivity (2) To create on egalitarian pattern of society (3) To make more national use of land (4) To eliminate the exploitation of labour (5) To promote the living conditions of the tillers (6) To bring about social justice.

Land Reforms Measures:

1. Abolition of Zamindari System (1960-1972) (Article - 31)
2. Tenancy Legislation
3. Land Ceilings
4. Co - operative Farming

Land reforms in India have mainly succeeded in breaking the feudalistic structure of agrarian society; but they have failed to provide to adequate security tenure.

3. Green Revolution: (1967)

Green revolution in India refers to the technological breakthrough in Indian agriculture by the development and use of high yielding varieties of seeds, minor irrigation, use of fertilizers, regular plant protection and mechanization of agriculture.

Green Revolution Implies: (i) Well marked improvement in agricultural production in a short period, and (ii) The sustenance of a higher level of agricultural production over a fairly long period of time.

4. Agricultural Marketing:

Marketing is a process of bringing together the producer and the buyer and is essential to complete the process of production.

Features of Agricultural commodities in the market:

(i) Bulk in nature and low in value
(ii) Seasonal character of supply
(iii) Price fluctuation
(iv) Poor transport
(v) Long chain of middle man
(vi) Absence of storage facilities
(vii) Lack of financial facilities.

Steps taken by the Government to improve Agriculture Marketing:

(1) Berar Cotton and Grains Market Act, 1897

(2) The Royal Commission on Agriculture, 1928
(3) Commercial Crops Market Act, 1933, it was replaced The Madras Agricultural Produce Market Act, 1959.
(4) Integrated Scheme for the Development of Regulated Market, 1933.
(5) First Five Year Plan - 286 Market, 1998 - 7060 Markets.

5. Agricultural Credit:

"Indian farmers is born in debt, lives in debt, dies in debt and bequeaths debt". Indebtedness is the only companion of the farmer from circle to grave. An average farmer in India is port and caught up in the vicious circle of poverty, he become indebted.

Credit is essential for any activity and agriculture is no exception, credit plays a vital role in agricultural progress.

Sources of Rural Credit:

A. Institutional Sources: (1) Government (2) Co-operative (3) Commercial Banks.
B. Non-Institutional Sources: (1) Money lenders (2) Traders (3) Relatives, Landlords and others.

6. Integrated Rural Development Programmes (IRDP):

Integrated Rural Development Programme was conceived in March 1976 in order to improve the economic and social life of the "poorest of the poor" living in the rural areas. IRDP was started and the Lock Sabha of India approved during the period of October 2, 1980, in all the 5,011 blocks of the coring.

Objectives of IRDP/DRDA:

i. To help the poorest among the poor.
ii. To raise the income of the poor families.
iii. To create employment opportunities.
iv. To eradicate poverty and illiteracy.
v. To promote all round development in rural areas
iv . To meet the Minimum needs of the poor

UNIT: 4

Industry

Role of Industry in Economic Development:

The level of industrial development determines the level of economic development of a country. The term industrialization constitutes the development of the network of infrastructure like, transport, power, communication, and the starting of the key industries to produce capital goods. Therefore, the process of industrialization is essential for the achievement of economic development.

Role of industrial development: is increase in national income (ii) increase in export potentiality (iii) increases employment opportunity (iv) preserves the value of goods, (v) achieves selfsufficiency (vi) useful for the nation's security.

2. Industrial Policy of the Government of India since Independence:

Industrial policy reflects the attitude of the Government towards industrial development. The Government announces different policies with varying amounts of allocation from time to time.

(i) The Industrial Policy of 1948.
(ii) The Industrial Policy of 1956.
(iii) The Dutt Committee, 1969.
(iv) The Industrial Licensing Policy of 1970.
(v) The Industrial Policy of 1977.
(vi) The Industrial Policy of 1980,
(vii) The Industrial Policy of 1984.
(viii) The New Industrial Policy, 1991.

3. Small Scale and Cottage Industries: Role and Government policy.

At present, units involving fixed capital investments less than Rs.25 lacks are included in the small scale sector. Small scale industries can be divided into two types viz., cottage industries and small-scale enterprises.

Advantages of small-scale industries: (1) Contributes more national income (2) It generates more employments (3) It requires only a small amount of capital (4) It needs less skill (5) It requires less import of machines and equipments (6) It gives quick returns (7) It promotes better distribution of wealth.

Disadvantage of small-scale industries: (1) The procurement of raw material is a serious problem (2) The technique of production is backward (3) Marketing is big problem (4) Problem is to get finance.

The Government of India has adopted both positive and negative measures to help the small enterprises:

- Industrial (Development and Regulation) Act, 1984.
- National Small Industries Corporation (NSIC).
- Deposit Insurance and Credit Guarantee Corporation (DICGC).
- District Industries Centres (DICs), 1987.
- National Institute for Entrepreneurship and Small Business Development (NIES BUD), 1983.
- State Finance Corporation (SFC)
- New Small Enterprises Policy, 1991.

UNIT: 5
Labour

1. Problems of Agricultural Labour and Industrial Labour:

Agricultural labour is provided mostly by economically and socially backward sections.

The Agricultural labour position are:

(a) Landless labourers who are attached to the landlords;

(b) Landless labourers who are personally independent but who work exclusively for others;

(c) Petty farmers with tiny bits of land who devote most of their time working for others; and

(d) Farmers who have economic holidays but who have one or more of their children and dependents working for other prosperous farmers.

- Agricultural Labour Enquiry Committee - 1950-51.
- Minimum Wages Act, 1948.
- Abolition of Bonded Labour.

Industrial Labour: Industrial labour should stand for all labour engaged in large and small industrial establishments, including cottage industries.

Problems in industrial labour:

(i) Most of the industrial workers have their roots in villages.

(ii) Industrial labour is largely uneducated.

(iii) Industrial labour in India is not united but is divided and sub-divided on the basis of region, religion, languages, and caste.

(iv) Indian workers do not remain in the same work for considerable amount of time.

2. Trade Unions:

The Trade Union Act, 1926 defines trade union, “as any combination whether temporary or permanent formed primarily for the purpose of regulating the relations between workmen and employees, or between workmen and workmen or between employees and employees or for imposing restrictive conditions on the conduct of any trade or business and includes and federation of two or more trade unions”.

- All India Trade Union Congress (AITUC) - 1920
- 1080 affiliated unions, 9.24 lakhs membership.
- Indian National Trade Union Congress (INTUC) -1947
- The Hindu Mazdoor Sabha (HMS) - 1948
- The United Trade Union Congress (UTUC) - 1949
- The Bharatiya Mazdoor Sangh (BMS) - 1948
- Centre of Indian Trade Unions (CITU) - 1970
- CPI(M)
- National Federation of Independent Trade Union (NFITU)

3. Industrial Relations & Labour Legislation:

Industrial relation refers to manifold contacts between the workers and employees in,about and around the work. These contracts arise from many reasons and in many forms. The conditions of service in respect of fixation and payment of wages, leave, bonus, hours of work, etc., the facilities for work in regard to tools, equipment etc.,

Industrial dispute is high in India. These disputes lead to all types of unpleasant consequences as, for instance, strikes, and go-slow tactics by the workers, lock-outs by the employers, etc.

- Minimum Wage Act, 1946
- Factories Act, 1881 - 1918
- Indian Mines Act, 1923 & 1952
- The Tea District Emigrant Labour (Repeal) Act, 1970
- The Plantation Labour Act, 1951 with Amendments
- Indian Railway Act, 1980 as amended in 1930
- Motor Transport Workers Act, 1961
- Industrial Statistics Act, 1942

4. Social Security Schemes:

1. Workmen's Compensation Act, 1923.
2. The Employees State Insurance Act, 1948.
3. The Maternity Benefit Act, 1961.
4. Employees Provident Fund and Miscellaneous Provisions Act,1952
5. The Payment of Gratuity Act, 1972.
6. The Employees Family Pension Scheme, 1971.
7. The Employees Pension Scheme, 1995.
8. Payment of Bonus Act, 1965.

UNIT: 6

Planning in India

1. Basic Objectives and Achievements of Planning in India:

The National Government established the Planning Commission on March 15, 1950. There is no provision in the Constitution for a body like the Planning Commission. It was established by a resolution of the Government of India. It is a Non-Political Advisory Body.

Growth Performance in the Five Year Plan (at 1993-94 prices)

Plan Period	*Targeted Growth Rate in %*	*Realized Growth Rate in %*
First Plan (1951-56)	2.1	3.6
Second Plan (1956-61)	4.5	4.1
Third Plan (1961-66)	5.6	2.8
Forth Plan (1969-74)	5.7	3.3
Fifth Plan(1974-79)	4.4	4.8
Sixth Plan (1980-85)	5.2	5.7
Seventh Plan (1985-90)	5.0	6.0
Eighth Plan (1992-97)	5.6	6.8
Ninth Plan (1997-2002)	6.5	5.35
Tenth Plan (2002-2007)	8.0	8.2
Twelth Plan (2012-2017)	9.0	-

Source: Planning Commission.

2. Strategy of Planning:

Economists have advocated different strategies of development. They are

(i) Balanced Growth
(ii) Unbalanced Growth
(iii) Big Push Theory.

There are different strategies adopted various plan period.

Choice of Technology: (1) Labour intensive technology (2) Capital intensive technology.

Deficit Financing: Deficit financing is used to mean any Government expenditure which is in excess of its current revenue. In advanced countries, public borrowing is excluded in deficit financing. In under developed countries public borrowing is excluded in deficit financing.

In India, the deficit is financed in one or more of the following ways:

(1) Borrowing from RBI
(2) Withdrawal of cash balances by the Government
(3) Borrowing from the commercial banks
(4) Issue of new currency by the Government.

Role of Deficit Financing :

(1) It promotes economic development of a country
(2) It develops economic and social overheads
(3) It increases the saving of the society
(4) It increases employment output and income
(5) It encourages entrepreneurial class
(6) It combines both the fiscal and monetary policie

Export and Import Policies:

The Government appointed Mudaliar Committee in 1962 to review Government's trade policy. The Committee felt that development and maintenance of imports were both essential.

In the Trade Policy of 1970-71 and 1971-72 emphasis has been laid on "Important Substitution".

Export promotion is a policy and practice by which the exports of a country can bridge the balance of payments deficits as quickly as possible. In India export promotion can be done by

(1) Increasing the traditional items of exports

(2) Increasing the number of customers

(3) Increasing the non-traditional items.

The Government appointed an Export Promotion Committee in 1957. It recommended a large number of measures to increase the exports.

UNIT: 7

Concentration of Economic Power:

1. Regulations:

The Monopolies Inquiry Commission was concerned with the two manifestation of economic power, viz., (i) Monopolistic practice (ii) Restrictive practice.

Types of economic concentration:

(1) Product wise concentration

(2) Country wise concentration.

2. Monopolies and Restrictive Trade Practices Act, 1969

The Monopolies and Restrictive Trade Practices (MRTP) Act drew a distinction between monopolistic and restrictive trade practices. They refer to the behaviour of an individual firm or an oligopolist group of not more than three firms which have attained such a dominant position in the industry that they are able to control the market by regulating prices by output or eliminating competitions.

MRTP Act Amendments 1981 and 1982, The original section 2(d) - MRTP Amendment Act,1984.

COMPETITION ACT, 2002

The Competition Act has ben enacted and published in the gazette of Indian on January 14, 2003 for beringing competition in the Indian market. The mian objectives of the Act are to provide for the establishment of a commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets in India, to perfect the interest of consumers and to ensure freedom to trade carried on by participants in market in India and for related matters.

The Act jainly covers the following aspects:

i) Prohibition of anti-competitive agreements;

ii) Prohibition of abuse of dominance;

iii) Regulation of combination (acquisitions, mergers and amalgamations of certain size);

iv) Establishment of Competition Commission of India (CCI)

Competition (Amendment) Bill, 2007

Parliament on September 10, 2007 finally passed the long pending Competition (Amendment) Bill, 2007 that empowers the Competition Commission of India (CCI) to act as the competition regulator to deal with a host of contemporary economic issued including monopolies and take overs of corporate firms.

*Competition Commission of India becomes operational on May 20th, 2009.

3. Pricing Policies:

Price of agricultural commodities have increased more or less continuously over the plan period.

- Food grains Policy Committee - 1947
- Food grains Enquiry Committee - 1957
- Food grains Prices Committee - 1964
- Agricultural Price Commission - 1965,

it was renamed Commission for Agricultural Costs and Prices - 1985

Policies:

1. Agricultural Price Policy Since 1965
2. New Agricultural Price Policy 1986
3. PDS (System)

UNIT: 8

New Economic Policy

Economic Reforms Since 1991 - Liberalization:

Liberalization refers to relaxation of previous Government restrictions usually in areas of social and economic policies. Thus, when Government liberalize trade it means removed the tariff subsidies and other restrictions on flow of goods and services between countries.

Privatization:

Privatization, in generally refers to the transfer of assets or service functions from public to private ownership or control and the opening of hitherto closed areas to private sector entry.

Arguments in favour of Privatization:

(i) Privatization will help reducing the burden on exchequer which results from the public subsidizing of chronically loss making public sector units.
(ii) It will help the profit making public sector.
(iii) It make more competitive.
(iv) Privatization may help in reviving sick units.

Arguments against Privatization:

(1) Monopoly power
(2) Lopsided development of Industries in the country. Main aim is profit motive not welfare.

FIGURES AT A GLANCE - TAMIL NADU

i)	Number of districts:	32		
ii)	Area in sq.km.:	1,30,058		
		Persons	Males	Females
iii)	Total Population:	7,21,38,958	3,61,58,871	3,59,80,087
iv)	Decadal Population Growth:			
	1)Absolute Numbers	97,33,279		
	2)Percentage	15.60		
v)	Population Density(Persons per sq.km.)	555		
vi)	Sex Ratio (Females per 1000 Males)	995		
vii)	0-6 Population:	Persons	Males	Females
	1)Absolute Numbers	68,94,821	35,42,351	33,52,470
	2)Percentage to Total Population	9.56	9.80	9.32
viii)	Child Sex Ratio (Girls per 1000 Boys in 0-6 age group)	946		
ix)	Literates	Persons	Males	Females
	1)Absolute Numbers	5,24,13,116	2,83,14,595	2,40,98,521
	2)Literacy Rate	80.33	86.81	73.86

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4. INDIAN SOCIOLOGY

UNIT - 1
BASIC DEVELOPMENT OF THE INDIAN SOCIETY

a) Unity and diversity:

In India there is unity in diversity. We have physical, cultural, religious and emotional unity. We have also discussed that the people belonging to different castes, creeds and religions usually live in complete harmony with each other, which is, of course, sometimes disturbed. However attempts have been made to forge national and emotional integration. With the efforts of our social reformers and national leaders, nation has been successful in bringing about emotional and national integration.

The following are the aspects of unity in diversity in India:

(1) Geographical, (2) Religious, (3) Cultural, (4) Political, (5) Economical, (6) Linguistic, (7) Emotional.

The following are the important hindrances on the path of Indian Unity.

(1) Regionalism, (2) Casteism, (3) Linguism, (4) Communalism, (5) Religionism.

b) Continuity and change:

The uniqueness of India lies in its peculiar social system which consists of caste, joint family, customs and its rich tradition. In the development of Indian society, right from antiquity to modern times, India has been affected by various external forces which tried to collapse its structure and tradition. But somehow Indian people are accommodating all forces into their social life while maintaining their own culture.

Modern education has brought a number of changes in the life of the Indian people. But the continuity of all customs, cultural values and dogmas still exist after so many changes have taken place in India. Likewise there are plenty of changes taking place in the life of the people. But the continuity of old values from Indian social life did not die. The way of life of the Indian people certainly has undergone many changes along with the development of Indian society. But tradition of the Indian society continues to be rich in the midst of changes.

c) India as a plural society:

1) Customs and ways of life:

The plurality of the Indian society is derived from different sources. Inspite of these major differences, India has one more peculiar difference in its composition which is called “religion”. The major religious compositions of India are Hindus, Muslims, Christians, Sikhs, Buddhists, Jains. Each religion has its own Customs and ways of life in India. Most of the interaction of these religious groups in India goes in the social process like Co-operation and assimilation. As a result of assimilation, various Cultural elements have been integrated into one whole.

2) Linguistic Community:

India is a land of different languages. Our Constitution has recognized this fact by including different languages of the country. Every language has rich literature and each region can feel proud of the language which it speaks or in which its literature is available. But some people lay too much or rather overstress on the superiority of their language. Thus the languages, which through literature might have brought about national unity, have created disunity in the country. In our own times we have seen the people indulging in unhealthy acts in the name of the language. Thus language has created many problems rather than solving them.

3) Religious Community:

The people belonging to all communities live in India. In our Constitution it has been provided that for all public appointments and in different walks of life, it is the worth of the person will matter and not the religion to which he belongs. This should have reduced differences between man and man on the basis of religion.

Even otherwise, religionism in India should have been condemned because we had seen in our own time its evil efforts, resulting ultimately in the partition of the country. As we know in the wake of this partition many problems crept up. These included rehabilitation of the people, communal hatred, and problem of adjustment and so on.

4) Other Communities:

Regionalism: Regionalism is another complicated communal problem in India. By regionalism we mean love for the region in which one lives, rather than love for the country as a whole. Regionalism implies that the region is above the nation. It should only be developed and the people of that region alone should be given the benefits of that development. Regionalism could be due to geographical conditions, historical, political and physiological reasons. Other reasons can be differences in the economic standards, differences in vocations and professions, and differences in the cultural heritage.

Communities on the basis of caste: Government divided the whole society on the basis of caste for the convenience of reservation. Such as, Forward, Backward, Schedule tribes and Schedule caste. But this system has been creating many social problems.

Urban and rural communities: In every society there are urban as well as rural communities. Indian society is mostly a rural oriented agrarian society. But due to various plans of the government, particularly after independence industrialism is being developed. This industrial development results in urbanization and emergence of new urban society.

UNIT - 2

MAJOR SOCIAL INSTITUTIONS

1) Village Communities:

India lives in villages with agriculture as one of their main occupations and sources of livelihood. Most of our Indian villages even today are backward. They are educationally not well advanced. The real progress of India thus very much depends on the progress which these villages make. But, now the villages of today are witnessing many changes. Due to the policies of rural development and advancement, many villages are getting modernized.

Characteristics of Indian Villages:(1) Faith in Religion, (2) Self-sufficiency, (3) Stress on neighbourly relations, (4) Isolation, (5) Joint family system, (6) Simplicity, (7) Fellow feelings, (8) Group Feeling, (9) Conservation, (10) Poverty, (11) Illiteracy and (12) Natural Proximity,

2) Joint Family System:

In a joint family system, basically all the members of the family live together under one roof and are related to each other in one way or the other i.e. either directly or indirectly.

Advantages of joint family system: (1) Division of Labour, (2) Useful for agricultural economy, (3)It provides minimum existence, (4) Encourages social virtues, (5) It stands guarantee in difficult times, (6) It is economical, (7) Leisure is possible, (8) Development of good virtues.

Disadvantage of joint family:

(1) It encourages idleness, (2) Hindrance in development, (3) Leads to quarrels, (4) Absence of privacy, (5) Lower living standard, (6) Uncontrolled procreation.

Disintegration of joint family:

(1) Industrial economy, (2) Influence of western education, (3) Pressure on land, (4) Quick means of transportation, (5) Our social legislation.

Modern family: In India family set up is rather quickly changing in the urban settings. It is now considerably different from a family in the rural settings. The members of the joint family look towards the head for all guidance. But the situation has changed in so far as modern family in the urban setting is concerned. A woman in a modern family will not like to remain within four walls of the house. She will like to move about in the public places. She will only reasonably tolerate the authority of her husband.

Features of Modern Family: (1) No economic dependence, (2) Economic self-sufficiency of women, (3) Partnership in family, (4) Love marriage, (5) Democratic set-up.

Problems of a modern family: (1) Lack of adjustment, (2) Sexual disharmony, (3) Problem of happy life, (4) Problem of stability, (5) Problem of child development.

3) Caste:

Caste, as an institution, is a unique feature to India. There is some 3000 castes in India. Each caste is a social unit. Persons of one caste do not marry those of another. The extent to which person of one caste will eat or drink with those of another is strictly limited by unwritten laws and everybody knows who is affected by them. Even a change of religion does not destroy the caste system.

E. A. Gait defines caste "as an endogamous group or collection of such groups bearing a common name, having the same traditional occupation, claiming descent from the same source and commonly regarded as forming a single homogenous community".

According to Hindu tradition the caste system owes its origin to the four varna. The Brahmin who sprang from the mouth of the deity or the Supreme being, the Kshatriya who was created from His arms, the Vaishya who was formed from His thighs and the Sudra who was from His feet. The purpose of creation of each caste, according to them is to perform specific functions and as such due to human will these castes cannot be changed.

In the traditional hierarchy, Brahmans, Kshaatriya and Vaishya are the caste groups which enjoyed almost all the privileges in the society, whereas the sudras are considered like animals. The illiteracy and superstitious belief of people favoured the traditional casteism.

Characteristics of Caste System: (a) it is linked with birth, (b) ban on inter caste marriage, (c) restrictions on food taking habits, (d) fixed occupation, (e) accepted stratification.

Advantage of Caste System:

1. It preserves our solidarity.
2. It helped in maintaining purity of blood and profession.
3. It gave definite status to individuals.
4. It developed spirit of Co-operation.
5. Marriage became stable.
6. Panchayat system became training ground for political system

Disadvantages:

1. It limited the choice of professions.
2. It encouraged moral degradation.
3. It resulted in economic retardation.
4. It resulted in untouchability.
5. Society became Conservative.
6. Low Castes were ruthlessly suppressed.

Caste in contemporary India:

Caste system had very favourable climate in the country in the past, but since the last 50 years and more particularly after independence, times are against the system. Some basic and fundamental changes are coming in it which include decline in the prestige of Brahmanic cult and inter-mixing of people of all castes and classes in schools, colleges, railways and buses etc. But at the same time castes are in some respect holding firmly. Intercaste marriages are still few and far between.

Some important changes are:

1. Challenge to Brahmanic cult
2. Trends for inter - caste marriage
3. Challenge to oxthodoxy
4. New food habits
5. Changes in occupation
6. Trend about equality

Causes for changes of caste system.

(1) Spread of education, (2) Influence of the West, (3) Industrialisation, (4) Urbanisation, (5) Significance of wealth, (6) Efforts of social reformer, (7) Means of transport and communication, (8) Policy of Government.

Class: "A social class is the aggregate of persons having essentially the same social status in a given society" by Ogburn and Nimkoff.

The relative position of the class in the society arises from the degree of prestige attached to the status. Wherever the consideration of status, lower and higher, limit social inter course, there social class exists. Status is the basic criterion of social class.

UNIT - 3
BACKWARD CLASSES

Two-thirds or more of the population of India are very backward, being illiterate and living in utter poverty. Their disadvantages derive from the fact that their status is ascribed to them by birth in certain castes, creeds and tribal groups.

The backward classes in India form an aggregate of closed status groups; they belong to these groups by birth and not because their individual economic characteristics.

There are three broad divisions among the backward classes namely (a) the Scheduled Tribes (Girijans), (b) the Scheduled Castes (Harijans) and (c) the other backward class. The first two groups are listed in the Constitution while the third group is unlisted and loosely defined. As a result, the problem of the other backward classes is very complicated and very difficult to deal with.

Backward class may be defined as "an ascertainable and identifiable social group of persons based on caste, religions, race, language, occupation with definite characteristics of backwardness".

Backwardness implies social, educational, economic and political backwardness. When relevancies of all these factors were considered by the constitution makers, they favoured social and educational factors also.

Scheduled Caste

The Hindu social organization recognized four varnas only. In course of time, they were referred as the fifth varna and came to be attached with. They represent nearly 15% of the total population in India.

The social, religious, educational, economic, political and civic disabilities are some of the important problems of schedule caste.

Scheduled tribes

A vast population of India consists of the tribal. These people are freedom lovers and have preserved much of original culture of India. They have their own social, economic and cultural institutions.

Tribe defined: D. N. Majumdar says, a 'collection of families or group of families bearing a common name, members of which occupy the same territory, speak the same language, observe certain practices occupation and have developed a well assessed system of reciprocity and mutuality of obligations.

The social, economic, educational, political and geographical separations are some of the important problems of schedule tribe.

Other Backward Classes

The third major backward classes consist of a bigger number of educationally and socially backward people. They also suffered from several disabilities. Backward class movement started in the early part of 20th century with the aim to limit the Brahmin monopoly in the field of education and employment. This movement strived for promotion of interest of backward class.

Measures taken for upliftment of BC's.

Constitutional measures

a. Preamble - Social, economic and political justice.
b. Article-14 - Equality before law and equal protection of law.
c. Article-15 - Protective discrimination.
d. Article-17 - Abolition of untouchability.
e. Article-46 - Protection from social injustice.

Other measures

a. Promotion of education.
b. Reservation in employment.
c. Economic measures.
d. Political measures.

UNIT - 4
WOMEN AND SOCIETY

The social progress of a country depends on the status women enjoy in the society. A progressive and civilized society is one which recognizes respects, upholds and protects the rights of the women. Therefore women's status is the index of social progress. It passed through fluctuations through the ages. During the vedic period, women enjoyed a high position and equal status with men. But in the post vedic period, their status deteriorated. Now in the modern period, their position improved and became equal to men in the society. In the twentieth century the Indian women recaptured the position which they held in the early vedic period. With the advent of women's education, the influence of the west, together with the efforts of the social reforms movements of contemporary India, the discriminatory practices and injustice perpetrated against them gradually diminished. In the field of education, employment, politics; in respect of marriage, property, etc., women are now more empowered.

Constitutional provisions favouring women:

Article 14	:	Equality before law and equal protection of law.
Article 15(1)	:	Prohibits discrimination on the basis of sex.
Article 15(3)	:	Protective discrimination.
Article 16	:	Reservation for women in public employment.
Article 21	:	Right to liberty.
Article 23	:	Right against exploitation.
Article 39	:	Equal pay for equal work for both men and women

UNIT - 5

TRENDS OF CHANGE IN INDIAN SOCIETY

Change is law of nature and with the passage of time every society must change. In some societies these changes are very slow while in others are rapid and fast. But no society can escape from changes. A sociologist is therefore, required to take these changes into consideration for proper study of society.

As Mac Iver says, "It is soon apparent that social change is a process responsive to many types of change, to changes in the man made conditions of living, to changes in the attitudes and beliefs of men, and to changes that go beyond human control to the biological and physical nature of things".

Changes occurred in the following spheres of the Indian society:

(a) Social,

(b) Political,

(c) Economic,

(d) Religious.

a) Social: In the course of development of Indian society the pillars of caste and joint family have faded from the life of the people. They could not withstand the changing complex life of the people. These pillars are disintegrated due to westernization, industrialization and urbanization.

b) Political: Establishment of law courts, village panchayats and local autonomy changed the traditional social structure.

c) Economic: In modern times, industrial revolution, development of technology, transport and communication had largely influenced the economic structure of India. Previous agrarian economy disintegrated and industrial economy is now fast emerging in the Indian economy.

d) Religious: Due to the western secular education authoritarian religious norms have been replaced by democratic and equalitarian ideas.

UNIT - 6

SOCIAL PROBLEMS IN INDIA

Like nature, the human society too has its own order. The orderliness of society depends on its internal strength to maintain its equilibrium. The orderliness or the equilibrium that is normally maintained in the natural world is often upset due to certain forces at work. Social problems are the conditions threatening the well-being of society. "A social problem is any deviant behaviour in a disapproved direction of such a degree that it exceeds the tolerance limit of the community".

Every social problem implies three things:

Firstly, that something should be done to change the situation which constitutes a problem;

Secondly, that the existing social order will have to be changed to solve the problem;

Thirdly, that the situation regarded a problem is undesirable but is not inevitable. The people deplore the situation because they think that it can be reformed or eliminated.

Poverty as a social problem is very much rampart in India. Poverty and unemployment, the twin social problems are found throughout the length and breadth of this land. Over population, buggery, dowry, prostitution, crime and juvenile delinquency are the other major problems in India. The causes for these social problems and remedial measures for removal of the problems are to be studied in detail.

UNIT - 7

INDIAN CULTURE

Some of thinkers, both in the East as well West, have tried to establish that Indian culture is static. It has no capacity to absorb others. It is rigid with the result that it is out dated. But we are not concerned with that controversy here. Needless to say that many invaders who came to India were absorbed here and became part of the main stream line. Whatever might be the controversy in this regard, one finds that there are few basic principles of our culture passed on to us from generations and are being observed even today.

Permanent Elements of Indian Culture:

1) Indian culture is more spiritualistic rather than materialistic.
2) More stress is laid on religion in our culture.
3) Our culture teaches us religious tolerance.
4) There is capacity to absorb other cultures.
5) Our culture is very wide in its approach.
6) Freedom of thought and expression is character of our religion.
7) Our culture is very dynamic rather than static.

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5. LAW OF CRIMES

CHAPTER - I

THE CONCEPT OF CRIME

Crime as a Public wrong:

An Act committed (or) omitted in violation of 'Public Law' Forbidding or commanding it - Blackstone.

Crime as a Moral wrong

Garafalo, an eminent Criminologist, defines Crime in terms of immoral and anti-social acts.

- "Crime is an immoral and harmful act that is regarded as Criminal by public opinion because it is an injury to so much of the moral sense as is possessed by a community a measure which is indispensable for the adaptation of the individual to society."

Crime as a Conventional wrong

A noted Criminologist, Edwin H. Sutherland, defines Crimes in terms of criminal behaviour

He says "Criminal behaviour is behaviour in violation of the Criminal Law".

Crime as a Social Wrong:

John Gillin gives a sociological definition of crime.

He says, "Crime is an act has been shown to be actually harmful to society..."

Crime as a Procedural wrong:

"A wrong which is pursued by the Sovereign or his subordinates is a Crime" - Austin.

Keny modified Austin's definition and stated crimes are wrongs whose sanction is punitive, and is in no way remissible by any private person, but is remissible by the crown alone, if somissible at all.

Crime as a legal wrong:

When a Penal statute prescribes Punishment for an illega act or illegal omission, it becomes crime. Section 40 of the Indian Penal Code simply states:

"Except in the chapters and Sections mentioned in clauses two and three of this section, the word ' offence' denotes a thing made punishable by this code... or under any special or local law".

However, one can understand what constitutes, a crime, by the following two essential attributes-

a) Crime is an act of Commission or an act of omission on the part of a human being, which is considered harmful and prohibited by state.

b) the transgression of such harmful acts is sanction of punishment.

CONSTITUENT ELEMENTS OF CRIME

Criminal guilt would attach to a man for violations of Criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, ' actus non facit reumnisi mens sit rea'. It signifies that there can be no crime without a guilty mind.

Actus reus + mens rea = crime

a) Actus reus : (Act or omission)

The word actus connotes a 'deed', a physical result of human conduct. The word reus means forbidden by law'. The word actus reus, may, therefore be defined as 'Such result of human conduct as the law seeks to prevent.

b) Mens rea

The another one important essential of a crime is mens rea or evil intent. There can be no crime of any nature without an evil mind. Every Crime requires a mental element. No act of the person was punishable unless the same is done with evil intent.

Strict responsibility in Criminal law:

Crimes of Strict liability are those in which guilty mind is excluded. The exclusion of mens rea from statutory offences is justified on the ground that such laws are enacted by the legislature to preserve and protect social and economic interest of the society, which require strict adherence to such laws. Such offences are termed as offences of strict liability or absolute liability.

Mens rea in statutory offences:

'No mens rea - No Crime' this doctrine has been applied to all common law crimes in England without any reservations. Application of this doctrine to statutory crimes is fully discussed in two leading English cases.

1. R. v. Prince (1875) LR 2 CCR 154.
2. R. v. Mrs. Talson (1889) 23 QBD 168.

In R v. Prince Henry was tried for having unlawfully taken away an unmarried girl named Annie Phillips, below the age of 16 years, out of the lawful possession and against the will of her father,

Under the belief that she was eighteen; That is the crime under section 55 of the offences against the person Act 1861 (English law) The House of lords' should not consider the mental status of the accused, they were set aside the accused's plea (absence of Criminal intention).

Mens rea in Indian Penal Code:

The word mensrea is a technical term, it is not directly used in the Indian Penal Code; The draftsman's alternatively used various terms for mes rea such as

Intentionally - Ref.- Sec 300 IPC

Fraudulently - Ref. the topic - offenses against the property in I. P. C.

- Knowingly (or) Knowledge - Ref Sec. Sec 26 I. P. C.

- maliciously (or) Malice - Voluntarily, dishonestly,

Wantonly - rashly etc.,

If no such element is incorporated in the definition of crime, it is presumed that the legislature has done it intentionally and hence the doctrine of mens rea does not apply.

Mens rea in statutory offences in India:

Ref. case law:

Srinivasa Mills v. Emperor A.I.R. 1947 SC

State of Maharastra v. M.H.George A.I.R. 1965 SC 722.

CHAPTER - II

GENERAL DEFENCES

A person is presumed to know the nature and consequences of his act, and is therefore, responsible for it in law. However, there are some exceptions to this. A man may be excused from Punishment, either on the ground of the absence of the requisite 'mens rea' for the Commission of a Crime or on some other ground recognized by law. Such Provisions have been dealt with in chapter IV of the Indian Penal Code (Ref. sections 76 to 106). Though there are 32 Sections in this chapter it contains 7 heads.

Mistake of fact:

The common law Principles "ignorantia facit excusat, ignorantia juris non excusat"- ignorance of a fact is excused or is a defence but ignorance of law is no excuse have been embodied in Section 76 and 79 of the I. P. C.

The act of the Police Officer in the illustration to Sec.76 in arresting Z in place of Y for whose arrest, in fact no warrant was issued, does not make him guilty of wrongful confinement. (In Dakhi singh Case 1955 Cri L.J.905) a suspected thief who was arrested, escaped from custody. The Police Officer, not being able to capture him fired at him. In doing so another person was hit and killed. A justification under this section can not be accepted. So Mistaken belief in execution of duty is no defence under this Provision. Ref. Case: State of West Bengal v. Show Mangal Singh (AIR 1981 SC 1917)

Section 79 is a bit different from Section 76, though the language employed is particularly similar except the word "justified" used therein. As the Section runs. Nothing is an offence which is done by a person who

i) is justified by law (or)
ii) who by reason of a mistake of fact and not by reason of a mistake of law
iii) in good faith.
iv) believes himself to be justified by law to do it.

Ref. Case: *Chirangi v. State (1952-Cri L.J. 1212 M.P.)*

Mistake of Law:

Mistake of law is no excuse to a crime

Ref. Case: State of Maharastra v. M.H.George (A.I.R.(1965 SC 722)

CAPACITY OF THE PERSON AND CRIMINAL LIABILITY

Infancy (or) Act of Child:

a) under Seven years of age (Section 82.)
b) Above 7 and under 12 years Section 83.

Sections 82 and 83 of the IPC gives Protection to a child of a particular age from Criminal Prosecution and punishment. This is based on the Principle that an infant is incapable of distinguishing between right and wrong.

Section 82 grants absolute immunity to a child below seven years of age on the ground that such a child is 'doli incapax' that is, incapable of doing a criminal act

Defence of Insanity:

Ref.Case: MC. Naughten's case (1843)

Defence of intoxication (Drunkenness)

Under Modern English law, in order that drunkenness can be pleaded as an excuse, it must be involuntary and not voluntary drunknenness.

Ref. Case Law:

D. P. P. v. *Beard (1920 A.C.479)*

Attorney General for northern Ireland v. *Gallachar (1961 Alle R.299)*

Law of Intoxication in India : (Sec. 85 and 86)

Ref. Case Law: Basu dev v. State of Pepsu (A.I.R.1956 SC 488)

Consent: (Sec. 87 to 91 IPC)

The word consent has not been defined under the Penal Code. But consent has been considered a good defence in a Criminal case.

Ref. Case Law: *R.* v. *Williams (1923) 1 K.B.340*

R. v. *Genevan (1934) 2 K.B498*

Sec. 87 does not protect causing death or grievous hurt consent however, may help in reducing the offence of murder to the culpable homicide (Exception V to Sec 300). Immunity i.e. Fencing, Boxing.

Sec. 88 Provides for protection to doctors and surgeons. If a medical practitioner is not qualified section 88 will afford no protection. Ref. Case Sukaroo Kabiraj's case.

Sec. 89 of the IPC provides for protection in those cases where consent for causing harm to persons of unsound mind or an infant below 12 years of age, is given by parents or guardians with the prescribed or permissible limit.

Ref. Case: *Nankee* v*. Emperor (A.I.R. 1935 All 916).*

Section 90 IPC:

This section lays down specifically that a consent is not valid if the same is obtained under fear of injury or a misconception of fact.

Ref. Case: *Poonai Fattemah* v*. Emperpor 1896 12 WR (Cr) 7*

Section 91 IPC

Causing of miscarriage (unless caused in good faith for the purpose of saving the life of a woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence by reason of such harm and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Ref. Case: *R.* v*. Dudley and stephens. (1884. 14 Q BD 273.)*

Section 92 IPC :

Necessity - Implied consent (with good faith)

Ref. Case Law: Simbhu Narain v. Emperor A. I. R. 1923 All 546.

Compulsion - Sec. 94 IPC

Ref. Case law: D. P. P. v. Lynch 1975 (1) All E.R.9(3)
R. v. Home (1986) 1 All E. R. (C. A.)
R. v. Burke and Clarkson (1986) 1 All E.R. 836

Triviality (Sec. 95 IPC)

"De Minimis Non Curat Lex".

Law does not take notice of trifles.

Ref. Case law- Veeda menezes v. Yusuf khan. (A. I. R. 1966 S.C.1773)

RIGHT OF PRIVATE DEFENCE

(Sec. 96 to 106 IPC)

It is a right inherent in man and is based on the premise that the foremost duty of man is to protect himself. But the right of private defence as provided in the code is to be exercised within certain limits though the Indian law is wider that its English counter part.

Ref. Case law:

- R. v. Rose (1884 15 cox CC-540).
- Viswanath v. State of U.P. (A. I. R. 1960 SC 67)
- Amjad khan v. State (AIR 1952 SC 165)
- Deo narain v State of U.P. (A. I. R. 1973 SC)

Section 96 of the IPC gives statutory recognition to the right of private defence.

Section 97 and 99 IPC

The right of Private defence to defend one's body and property as well as the body and property of another against certain specified offences granted by section 97 is not absolute but subject to the limits and restrictions prescribed in Section 99. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Section 100 IPC provides; when the right of Private defence of the body extends to causing death.

Ref. case law:

- Puran Singh v. State (AIR 1975 SC 1674)
- Mancini v. D. P. P. (1942).

Section 101 IPC provides that in the absence of the circumstances laid down in Sec 100, the right of private defence is limited to causing of any harm other than dealt. This right, again is subject to the exceptions already dealt with under Sec. 99.

Section 102 IPC Commencement of the right of Private defence and its duration.

Ref Case: Kala Singh v. Emperor (AIR 1933 Lah 167)

Section 103 IPC discussed when the right of Private defence to property extends to causing death.

Ref. Case: Ismail v. Crown A.I.R. 1926 Lah 28.

Section 104 IPC

Ref. Case Law: Ramaswamy Chettiar case (1949 Mad 545)

This Sec. says that if the theft, mischief or criminal trespass does not answer the description given in Sec. 103, then the right of private defence of property does not extend to causing death, but it extends, subject again to Sec. 99 to voluntarily causing any harm other than death.

JURISDICTION

Territorial Jurisdiction:

Section 2 of the Indian Penal Code declares that every person shall be liable to punishment under the code and not otherwise for every act or omission contrary to the provisions of the code of which he shall be guilty within India.

Ref. case Law : *Mobark Ali* v*. The State of Bombay A.I.R. 1957 S.C.857.*

The accused a Pakistani national while staying at Karachi, made false representations through letters, telephone conversations and telegrams to the complainant at Bombay and induced the complainant to part with money at Bombay. When the accused subsequently happened to come to Bombay he was prosecuted for cheating.

Held that the offence was committed at Bombay even though the accused was not physically present there and that the Court had jurisdiction to try him under S.2.

Jagannadadhas J. Observed “The use of the word” every person in Sec. 2 as contracted with the use of the phrase any person in Sec. 3 as well as Sec. 4(2) of the Code Sec. 2 must be read with the phrase every person at the commencement thereof. But this is far fetched and untenable. The plain meaning of the phrase “Every person is that it comprehends all persons without limitation and irrespective of nationality allegiance, rank, status, caste, colour or creed.

On the other hand a reference to S.3 of the Code clearly indicates that it is implict therein that foreigner who commits an offence within India is guilty and can be punished as such without any limitation as to his corporeal presence in India at the time. For it is were not so, the legal fiction implict in the phrase ‘as if such act had been committed within India’ in S.3 would not have been limited to the supposition that such act had been committed within India but would have extended also to a fiction as to his physical presence at the time in India.

The code does apply to a foreigner who has committed an offence within India not withstanding that he was corporeally present outside (it may also be noted that foreigners who initiate offence abroad that take effect of Indian territory are liable to be punished under the code. Ref. case laws: -Chotelal v. Emperor (36 bom 524)

- *Mubarik Ali v. State of Bombay, (A.I.R. 1957 S.C. 857)*
- *Joyce v. D.P.P. (1946 A.C. 347)*

CHAPTER III

JOINT LIABILITY

When a criminal act is committed by an individual it is easy to assess his liability for punishing him. But when an offence is committed by means of several acts by several persons in furtherance of common intention each of the accused who has participated is guilty of the whole offence. Section 34 of IPC. Provides for such cases and lays down the principle of joint liability.

Sec. 34 reads when a criminal act is done by several persons in furtherance of the common intention of all each of such persons is liable for the act in same manner as if it were done by him alone". Thus the section gives statutory recognition of the common sense principle that if several persons unite with a common intention to effect any criminal object all those who assists in the accomplishment of that object are equally, though some may be at a distance from the spot where the crime is committed.

The essential ingredients of Sec. 34 are

1. where a criminal act is done by several persons
2. in furtherance of common intention of all
3. each of such person is liable for that act in the same manner as if it were done by him alone.

The following two cases are illustrative of the application of the principle to joint liability.

Ref. Case Law:

1) Barendra Kumar Ghosh v. Emperor (1952 Cat 197P.O)
2) Mehboob Shah v. Emperor (Indus reiver act case) (A.I.R.1945 P.C.118)
3) Nachimuthu Gounder v. State of TamilNadu (1947 Mad)

Corporate liability (Alterego - Doctrine)

Ref. Case Law:

- *Moore* v*. Bresler Ltd. (1944 All E.R.515)*
- *Vadivelu Arsuthir* v*. R. (1943 MCJ 445).*

Vicarious liability in criminal law

Ref. case Law:

Ruvula Heri Prasada Rao v. The state (A.I.R. 1951 SC 204)

R. v. Prayagsingh.

CHAPTER IV

STAGES OF CRIME

i) Intention
ii) Preparation
iii) Attempt
iv) Commission of crime.

INTENTION

It is the fist stage in the commission of the offence and known as mental stage. Indian Criminal law also mere intention to commit an offence is not punishable. However, law in certain acts does take notice of an intention to commit an offence.

i.e. wagging war Sec. 121 - 123 IPC Sedition (Sec. 125 - A IPC).

PREPARATION

Preparation is the second stage in the Commission of a crime. Under the Indian penal code, mere preparation to commit the following offences is punishable.

Ref:

- Sec. 122. 126. 399. 233. to 235 255 and 257 I. P. C.
- 242. 243. 266 and 474 I. P. C

ATTEMPT

The term attempt, however, means the direct movement towards the commission of Crime after necessary preparations have been made next stage is commission of offence.

Preliminary crimes:

Abetment: Sec 107, 108, 108A and 109)

Constituents of abetment

i) by instigating
ii) by engaging in a conspiracy
iii) by intentionally aiding.

Ref.Case Law: Saju v. State of Kerala (2001)

Abetors classified in two categories.

i) Accessory before the Act instigation, Preparation, Attempt; Conspiracy...
ii) Accessory after the act.

Accessor after the Act.

The IPC does not recognise accessories after the fact except that it makes a substantive offence of it in few cases

(Ref Sec. 130, 136, 201, 212, 216 and 216 A IPC)

Criminal conspiracy

Chapter V-A of the IPC has been added by criminal law (Amendment) Act 1913.

Essential ingredients:

1. in the intention of two or more but in the agreement of two or more
2. to do an unlawful act
3. to do a lawful act by unlawful means.

Ref. Case Law

i. Fakkhruddin v. State of M.P. (AIR 1967 Sc)
ii. Lennart schusslar and another v. Director of Enforcement (AIR 1970 SC)
iii. Barindra Kumar Ghose v. Emperor (Alipu conspiracy case)
iv. P.N. Talukdr v. S.R.Sarkar A.I.R. 1962 SC 876.

CHAPTER V

PUNISHMENT

OBJECT OF THE PUNISHMENT

The object of punishment is the prevention of crime, and every punishment is intended to have a double effect, viz., to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of the society from committing similar crimes.

THEORIES OF PUNISHMENT

1. Retributive theory

This theory is based on the principle of an eye for an eye and a tooth for a tooth. It is based on primitive nature of vengeance against the wrong doer. The Supreme Court has recently laid down that an eye for an eye approach is neither proper nor desirable. Mandate of Section 354 (3) Cr.P.C. does not approve of it.

2. Deterrent theory

According to this theory the punishment is awarded to deter people from committing the emotion of fear plays a vital role in man's life.

3. Preventive theory

This has also been called "Theory of disablement' as it aims at preventing the crime by disabling the criminal. In order to prevent the repetition of the crime the offenders are punished with death, imprisonment for life or transportation of life.

4. Reformative theory

The object of punishment according to this theory should be to reform criminals. The crime is a mental disease which is caused by different anti-social elements. Therefore, there should be mental cure of criminals instead of awarding them severe punishment.

Ref.Case Law: Ediga Annama v. State of Andhra Predesh (SC).

PUNISHMENT UNDER THE INDIAN PENAL CODE

The scheme of the punishment is laid down from Sections 53 to 75 of the Indian Penal Code out of which five sections (Sections 56, 58, 59, 61 and 62) have already been repealed. Different types of punishments, rules for their assessment and enhancement in subsequent offences, from the subject-matter of this topic.

According to Section 53 of the Code the offenders are liable to the following punishments:

1) Death;
2) Imprisonment for life;
3) Imprisonment which may be rigorous, simple or solitary;
4) Forfeiture of property;
5) Fine.

The Code as originally enacted, contained one more type of punishment known as "Transportation for life". This punishment has now been substituted by imprisonment for life. (Section 53 - A).

The following are the cases where death sentence may be awarded at the discretion of the Court;

a) Waging war against the Government (Section 121)
b) Abetment of mutiny.
c) Fabricating or giving false evidence as a result of which an innocent person suffers death.
d) Murder.
e) To abet an insane, minor or intoxicated to commit suicide (Section 305).
f) Dacoity with murder.

The maximum term of imprisonment that can be awarded should not exceed lifetime of the accused and be not less than 24 hours.

The maximum term of imprisonment that can be awarded should not exceed lifeterm of the accused and be not less than 24 hours.

Solitary confinement according to Section 73 should be awarded in the following manner:

	If term of imprisonment is	**Solitary confinement should not exceed**
a)	6 months	1 month
b)	1 year	2 months
c)	more than 1 year	3 months

Forfeiture of property under the Code was provided for in Sections 61 and 62 which were repealed in 1921. However, under the following Sections the forfeiture of property can be ordered:

i) property used or intended to be used in committing depredations on the territories of a friendly country.

ii) Property received with the knowledge that the same has been taken by waging war or committing depredations under Sections 125 and 126 I.P.C. respectively.

iii) Property purchased by public servant who is legally prohibited to purchase or bid for such property.

Fine: where no specific amount to be imposed as fine is mentioned, it shall be discretionary but not excessive. If punishment awarded for offence is fine only or imprisonment with fine, court should direct that in default of payment of the fine, the accused shall be imprisoned for a certain term which should be in addition to the imprisonment already awarded (Sections 63 and 64). Sections 65 to 70 deal with rule of imprisonment in default of fine. If offence is punishable with fine and imprisonment the term of imprisonment in default of payment of fine should not exceed one fourth of the maximum term fixed for the offence. If maximum term fixed for an offence is 2 years, in default of payment of fine should not exceed one-fourth of the maximum term fixed for the offence. If maximum term fixed for an offence is 2 years, in default of payment of fine, imprisonment awarded should not be for a term exceeding 6 months. As soon as payment of fine is made the prisoner shall be set free. If offence is punishable with fine only, the imprisonment in default of payment of fine shall be simple in the following proportion:

Amount of fine	**Term of Imprisonment**
Upto Rs.50	Not more than 2 months
Upto Rs.100	Not more than 4 months
Exceeding Rs.100	Not more than 6 months

Fine imposed by the Court can be realized within 6 years or during imprisonment when the term of the same is longer than 6 years. The death of a prisoner does not discharge him from liability and his property will be liable for his debt. It has been laid down by the Supreme Court that limitation of 6 years prescribed under Section 70 does not apply to fine imposed for contempt of High Court. The imprisonment in default is not a substitute of fine but it is punishment for default.

Death Sentence:

The Validity of death sentence as being violative of Articles 14, 19 and 21 of the constitution was challenged for the first time in **jagmohan Singh V. State (1973).** But the Court upheld the constitutional validity of Section 302 of the Code. In the meantime the new provisions of the Cr.P.C., 1973 came into being and as per Section 354(3) Judges will have to state special reasons in the judgement for inflicting death penalty. The Court cannot remain silent spectators of what is happening around the society. So the Supreme Court of India came forward with a new ruling about the awarding of death penalty rarest of the rare case Policy in **Bachan Singh V. State of Punjab (1980).**

The following case examples considered as the rarest of rare cases by the Supreme Court. In Kehar Singh V. Delhi Admn. (Indira Gandhi murder case), the accused killed Indira Gandhi while standing on guard duty by firing from carbine, releasing about 25 bullets. Convicting the accused the Court said that it was the most foul and senseless assassination as persons duty bound to protect the life of the Prime Minister have themselves become the assassins. Even the preparation for execution of this (egregious) crime do deserve the dread sentence of the law. It is one of the rarest cases where extreme penalty of death was called for.

The accused raped and brutely killed his niece, a 7 year-old girl, it was held that undoubtedly it falls in the category of rarest of rare cases.

Laxman Naik, v. State, 1994

CHAPTER VI
SPECIFIC OFFENCES

OFFENCES AGAINST THE STATE

Sedition Sec. 124 A

Ref. Case Law: Queen, Emperor v. Bala Ganghadar Tilak (22 Bom 112)

Crime against the State

Sedition is a Crime against the State. Bringing or attempting to bring into hunted or contempt or exciting or attempting to such act or attempt may be done by words spoken or written by signs (Ganash D.Savarkar case) by visible representation, the Act must be international excite disaffection towards the Govt. of India.

Ref. Case: Kedar Nath v. State of Bihar (AIR 1963 SC)

OFFENCES AGAINST PUBLIC PEACE (or) OFFENCES AGAINST PUBLIC TRANQUILITY:

Unlawful assembly (Sec 141 IPC)

Unlawful assembly together with its cognate offences section 141 to 145, 149 to 151 157 and 158 of the IPC.

Ref Case :

1. Dalip Singh v. State of Punjab (AIR 1953 SCJ 532)
2. State v. Nadhu Pande (1969 (2) SCC 207)
3. Musakhan v. State (1977 SC)
4. Sukha v. State (AIR 1965 SC 513)

The Combination of five or more persons who are chited in their purpose of committing a crime (illegal object) that is called unlawful assembly.

Rioting (Sec 146 IPC)

When a particular State of an unlawful assembly is accompanied by use of force or violence it is a riot.

Affray (Sec. 159 and 160)

Affray generally called as offence aginst public tranquility.

When two or more persons fight in a public place and disturb the public peace, they are said to commit an offence of affray.Sec. 160 Punishment for Affray.

Offences against public administration- Bribery

Section 161 - Speaks about the public servant taking gratification other then legal remuneration in respect of an official Act.

The Provisions contained in IPC were felt to be deficient to control corruption, the parliament in 1947 enacted the prevention of Corruption Act. The PCA 1947 was amended. The PCA, 1988 envisages widening the scope of the definition of the public servant and omitting the provisions of Sec. 161 to 165 A IPC.

Ref. case :

1. Dalpat Singh v. State of Rajasthan (AIR 1969 SC)
2. Man Sankar Prabha Sankar v. State of Gujarat (AIR 1970- Guj 97)
3. Tirlock chand jain v. State of Delhi (AIR 1977 SC 665)
4. Rs. Nayak v. A.R.Antulay

Personating a public servant (Sec 170 IPC)

Wearing garb (or) convying taken used by public servant with fraudulent intent (Sec 171) personating a public servant and doing or attempting to do an act in such assumed character under colour of office is punishable.

Offences against Administration of Justice giving and fabricating false evidence

This part '"of false evidence and offences against public justice" comprising 39 Sections i.e. Section 191 to 229 can be roughly divided into the following eleven groups.

Ingredients (Sec 191 IPC)

1) A person must be legally bound (a) by an oath or by an express provision of law to state the truth (or) (b) to make a declaration upon a subject
2) He must make a false statement
3) He must take a false statement
4) He must (a) know or believe it to be false (or) (b) must not believe it to be true.

Fabricating false evidence (Sec 192)

The area covered by the section is as wide as to cover any offence committed with an intent to injury another by creating a false background in any judicial proceeding.

Ref Case Law: *Santakh Singh* v*. Izhar Hussain (1973 SCC Cril J 828)*

CHAPTER VII

OFFENCES AGAINST PERSONS

Culpable Homicide and murder (Sec 299 and 300 IPC)

Sections 299 and 300 of the Indian Penal Code provide for the offence of culpable Homicide and murder respectively. The distinction between culpable homicide and Murder had been clearly explained by Melvill J. in R. v. Govinda (1876 I Bom 344).

Fact: The accused kicked his wife aged 12, and also stuck her several times with his fist on her back; as a result of which she fell down. There upon he put his knee on her chest and gave blows with his fist on her face, which resulted in extravagance of blood in the brain as a result of which she died. Melvill. J. held that it was culpable Homicide not amounting to murder under Sec. 299 IPC.

Melvill J. brought out the distinction between culpable Homicide and murder by analyzing section 299 and 300 as follows:

Section 299	Section 300
Whoever causes death by Doing anact. Culpable. a) with the intention of causing death	(Except in the cases herein after Excepted) Homicide is murder, if the act by which death is caused is done. 1)with the intention of causing death.
b) with the intention of causing such bodily injuras is likely to cause death.	(or) 2)If it is done with the intention of causing such bodily injury as the offender knows be Likely to cause the death of the person to whom the harm is caused.
c) with the knowledge that he is likely by such act to cause death	(or) 3) If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. 4) If the person committing the act knows that it is so-imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such an act without any excuse for incurring the risk of causing death or such injury as aforesaid.

A comparison of clause (b) and 3 shows that the offence is culpable Homicide, the bodily injury intended to be inflicted is likely to cause death, it is murder, if such is sufficient in the ordinary course of nature to cause death. The distinction is fine but appreciably. It is a question of degree of probability. Practically, it will generally resolve itself into a consideration of the nature of the weapon used. A blow from a fist or a stick on a vital part may be likely to cause death, a wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death.

In interpreting the third clause of Sec. 300 it has been expressed that the proper view to take is that the bodily injury suffered by the deceased and found sufficient to cause death should be actually intended by the Supreme Court in Virsa Singh v. The State. The accused after a dispute with the deceased thrust several times with a spear in the abdoment of the deceased and caused gaping wounds. The accused was charged with the offence of murder under section 300 thirdly. The medical evidence proved tht the injuries were sufficient to cause death in the ordinary course of nature. The session judge convicted him for murder and ordered a life sentence.

On appeal to the Supreme Court the Court observed the prosecution must prove the following facts before it can bring a case under Sec. 300, thirdly. Firstly, it must establish quite objectively that a bodily injury is present; secondly, the nature of the injury must be proved. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury that is to say, that it was not accidental or unintentional, or the some other kind of injury was intended. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause the death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

Exception 1 of Section 300

Section 300 provides for grave and sudden provocation as a mitigating factor under Exception-1. When an accused causes death under the influence of a grave and sudden provocation the law views him with leniency as he is deprived of the power of self - Control and he is liable only for culpable Homicide not amounting to murder. The explanation to exception I states that suddenness or gravity of the provocation is a question of fact.

In Nanavathi v. State of Maharastra (A.C. 1962 SC.695) the wife of the accused confessed to him that she had illicit intimacy with the deceased who was not present there. After this the accused drove his wife and children to a cinema, left them there went to his ship. Took a revolver on a false pretext, loaded it with six rounds, did some official business there was drove his car to the office of the deceased and then to his flat went straight to the bedroom of the deceased and shot him dead. Three hours has elapsed between the time when he left his house and the murder took place. The Supreme Court held that the facts did not attract the provisions of Exception-1, as there was sufficient clearly showed that the murder was a deliberate and calculated one. In other words the evidence showed that the accused regained his self-control and killed the deceased deliberately.

Ref. Case Law: Murugesan v. State of T.N (1993) Cri L.J.2565); Sompal v. the State (1977 Cri. L.J.2) Exception 2 (sec 300)

Subba Rao. J. observed in Nanavathi Case “The Indian Law, relevant to the present enquiry may be stated thus:

(1) The test of grave and sudden provocation is whether a reasonable man belonging to the same class society as the accused placed in the situation in which the accused was placed would be so provoked as to lose self-control.

2) In India words and gestures may also under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to S.300 of the Indian Penal Code.

(3) The mental back ground created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

II. Exception :

This exception reduces murder in all Cases in which death has been caused by an excessive use of the right of Self-defence provided the act has been done in good faith without pre meditation and without any intention of doing more harm than was necessary for the purpose of such defence.

Munney Khan v. State of Madhya Pradesh (A.I.R.1971 Sec. 1491): Yogendra morarji v. State of Rajasthan (A.I.R. 1980 SC)

III. Exception:

Bonafide Act of Public servant in excess of powers given to him.

State of West Bengal us. S.M.Singh (AIR 1981 Sc 1917)

IV. Exception:

Death caused in sudden fight without premeditation in the heat of passion.

1. Budhwa v State of Madya Pradesh (AIR 1954 SC)
2. Transferred Malice in Murder case
3. Public prosecutor v. Suryanaryana Moorthy (AIR 1912)
4. Burden of proof in murder case
5. Wollimington v. D.P.P. 1935 AC 462)
6. Ramadas v. State of Maharastra (1997 2 SCC 124)
7. Provocation on murder case:
8. R v. Duffy (1949) ALL ER 932
9. Homes v. D.P.P. (1946 - AC 588)
10. D.P.P. v. complin (1978) 2 All E.R
11. Sec 304 A IPC
12. Tukaram Sitaram v. State (1971 Crl. L.J. 767)

V. Exception:

Culpable Homicide is not murder where death is caused to the person above the age of 18 years suffers death or takes the risk of death with his own consent.

Sec 302 IPC punishment for murder (Ref case Kaliappa Gaudan's case (1938 / 57 mad 158)

Sec 303 IPC- punishment for live convict

Ref case Mithu v. State of Punjab 1983 SC 473

Sec. 304 IPCPunishment for culpable homicide not amounting to Murder

Ref Case R v. Sengoda Goundar 1916 AIR); R v. Palani Goundan (1919 Mad 547)

Sec 307 IPC Attempt to murder

Sec 308 IPC Attempt to culpable homicide

Sec 306 IPC abetment to commit suicide

Sec 309 IPC Attempt to commit suicide

Ref case law relating to suicide cases

1. Maruti Shriputi Dubey v. State of Maharastra (1987 Cr.L.J.743)
2. Chenna Jagadeeswar v. State of A.P 1988 Cr.L.J. 549)
3. P.Rathinam v. Union of India (1994)
4. Gain Kaur v. State of Punjab

Constitutional validity of the Death penalty

1. Jagmohan singh v. State of UP (A.I.R. 1973 SC 947)
2. Ranjit Singh v. Union territory chandigarh

Sec 310 Thugs special Provisions for Dacoit gang (Ref. Criminal Tribes Act.)

Sec 312 Miscarriage Ref medical termination Act 1971

Hurt and grievous hurt (Sec 319 and 320 IPC)

Hurt: Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Grievous hurt: The following kinds of hurt only are designated as 'grievous'

i) Emasculation - To emasculate means to deprive of virile procreative power.
ii) Permanent privation of the sight of either eye.
iii) Permanent privation of the hearing of either ear.
iv) Privation of any member or joint.
v) Destraction or permanent impairing of the powers of any member or joint.
vi) Permanent disfiguration of the head or face.
vii) Fracture (or) dislocation of a bone or tooth.
viii) Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits (Sec.320)

Case law Ref: Naib Singh v. State of Punjab (1986 Cri.L.J.2061 SC

Types of Kidnapping

1. From India (sec.360)
2. From lawful guardianship (361)

Ingredients of Kindnapping

1. Takes or entices a minor or any person of unsound mind.
2. Person taken or enticed away should be below 16 years of age if male, 18 years of age if female or a person of unsound mind.
3. The taking or enticing should be from the keeping of the lawful guardian.
4. Taking or enticing should be without the consent of such guardian.

Ref. Case Law: R. v. Prince (L.R.2 CCR); Varadarajan v. State of Madras

Abduction (Sec. 362 IPC)

Wherever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person

RAPE- (SEC 375)

Definition of the Rape

A man can commit Rape

1) against her will
2) Without her consent
3) with her consent obtained by putting her in fear of death or of hurt.
4) with her consent when the man knows that he is not her husband and that on sent is given under a false belief.
5) with her consent when she was insane (or) intoxicated stage (case law cablin's case)
6) with or without her consent when she is under 16 years of age.

(Ref. case law State of Karnataka v. Krishnappa (2000)

Exception

Sexual intercourse by husband his own wife if she is above 15 years of age is not rape if she is under 15 years of age it is rape.

Explanation

Penetration is sufficient to constitute the offence of rape.

- Case law Allens case (1839)

Husband can be guity of abetment

- Lord Audbey's case

Men's rea in rape case D.P.P. v. Morgan

Abetment by inducement R v. Cogan (1975)

The Criminal law (Amendment Act 1983 introduced new Sections in IPC Ref. Thukkaram v State of Maharastra (1980)

Sec 376 A Marital rape (Ref case Ram kumar v. State of H.P. 1946)

Sec 376 B - Rape by public servant

Sec 376 C - Rape by Jail Authorities.

Sec 376 D Rape by staff of the hospital.

Sec. 376 (2) (2) (i) to (iii) custodial rape

Sec. 376 (2) (g) - Gang rape

Ref Case - Arun Kumar v. State of U.P.; Balwant Singh case (1987)

376 (2) (8) - Rape on minor girl (under age of 12)

Ref Case - State of A.P. v. Bodem Sundara Ra (AIR 1996)

Attempt to commit rape:

Mohan lal v. Jammu Kasmir (1998 Cri L.J. 667)

Un natural offence (Sec 377 IPC)

Un natrual offence is voluntarily having carnal intercourse against the order of nature with any man, woman, (or) animal.

Ref case law - Grija Devi v. State (2000);

3. Bestiality - Khandu v. Emperor (A.I.R.1934)

4. Sodomy - Chitranjit singh case.

Outraging the modesty of a woman (Sec 354 IPC)

Outraging the modesty of a woman is an offence provided there is use of assault or criminal force with the intention for the purpose or knowing it likely that he will thereby outrage her modesty. The offence under this Section different from rape and is of seriousness than the one under section 376.

Ref Case Law - Major Singh Case

K. P. S. Gill v. Rupan Deol Bajaj (1995)

Criminal force and Assault: Sec. 350 and 351 IPC)

Ref: Durga Charan Naik v. State of orissa (AIR 1966 SC 1775)

Offence against human Freedom: (Wrongful restrain and wrongful Confinement)

Wrongful Restraint:

Ingredients:

i) Voluntarily obstructs any person.

ii) So as to prevent him from proceeding in any direction in which that person has a right to proceed.

Wrongful Confinement:

Ingredients:

i) Wrongful restraint of a person.

ii) In a manner as to prevent him from proceeding beyond certain circumscribing.

Ref case : Nilabat Behera v. State of orissa (AIR 1993 SC 1960)

Rudul Shaw v. State of Bihar (AIR 1983 SC 1086)

CHAPTER IX
OFFENCES AGAINST PROPERTY

THEFT (SEC 378 IPC)

Ingredients:

1. Movable property
2. It should be in the possession of another person.
3. The accused should move such property in order to take it out of his possession.
4. He should do so without his consent.
5. Intended to take the property dishonestly.

Ref Case law- K.N.Mehra v. State of Rajasthan A.I.R. (1975 SC 369)

EXTORTION (Sec. 383 IPC)

Extortion is a form of theft in aggravated stage.

Ingredients

1. The accused should threaten any person with any injury to that person or an other.
2. The person put in fear should be induced.
   a. to deliver any property
   b. to deliver any valuable security
   c. or anything which may be invereted into valuable security
   d. accused should have acted with dishonest intention.

ROBBERY (Sec 390 IPC)

Theft to become Robbery

1) The accused should cause or attempt to cause death or hurt or wrongful restraint or fear of instant death instant hurt or instant wrongful restraint.
2) He should use such force or employ violence for one of three purposes.
   a) In order to commit theft.
   b) In the course of committing theft.
   c) In carrying away or attempting to carry away stolen property.
3) The accused should cause shuch hurt violently

   Ref case Laws: Kushomathton v. State of Bihar (AIR 1980 SC)
   Smith v. Desmound (1965) All E.R.976

DACOITY - (Sec 391 IPC)

1) When five or more persons can jointly commit or attempt to commit robbery.
2) With common intention.
3) Person present and aiding such Commission or attempt liable for dacoity.

Attempt is equivalent with commit in Dacoity attempt to commit dacoity is Dacoity itself.

Ref Case Law: Shyam Behari v. State of UP AIR 1957

Sec 403 IPC Misappropriation

Case law: R v. Sita

Section 405 IPC Criminal Breach of Trust

Ref Case law- Preteba Rani v. Suraj Kumar AIR 1986 C 628) R.K.Dalmioa v. Delhi Aministrtion.

Sec. 410 IPC Receiving Stole Property.

Ref case Sheonath v. State of UP (1970 A.I.R)

Sec. 415 IPC cheating

Ingredients

1. The accused should deceive another person .
2. The person deceived should be induced to deliver any property to any person or consent to be detention of property by any person.
3. The accused should have acted dishonestly and fraudulently.

Dishonest obtaining of Property by deception

I) the accused should deceive another person

II) The person deceived should be induced to do or omit to do anything which act or omission either causes or likely to cause injury to that person in body, mind reputation or property.

III) The accused should have acted intentionally.

Aggravated forms of cheating.

Cheating by personation Sec. 419 IPC

Ref Case Laws : R v. Appusamy (1886) 12 Mad (3)

4. Krishna moorthy v. State of A.P (1965)
5. Sushil Kumar Datta v. state 1985 Cri. L. J. 1948
6. Sec. 420 IPC cheating and thereby dishonestly inducing delivery of property.

MISCHIEF (Sec 425 IPC)

1) Wrongful loss or damage to the public (or) any person be intended or be likely.
2) Any property should either be destroyed or any such change should occur in any property, or in the situation thereof destroys or diminishes its value or utility or affects it injuriously.

Case Law reference Sir Ram v. Emperor.

Criminal Trespass (Sec. 441 IPC)

As regards criminal trespass the entry upon other's land must be made with a guilty intent mentioned insection 441.

House breaking is an offence u/Sec 445 IPC

CHAPTER X

OFFENCES RELATING TO MARRIAGE Sec. 493 to 498 IPC

- Mock marriage sec 493 and 496

  Rambilas Singh v. State of Bihar (AIR 1989 SC 1593)
- Bigamy - Section 494, 495 and 496

Ms. Tolson's case

- Kawall Ram v. Himachal Pradesh (AIR 1966 SC 614.
- Sarla Mudgal v. Union of India AIR 1995 SC
- Lily Thomas v. Union of India AIR 2000

Adultery - Section 497

A married man having sexual intercourse with (i) an unmarried woman (ii) or with a widow or a married women whose husband consents to it or iv) with a divorced woman, commits no offence under this section.

Ref Case:

Yusuf Abdul Aziz v. State of Bombay

Justice Malimatti committee and Madavamenon committee reports.

Nanavathi v. State of Maharastra,.

Sowmithri Vishnu v. Union of India (AIR 1985 SC 1618)

Elopment (Sec 498)

The Section Punishes any person who

a) takes or entires away or conceals or detains the wife of another man from that man or from any person having the care of her on behalf of that man.

b) with knowledge that she is or having reason to believe that she is a wife of another man, and

c) with intext that she may have sexual intercourse lariat any person.

1. Alamgir v. the State of Bihar 1959 SCJ 457.
2. Ramanarayana Karup (1936) 39 Bom LR 61

Dowry Death (304 B)

This Section was added by Dowry Prohibition (Amendment) Act 1983. The object of this section to is prevent increasing number of dowry death in India and to provide stringent punishment for the same. Under this Section 'Dowry death' is punishable and it should occur within 7 years of marriage.

Lichhama Devi v. State of Rajasthan (1988 - SCC 456)

Delhi Administration v. laxman Kumar (1985-4-SCC 476)

Cruelty 498-A

This section was inserted by the Criminal law (Amendment) Act 1983 as observed by the Supreme Court of India in B. S. Joshi v. State of Haryana (2003) the object of introducing chapter XX-A in the IPC was to prevent torture to a woman by her husband or by relatives of her husband.

Ref Case:

Romesh Kumar v. State of Punjab (1986) Cri. L.J.2087

Ashok Kumar v. State of Haryana 1986 Cri.L.J. 1963

Constitutional Validity Challenged

Inder Raj Malik and others. v. Mrs. Sunitha Malik 1986 Cri. L.J. 1510.

Offences relating to religion

OFFENCES RELATING TO RELIGION

Sec. 295 IPC

Destroying, damaging or defiling any place of worship or object with intent to insult.

Ref Case: S.Veerbhadran Chettiar v. E.V.Ramaswami Naicker. AIR 1958 SC 1032.

Sec 295 A

Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious feelings:

Ref Case:

Acharya Ramesh v. Naval Thakur 1990 Cri L.J. 2511.

Ramji lal Modi v. State of U. P. A. I. R. 1957 SC 620.

Sant Das Maheswari v. Babu Ram A. I. R. 1969 All 436.

Disturbing religious assembly (296)

- Trespassing on burial places (297)

- Uttering words etc., with deliberate intent toward religious feelings (298) also offences under this head.

Defamation (Sec. 499 to 502 IPC)

Ref Case : Merivale v. Carson,
Natigam P.Ramaswamy v. M.Karunanithi

Criminal intimidation (Sec. 503 IPC)

Ref Case : Ramesh Chandra Arora v. The State (AIR 1960 Sec 154.

Insult the modesty of women IPC Sec. 509

Ref: case: Mohamed Kassim Chisty case.

511 IPC Attempt to commit offence.

Ref case: State of Maharastra v. Mohamad Yakub (A.I.R. 1980 SC 1111)

OBSCENITY

Section 292, 293 and 294 speak of obscenity. The sections prohibit and punish sale of obscene books or obscene objects, doing of any obscene act or reciting or uttering any obscene songs, ballads or words.

Ref. case law: R v. Hicklin (1868) - (Hicklin test)

AMENDMENTS TO THE INDIAN PENAL CODE(45 OF 1860):

1. After section 29, the following section shall be inserted, namely:—
   Electronic record-"29A. The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000.".
2. In section 167, for the words "such public servant, charged with the preparation or translation of any document, frames or translates that document", the words "such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record" shall be substituted.
3. In section 172, for the words "produce a document in a Court of Justice", the words "produce a document or an electronic record in a Court of Justice" shall be substituted.
4. In section 173, for the words "to produce a document in a Court of Justice", the words "to produce a document or electronic record in a Court of Justice" shall be substituted.
5. In section 175, for the word "document" at both the places where it occurs, the words "document or electronic record" shall be substituted.
6. In section 192, for the words "makes any false entry in any book or record, or makes any document containing a false statement", the words "makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement" shall be substituted.
7. In section 204, for the word "document" at both the places where it occurs, the words "document or electronic record" shall be substituted.
8. In section 463, for the words "Whoever makes any false documents or part of a document with intent to cause damage or injury", the words "Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury" shall be substituted.
9. In section 464,—
   'Explanation 3.—For the purposes of this section, the expression "affixing digital signature" shall have the meaning assigned to it in clause (d) of subsection (1) of section 2 of the Information Technology Act, 2000.'.
10. In section 466,—
    (a) for the words "Whoever forges a document", the words "Whoever forges a document or an electronic record" shall be substituted;
    (b) the following Explanation shall be inserted at the end, namely:— 'Explanation.—For the purposes of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000.'.

11. In section 468, for the words “document forged”, the words “document or electronic record forged” shall be substituted.

12. In section 469, for the words “intending that the document forged”, the words “intending that the document or electronic record forged” shall be substituted.

13. In section 470, for the word “document” in both the places where it occurs, the words “document or electronic record” shall be substituted. In section 471, for the word “document” wherever it occurs, the words “document or electronic record” shall be substituted.

14. In section 474, for the portion beginning with the words “Whoever has in his possession any document” and ending with the words “if the document is one of the description mentioned in section 466 of this Code”, the following shall be substituted, namely:—

    “Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as a genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code.”.

15. In section 476, for the words “any document”, the words “any document or electronic record” shall be substituted.

16. In section 477A, for the words “book, paper, writing” at both the places where they occur, the words “book, electronic record, paper, writing” shall be substituted.

17. Section 166A- After section 166 of the Indian Penal Code, the following section shall be inserted, namely:-

    “ Whoever, being a public servant, -

    (a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter, or

    (b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.”

18. In section 509 of the Penal code, for the words “shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both”, the words “shall be punished with simple imprisonment for a term which may extend to seven years and shall also be liable to fine which may not be less than Rs.1000” shall be substituted.

The Criminal Law Amended Act,2010 added the term sexual assault and amended Sec.166, sec.375,sec.374,376B,376C,376D and Sec.509 .The Criminal Law Amendment Act,2013 has added the following provisions:1)Insertion clause 7 to original sec.100 relating to throwing acid would amount to grievous hurt 2) Sec 166 A Public Servant disobeying direction under law3) Punishment for non treatment of a victim .3) Sec.228 A insertion of Figures and words 4) Sec.326 A (Voluntarily causing grievous hurt by the use of acid & 326 B (Voluntarily throwing or attempt to throw acid 5) Sec.354 A (Sexual Harassment and Punishment for Sexual Harassment 6)354 B(Assault or use of criminal force with intent to disrobe 7) Sec. 354 C (Voyurism) 8) 354 D (Stalking) 9) Sec.370 (Trafficking of persons) 10) Sec 370 A (Exploitation of Trafficked person) 11) Sec.375 Expanded explanation of term Rape. 12) Sec.376 Punishment for Rape 13) Sec.376 A (Punishment for causing death or resulting in persistent vegetative state of a victim) 14) Sec.376 B (Sexual Intercourse by the husband upon his wife during separation) 15) Sec .376 C Sexual Intercourse by the person in authority 16) Sec.376 D(Gang Rape) 17) Sec.376 E (Punishment for repeat offenders) 18) Sec.509 (Punishment).

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