

## **Module 2 : Central Administration**

Chapter 1 : Organs of Government

Chapter 2 : Constitution of India

Chapter 3 : The Legislature

Chapter 4 : The Executive

- President
- Prime Minister
- Council of Ministers
- Central Secretariat
- Cabinet Secretariat

Chapter 5 : Boards and Commissions

Chapter 6 : Judiciary

## Chapter – I

### Organs of Government

The state must exercise its sovereignty over its territory and the people living in it. While performing its functions the state also keeps in view the well-being, as well as law and order in society to achieve progress in different fields. For the smooth functioning of the society, there are certain laws according to which disputes of different kinds are settled. Such laws have to be made in manner that gives them credibility. Laws regulate the functioning of the society and all the individuals must accept. Making laws, their effective implementation and settling disputes are the three basic functions that the state performs. The three functions are performed by the legislature, the executive and the judiciary respectively.

In the earlier ages, these three functions were combined in the hands of the monarch. The king or the queen was the sole repository of state sovereignty and he / she pronounced the laws, administered them through the officials and also settled disputes. He was the supreme law maker and the highest source of law and justice. The three functions came to be perceived as distinct when the state came to handle matters that were more in number and complex. The monarch found it necessary to delegate many of the functions to other agencies. Early Greek and Roman writers viewed the three functions separately. It was emphasised that power was likely to be misused if all the powers concentrated in the hands of the monarch. Misuse of power was to be checked. The monarch was to function for the welfare of the society. Welfare of the society was regarded as the objective of the state by both ‘Shanti Parva’ of *Mahabharata* and Kautilya’s *Arthashastra*. Putting checks on the powers of the monarch was one way of preventing the misuse of power. Separating the three powers of legislating, executing and adjudicating and vesting them in three separate hands of power. The *Theory of Separation of Powers* was advocated by Locke, Bodin and Montesquieu. Evolution of political institutions in England strengthened the theoretical basis of separation of powers. The political arrangements under the constitution of U.S.A. provided sound basis to this theory.

After relationally separating the legislative, the executive and the judicial functions, they are assigned to the respective institutions. But for a

coordinated functioning of the government it is not advisable to separate governmental powers into watertight compartments. Moreover, assigning absolute powers to any institution is again likely to be misused. An extension of the practice of separation of powers is the system of checks and balances. Once the legislative, the executive and the judicial powers are assigned to separate institutions, each institution has some powers that check the powers of the other so that none of them act in a completely separate fashion. Thus the legislative powers are exercised by the legislature, but the other two branches (the executive and the judiciary) have some powers to check the legislative institutions. The executive and judiciary have powers which are checked in the same manner. This arrangement ultimately helps the government to function in a balanced manner.

The constitution of India provides for a parliamentary system of government. The executive and the legislative branches are combined, but the judiciary is independent of them.

## Chapter II

### Constitution of India

The Constitution of India is the supreme law of the land, which is fundamental in the governance of India. The Constitution of India was enacted on 26th November, 1949 and was adopted on 26th January, 1950. The Draftsmen of the Indian Constitution took inspiration from Constitutions all over the world and incorporated their attributes into the Indian Constitution. For example Part III on Fundamental Rights is partly derived from the American Constitution and Part IV on Directive Principles of State Policy from the Irish Constitution.

#### **The importance of the Constitution**

The Constitution lays down the basic structure of government under which the people are to be governed. It establishes the main organs of government - the **executive**, the **legislature** and the **judiciary**. The Constitution not only defines the powers of each organ, but also demarcates their responsibilities. It regulates the relationship between the different organs and between the government and the people.

The Constitution is superior to all other laws of the country. Every law enacted by the government has to be in conformity with the Constitution. The Constitution lays down the national goals of India - Democracy, Socialism, Secularism and National Integration. It also spells out the rights and duties of citizens.

The Constitution applies to the State of Jammu and Kashmir with certain exceptions and modifications as provided in article 370 and the Constitution (Application to Jammu and Kashmir) Order, 1954

#### **Preamble**

*We, the people of India having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens:*

*Justice, social, economic and political;  
Liberty of thought, expression, belief, faith and worship;  
Equality of status and of opportunity;*

*And to promote among them all*

*Fraternity assuring the dignity of the individual and the unity  
and integrity of the Nation;*

*In our constituent assembly this twenty-sixth day of November, 1949,  
do hereby adopt, enact and give to ourselves this constitution.*

The original drafting used the words "sovereign democratic republic". The two additional words "socialist" and "secular" were introduced by the controversial 42<sup>nd</sup> amendment.

### ***The importance of the Preamble***

The preamble is not a part of the Constitution of India as it is not enforceable in a court of law. However, the Supreme Court has, in the case of 'Kesavananda Bharati v. State of Kerala', recognized that the Preamble is a part of the Constitution and may be used to interpret ambiguous areas of the Constitution where differing interpretations present themselves. However, the Preamble is useful as an interpretive tool *only* if there is an ambiguity in the article itself and should not be treated as a rights bestowing part of the Constitution.

The first words of the Preamble - "We, the people" - signify that power is ultimately vested in the hands of the people of India. The Preamble lays down the most important national goals which every citizen and the government must try to achieve, such as socialism, secularism and national integration

### ***Explanation of some of the important words in the Preamble***

#### *Sovereign*

The word sovereign means supreme or independent. India is internally and externally sovereign - externally free from the control of any foreign power and internally, it has a free government which is directly *elected by the people and makes laws that govern the people.*

### *Socialist*

The word socialist was added to the Preamble by the 42<sup>nd</sup> amendment act of 1976. It implies social and economic equality. Social equality in this context means the absence of discrimination on the grounds of caste, colour, creed, sex, religion, language, etc. Under social equality, everyone has equal status and opportunities. Economic equality in this context means that the government will endeavour to make the distribution of wealth more equal and provide a decent standard of living for all. This is in effect emphasizing a commitment towards the formation of a Welfare state.

India has adopted a mixed economy and the government has framed many laws to achieve the aim of social equality, such as the Abolition of Untouchability and Zamindari, the Equal Wages Act, Bonded Labour Abolition Act and the Child Labour Prohibition Act.

### *Secular*

The word secular was inserted into the Preamble by the 42<sup>nd</sup> amendment act of 1976. It implies equality of all religions and religious tolerance. India therefore does not have an official state religion. Every person has the right to preach, practice and propagate any religion they choose. The government must not favour or discriminate against any religion. It must treat all religions with equal respect. All citizens, irrespective of their religious beliefs are equal in the eyes of law. No religious instruction is imparted in government or government-aided schools. The Supreme Court in S.R Bommai v. Union of India held that secularism was an integral part of the basic structure of the constitution.

### *Democratic*

India is a democracy. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise. Every citizen of India, who is 18 years of age and above and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis of caste, creed, colour, sex, religion or education.

## *Republic*

As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years.

## *Schedules*

Schedules can be added to the constitution by amendment. The twelve schedules in force cover the designations of the States and Union Territories; emoluments for high-level officials; forms of oaths; allocation of the number of seats in the Rajya Sabha (Council of States - the upper house of Parliament) per State or Union Territory; provisions for the administration and control of Scheduled Areas and Scheduled Tribes (areas and tribes needing special protection due to disadvantageous conditions); provisions for the administration of tribal areas in Assam; the Union (central government), State, and Concurrent (dual) lists of responsibilities; the official languages; land and tenure reforms; the association of Sikkim with India; anti-defection provisions for Members of Parliament and Members of the State Legislatures; rural development; and urban planning.

## ***Constitutional Amendments in India***

A Constitution should be a dynamic document. It should be able to adapt itself to the changing needs of the society. Sometimes under the impact of new powerful social and economic forces, the pattern of government will require major changes. Keeping this factor in mind the Draftsmen of the Indian Constitution incorporated Article 368 in the Constitution which dealt with the procedure of amendment. Due to Article 368 the Indian Constitution can neither be called rigid nor flexible but in fact it is partly rigid and partly flexible.

During the 56 years of the Constitution, more than 100 Amendments have taken place. The first amendment took place in June, 1950. While some amendments were a natural product of the eventual evolution of the new political system established under the Constitution in 1950, there were others necessitated by practical difficulties.

## *Methods of Amendment*

- By simple majority of the Parliament: Amendments in this category can be made by a simple majority of members present and voting, before sending them for the President's assent.
- By special majority of the Parliament: Amendments can be made in this category by a two - third majority of the total number of members present and voting, which should not be less than half of the total membership of the house.
- By special majority of the Parliament and ratification of at least half of the state legislatures by special majority. After this, it is sent to the President for his assent.

An amendment to the Constitution is an extremely difficult affair, and normally needs at least two-thirds of the Lok Sabha and Rajya Sabha to pass it. The Constitution of India is one of the most frequently amended constitutions in the world. Many matters that would be dealt with by ordinary statutes in most democracies must be dealt with by constitutional amendment in India due to the document's extraordinary detail. Most of the Constitution can be amended after a quorum of more than half of the members of each house in Parliament passes an amendment with a two-thirds majority vote. Articles pertaining to the distribution of legislative authority between Union and State governments must also be approved by fifty percent of State legislatures.

The question whether Fundamental Rights can be amended under Article 368 came for consideration of the Supreme Court in *Shankari Prasad v. Union of India*. It challenged the validity of the 1st Amendment to the Constitution. In this case it was held that a constitution amendment will also be held valid even if it abridges or takes away any of the fundamental rights. A similar decision was given by the hon'ble Supreme Court in *Sajjan Singh v. State of Rajasthan* which challenged the validity of the 17<sup>th</sup> Amendment. In *Golaknath vs. State of Punjab*, the validity of the Constitution (17<sup>th</sup> Amendment) Act, 1964 was again challenged, which inserted certain State Acts in Ninth Schedule. The Supreme Court in its landmark decision overruled the decision given in the *Shankari Prasad* and *Sajjan Singh*'s cases. It held that the Parliament had no power from the date of this decision to amend Part III of the Constitution so as to take away or abridge the Fundamental rights. Eleven judges participated in this decision with the ratio being 6:5. The judges were worried about the numerous amendments made

to abridge the fundamental rights since 1950. It apprehended that if the courts were to hold that the Parliament had power to take away fundamental rights, a time might come when these rights are completely eroded. The Chief Justice applied the doctrine of Prospective Overruling and held that this decision will have only prospective operation and, therefore, the 1st, 4th and 17th amendment will continue to be valid.

It means that all cases decided before the Golaknath case shall remain valid. In order to remove difficulties created by Golaknath's decision parliament enacted the 24th Amendment.

Thus the 24th amendment restored the amending power of the Parliament. The validity of the 24th amendment was challenged in the case of *Keshavnand Bharati v. State of Kerala*. It challenged the validity of the Kerala Reforms Act, 1963 but during the pendency of the petition, the Kerala Act was placed in the Ninth Schedule by the 29th Amendment. The question involved was the extent of the amending power conferred by Article 368 of the Constitution. A Special bench of 13 judges was constituted to hear the case. The Court by majority overruled the Golaknath case which denied Parliament the power to amend fundamental rights of citizens. It held that the 24th amendment merely made explicit which was implicit in the unamended Article 368. The Court held that under the Article 368 Parliament is not empowered to amend the basic structure or framework of the Constitution. After the decisions of the Supreme Court in *Keshavnand Bharati* and *Indira Gandhi cases* the Constitution (42nd Amendment) Act, 1976, was passed which added two new clauses, namely, Clause (4) provided that no constitutional amendment (including the provision of Part III) or purporting to have been made under Article 368 whether before or after the commencement of the Constitution (42nd Amendment) Act, 1976 shall be called in any court on any ground and Clause (5) removed any doubts about the scope of the amending power. It declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal of the provisions of the Constitution under this Article. Thus by inserting this clause it was made clear that the basic structure of the Constitution could be amended. In *Minerva Mills v. Union of India* the Supreme Court by 4 to 1 majority struck down clauses (4) and (5) of Article 368 inserted by the 42nd amendment, on the ground that these clauses destroyed the essential feature of the basic structure of the Constitution. Since these clauses removed all limitations on the amending power and thereby conferred an unlimited amending power, it was

destructive of the basic structure of the Constitution. The judgment of the Supreme Court thus makes it clear that the Constitution not the Parliament is supreme in India. The Parliament owes its existence to the Constitution and it cannot take priority over the Constitution. Therefore this landmark decision ended the long controversy between the Courts and the Executive.

The amendment process was incorporated in the Constitution by the Draftsmen of the Constitution to help India adapt itself to the changing circumstances. Society is never stagnant. It is ever-changing. Therefore the amending procedure was made partly flexible so as to make it easy for the Legislature. But the Parliament started thinking that it has unlimited amending power. It assumed itself to be the supreme law when the Constitution is the supreme law of the land. The Parliament started making amendments which were destroying the basic structure of the Indian Constitution. But after the landmark decisions of Keshavnand Bharati and Minerva Mills the Court by its power of judicial review has curtailed the amending power of the Parliament. The amendments made by the Parliament can no more affect the basic structure of the Constitution.

### ***Articles***

- Part I - consists of Articles 1 - 4 on the Union and its Territory
- Part II - consists of Articles 5 - 11 on Citizenship.
- Part III - consists of Articles 12 - 35 on Fundamental Rights.
  - Articles 14 - 18 on Right to Equality,
  - Articles 19 - 22 on Right to Freedom,
  - Articles 23 - 24 on Right against Exploitation,
  - Articles 25 - 28 on Right to Freedom of Religion,
  - Articles 29 - 31 on Cultural and Educational Rights,
  - Articles 32 - 35 on Right to Constitutional Remedies.
- Part IV - consists of Articles 36 - 51 on Directive Principles of State Policy.
- Part IV (A) - consists of Article 51A - Fundamental Duties of each citizen of India.
- Part V - consists of Articles on the Union.

### ***Chapter I - Articles 52 to 78 on The Executive.***

- Articles 52 - 73 on the President and Vice-President,

- Articles 74 - 75 on Council of Ministers,
- Articles 76 - Attorney General of India,
- Articles 77 - 78 on the Conduct of Government Business

***Chapter II - Articles 79 - 122 on Parliament.***

- Articles 79 - 88 on Constitution of Parliament,
- Articles 89 - 98 on Officers of Parliament,
- Articles 99 - 100 on Conduct of Business,
- Articles 101 - 104 on Disqualification of members,
- Articles 105 - 106 on Powers, privileges and Immunities of Parliament and its Members,
- Articles 107 - 111 on Legislative Procedure,
- Articles 112 - 117 on Procedure in Financial Matters,
- Articles 118 - 122 on Procedure Generally.

***Chapter III - Article 123 on the Legislative Powers of the President.***

- Article 123 on Power of president to promulgate Ordinances during recess of Parliament

***Chapter IV - Articles 124 - 147 on The Union Judiciary***

- Articles 124 - 147 Establishment and Constitution of the Supreme Court

***Chapter V - Articles 148 - 151 on the Controller and Auditor-General of India.***

- Articles 148 - 151 on Duties and powers of Comptroller and Auditor-General.
- **Part VI - Articles on the States.**

***Chapter I - Article 152 on the General definition of a State of the Union of India***

- Article 152 - Exclusion of the state of Jammu and Kashmir from the general definition of a state of the Union of India.

***Chapter II - Articles 153 - 167 on The Executive***

- Articles 153 - 162 on The Governor,
- Articles 163 - 164 on The Council of Ministers,
- Article 165 on the Advocate-General for the State.
- Articles 166 - 167 on the Conduct of Government Business.

***Chapter III - Articles 168 - 212 on The State Legislature.***

- Articles 168 - 177 General
- Articles 178 - 187 on the Officers of the State Legislature,
- Articles 188 - 189 on Conduct of Business,
- Articles 190 - 193 on Disqualification of members,
- Articles 194 - 195 on Powers, Privileges and Immunities Parliament and its Members,
- Articles 196 - 201 on Legislative Procedure,
- Articles 202 - 207 on Procedure in Financial Matters,
- Articles 208 - 212 on Procedure Generally.

***Chapter IV - Article 213 on the Legislative Powers of the Governor***

- Article 213 - Power of president to promulgate Ordinances during recess of Parliament

***Chapter V - Articles 214 - 231 on The High Courts in the States.***

- Articles 214 - 231 on High Courts in the States,

***Chapter VI - Articles 232 - 237 on the Subordinate Courts***

- Articles 232 - 237 on Subordinate Courts

- **Part VII** - consists of Articles on States in the B part of the First schedule.

- Article 238 Repealed, Replaced by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

- **Part VIII** - consists of Articles on The Union Territories

- Articles 239 - 242 Administration, creation of Council of Ministers and High Courts

- **Part IX** - consists of Articles on the Panchayat system.
  - Articles 243 - 243O on the Gram Sabha and Panchayat system
- **Part IXA** - consists of Articles on Municipalities.
  - Articles 243P - 243ZG on Municipalities
- **Part X** - consists of Articles on the scheduled and Tribal Areas
  - Articles 244 - 244A on Administration, creation of Council of Ministers, and legislatures.
- **Part XI** - consists of Articles on Relations between the Union and the States.

***Chapter I - Articles 245 - 255 on the Distribution of Legislative Powers***

- Articles 245 - 255 on Distribution of Legislative Relations

***Chapter II - Articles 256 - 263 on Administrative Relations***

- Articles 256 - 261 - General
- Article 262 - on Disputes relating to waters.
- Article 263 - on Co-ordination between States

- **Part XII** - consists of Articles on Finance, Property, Contracts and Suits

***Chapter I - Articles 264 - 291 on Finance***

- Articles 264 - 267 General
- Articles 268 - 281 on Distribution Revenues between the Union and the States
- Articles 282 - 291 on Miscellaneous Financial Provisions

***Chapter II - Articles 292 - 293 on Borrowing***

- Articles 292 - 293 on Borrowing by States

***Chapter III - Articles 294 - 300 on Property, Contracts, Right, Liabilities, Obligations and Suits***

- Articles 294 - 300 on Succession to property assets, liabilities, and obligations.

***Chapter IV - Article 300A on the Right to Property***

- Article 300A - on Persons not to be deprived of property save by authority of law
- **Part XIII** - consists of Articles on Trade and Commerce within the territory of India
- Articles 301 - 305 on Freedom of Trade and Commerce, and the power of Parliament and States to impose restrictions on the same
- Article 306 - Repealed - Replaced by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.
- Article 307 - Appointment of authority for carrying out the purposes of articles 301 to 304.
- **Part XIV** - consists of Articles on Services Under the Union and the States

***Chapter I - Articles 308 - 314 on Services***

- Articles 308 - 313 on Services
- Article 314 - Repealed - Replaced by the Constitution (Twenty-eighth Amendment) Act, 1972, s. 3 (w.e.f. 29-8-1972).

***Chapter II - Articles 315 - 323 on the Public Service Commissions***

- Articles 315 - 323 on Public Service Commissions
- **Part XIVA** - consists of Articles on Tribunals
- Articles 323 A - 323 B
- **Part XV** - consists of Articles on Elections
- Articles 324 - 329 on Elections

- Article 329A - Repealed - Replaced by the Constitution (Forty-fourth Amendment) Act, 1978, s. 36 (w.e.f. 20-6-1979).
- **Part XVI** - consists of Articles on Special Provisions Relating to certain Classes.
  - Articles 330 - 342 on Reservations
- **Part XVII** - consists of Articles on Official Language

#### **Chapter I - Articles 343 - 344 on Language of the Union**

- Articles 343 - 344 Official Language of the Union
- **Chapter II** - Articles 345 - 347 on Régional Languages
  - Articles 345 - 347 on Language of the State

#### **Chapter III - Articles 348 - 349 on Language of the Supreme Court, High courts, Etc**

- Articles 348 - 349 on Language used in Supreme Court, High courts Etc

#### **Chapter IV - Articles 350 - 351 on Special Directives**

- Article 350 - on Language to be used in representations for redress of grievances.
- Article 350A - on Facilities for instruction in mother-tongue at primary stage.
- Article 350B - on provision for Special Officer for linguistic minorities.
- Article 351 - on Directive for development of the Hindi language.
- **Part XVIII** - consists of Articles on Emergency Provisions
  - Articles 352 - 359 on Emergency Provisions
  - Article 359A - Repealed - Replaced by the Constitution (Sixty-third Amendment) Act, 1989, s. 3 (w.e.f. 6-1-1990).
  - Article 360 - on Provisions as to financial emergency.

- **Part XIX** - Miscellaneous
  - Articles 361 - 361A - Miscellaneous
  - Article 362 - Repealed - Replaced by the Constitution (Twenty-sixth Amendment) Act, 1971, s. 2.
  - Articles 363 - 367 - Miscellaneous
  
- **Part XX** - consists of Articles on Amendment of the Constitution
  - Articles 368 on the Power of parliament to amend the constitution and procedure therefore
  
- **Part XXI** - consists of Articles on Temporary, Transitional and Special Provisions
  - Articles 369 - 378A on Temporary, Transitional and Special Provisions
  - Article 379 - 391 - Repealed - Replaced by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.
  - Article 392 - on the Power of the President to remove difficulties.
  
- **Part XXII** consists of Articles on short title, date of commencement, Authoritative text in Hindi and Repeals.
  - Articles 393 - 395 Commencement, authoritative text in Hindi and repeals Notes

## Chapter III

### The Legislature

The legislature's main function is making laws of the state. A law gets the authority of the state when it is adopted by the state. Other organisations in society also have their laws, rules and procedures, but they are followed only by its members; laws of the state are binding on the society. Legislature provides the legitimacy and support to the state.

The legislature has an important role in the amendment of the constitution. A flexible constitution can be amended by the legislature following the ordinary process of legislature, as is the case in U.K. The rigid constitutions that are found in federation like U.S.A., the amendment procedure that are followed are difficult. The Constitution of India follows a middle course where some of its provisions can be amended by simple majority in the legislature (e.g., creation of new states in the federation and abolition of Legislative Council in a state), and for amending others, two – thirds majority is required (e.g., Fundamental Rights and Directive Principles of State Policy). The provisions regarding federal issues are in the third category, where a constitutional amendment is to be ratified by atleast one-half of the state legislatures. In all these cases, the final assent of the President of India is essential.

The legislature is the representative institution that reflects the final choice of the society. The legislature gets its authority to make laws for it on the basis of the fact that it represents the society. In a federal system, where the state is constituted of smaller units (states or provinces) representation is given to the federal units also.

The legislature is a deliberative body where matters of social and political concerns are debated and discussed. Since the legislature represents the country, the deliberations are expression of national concern and consensus. The state has to keep in view these concerns while formulating its policies.

The actions of the executive are under constant scrutiny of the legislature. This control is direct in the case of the parliamentary system of government, because the members of the executive are members of the legislature. The

executive, hence, emanates from the legislature. Parliamentary discussions and questions asked in the legislature are effective checks on the actions of the executive. The executive has to explain and justify its actions in the legislature. The legislature acts as an effective check on the activities of the state and makes suggestions about the policies to be followed.

The legislature is the custodian of national finances. The budget of the country is passed by the legislature that makes available to the state the finances for different activities. Finances are available to the governments for its activities only after the legislature's authorisation. The government also has to report back to the legislature about the state expenditure. This is a very effective control on the state activity by the legislature.

The expansion of the state activities has resulted in the increase of the powers of the executive. On many occasions the executive has to act through delegated legislation. With the increase in the state activities, the legislature is under constant pressure. Many writers have complained about the decline of legislature in modern times.

While the legislature performs many functions, its representative role is the most important function in modern democracies. Through periodical elections to the legislature, the country expresses itself and keeps a check on the activities of the government.

***Unicameral and Bicameral Legislature:*** Unicameral and Bicameral legislatures are two systems of the organisation of the legislature. When there is a single house of the legislature, it is called a unicameral system. In most of the cases, there are two houses of the legislature popularly known as bicameral system. They are called the Upper House and the Lower House. The Lok Sabha in India, the British House of Commons and the House of Representative in U.S.A. are the lower houses. The Upper Houses in the respective countries are Rajya Sabha, the House of Lords and the Senate. The two houses are constituted on the basis of different principles of representation. While the lower house is based on the principle of direct election, for the upper house different principles are followed. Thus, the members of the Lok Sabha are elected directly every five years, the Rajya Sabha members are elected indirectly by the legislators in the states. Some members are also nominated on the basis of special qualifications. As a directly elected house, the lower house is more important in a democracy. It

has more powers in matters, such as financial matters of the state. But the upper house also performs important functions.

Discussions and deliberations on matters of importance in the second chambers provide occasions for a second look on these matters, where the directly elected lower houses may be swayed by the changing public opinion or matters of momentary concerns. In matters requiring cooler and fuller consideration, the second chambers provide more time for their consideration and discussion. The second chambers are supposed to be a house of more experienced and mature persons.

The second house also provides representation to the special interests of some sections of the society. In federal states there is an added significance to the two houses of legislature. While the lower house represents the country as a whole, the upper house represents the states (units). In the first case the members are elected directly from the constituencies demarcated for this purpose. The states send their representatives to the upper house.

The Rajya Sabha in India is constituted of members elected indirectly by the members of the State Assemblies. The Union Territories similarly send their representatives. The Rajya Sabha also includes 12 nominated members. The Senate in U.S.A. consists of members elected by the states. Every state elects two members to the Senate. Thus the U.S. Senate has 100 members from its 50 States.

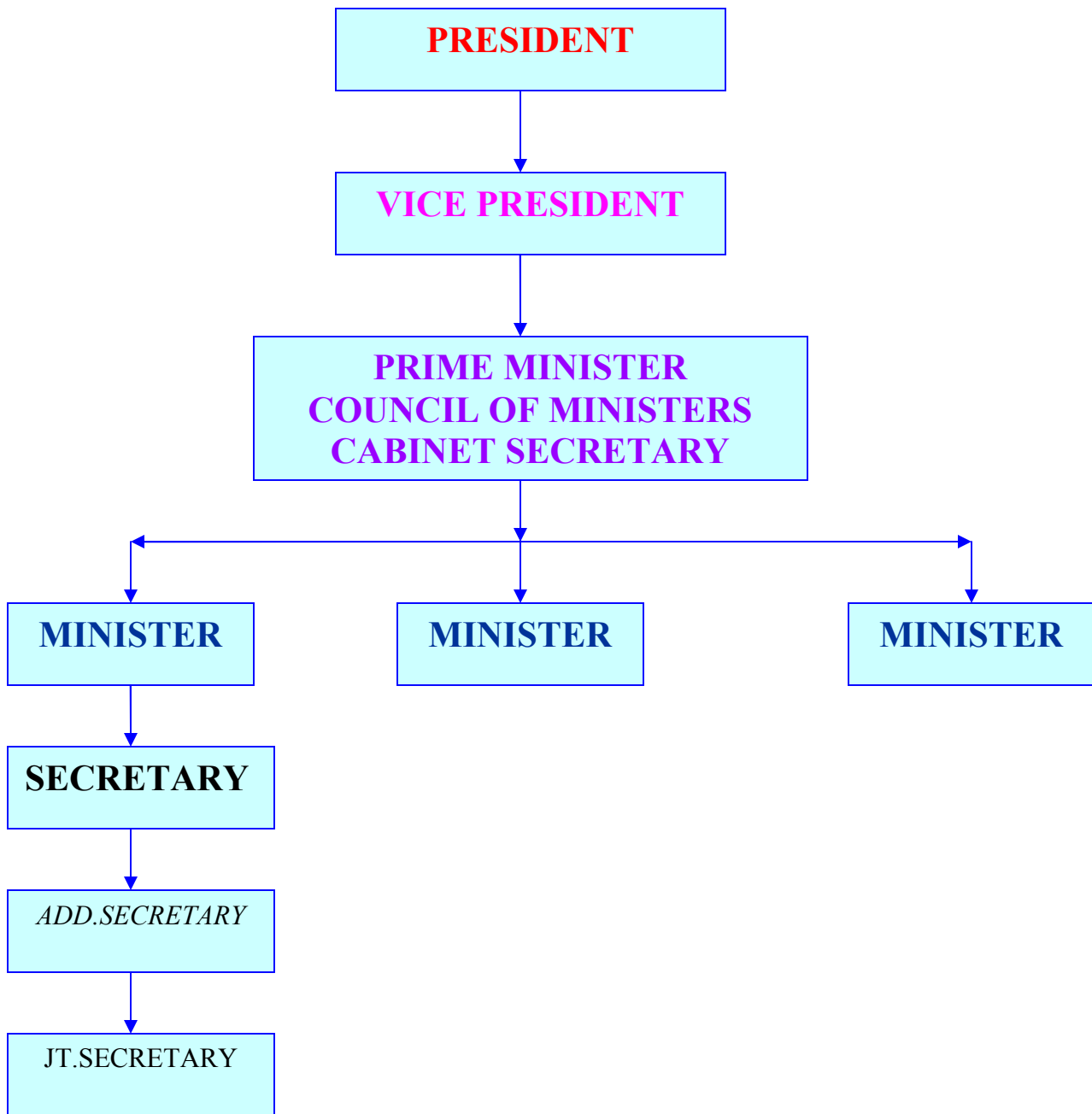
## Chapter IV

### The Executive

The executive is the most visible and the prominent organ of the government. Government officials are seen almost everyday and the people come in their contact on many occasions. The people are directly, affected by their actions. In fact, they are often referred to as the government. The executive is responsible for executing the laws passed by the legislature and for implementing the policies and programmes of the government.

The executive is the primary organ of the government both in terms of its evolution and importance. Even before the evolution of the well – organised legislature and judiciary, the executive performed the functions of the state. Laws become effective only when they are executed. Laws do not have much meaning if they are not executed. Laws help the state in attaining its objectives. In fact, the effectiveness of the state depends much on the efficiency of its executive branch.

The performance of the executive functions is understood in terms of its two components of policy making and detailed implementation. Distinction is made between the political executive and permanent executive performing the two functions respectively. In India, the President, the Prime Minister and the Ministers are the members of the political executive and the bureaucracy or the civil services represent the permanent executive. The political executive are elected or selected for a specific period of time (e.g., five years in India). The permanent executive holds permanent positions in the government services.



## A. **The President of India**

The Office of the President is the highest position in the Indian constitutional system. The President is the Chief Executive of the Indian Republic endowed with vast powers and functions. These powers and functions are, however, more formal than they are substantive and are exercised with the aid and advice of the Council of Ministers headed by the Prime Minister. Thus, his position is nominal and ceremonial.

### **Qualifications for the President of India**

Articles 58 and 59 of the Indian Constitution lay down the qualifications. A candidate for the office of the President should be a citizen of India, must have completed 35 years of age and possess other qualifications which are necessary to become a member of the Lok Sabha. He should not hold any office of profit under the Union, State or Local Governments at the time of his election, nor should be a Member of either House of the Parliament or State Legislature. Even if he happens to be a Member, he ceases to be a Member after his election as President. Besides, he should also possess such other qualifications as may be prescribed by the Parliament from time to time. Further, the nomination should be supported by 40 members belonging to the Union Parliament or elected members of the State Legislatures.

### ***Method of Election***

Articles 54 and 55 of the Indian Constitution describe the method of election of President. The Constitution prescribes an indirect election through an electoral college on the basis of proportional representation and by means of single transferable vote. The Electoral College consists of two types of members (i) elected members of both the Houses of Parliament, (ii) elected members of the Legislative Assemblies of the States. The nominated members are not included in the Electoral College.

The framers of Indian Constitution wanted to involve only the elected members of the Parliament and State Legislative Assemblies. This was intended to make the President Election broad based and to achieve political balance between the Centre and the States. Consequently, the President represents not only the Union, but also the States. This is in keeping with the federal character of Indian Policy.

Each elector casts a different number of votes. The general principle is that the total votes cast by Members of Parliament equals the total votes cast by Legislators. Also, legislators from larger states cast more votes than those from smaller states. Finally, the number of legislators in a state matters; if a state has a few legislators, then each legislator has relatively more votes; if a state has many legislators, then each legislator has fewer votes.

The actual calculation for votes cast by a particular state is calculated by dividing the state's population by 1000, which is divided again by the number of legislators from the State voting in the electoral college. This number is the number of votes per legislator in a given state. For votes cast by those in Parliament, the total number of votes cast by all state legislators is divided by the number of members of both Houses of Parliament. This is the number of votes per member of either house of Parliament.

The President is elected for a five year term. He can seek re-election for another term.

### ***Procedure for the Removal of President***

Article 56 and 61 deal with the procedure for removing or impeaching the President of India. In this regard, the constitution lays down that violation of Constitution is the ground for removal. The process of impeachment can be initiated by either Rajya Sabha or Lok Sabha. At least 14 days notice in writing must be given by not less than one-fourth of the total members of the House before such a resolution containing charges against the President is moved. After the resolution is moved and debated it must be passed by a majority of not less than two-thirds of the total membership of the House in which it has been

moved. Later the impeachment resolution shall be sent to other House. At this stage, the other House itself or through a committee investigate into the charges leveled against the President. After the investigation, the resolution is passed by a majority of not less than two-thirds of the total membership of the House and then the resolution takes effect. Thus, the procedure for the removal of the President is difficult and has been made so to prevent misuse of this power by the parliament. Till now no President has been impeached.

### ***Privileges of the President***

The President enjoys a number of privileges:

- (a) He is not answerable to any court for the exercise of his power and the performance of the duties of his office, except through impeachment proceedings.
- (b) No criminal proceedings can be instituted against him in any court during his term of office.
- (c) He cannot be arrested or imprisoned during his term of office.
- (d) No civil proceedings can be instituted against him in any court in respect of any act done by him in his personal capacity, during his term of office.

### ***Powers and functions of the President***

The powers and functions of the President can be broadly categorized under the following heads:

- (i) Executive Powers
- (ii) Legislative powers
- (iii) Financial Powers
- (iv) Judicial Powers
- (v) Emergency Powers

#### ***(i) Executive Powers of President***

The executive powers of the Union are vested in the President. Article 53,74,75,77 and other articles deal with his executive powers. Article 53 vests all executive powers in him and empowers him to exercise powers directly by himself or

through officers subordinate to him. Article 74 stipulates that the President shall act as per aid and advice of the Union Council of Ministers headed by the Prime Minister in respect of matters concerning the Union Government. Article 75 requires the Prime Minister to communicate to the President all decisions of the Union Council of Ministers. Article 77 holds that all executive powers of the Union Government shall be exercised in the name of the President.

The executive powers of the president include both Administrative and Military Powers.

The President has the power of appointment and removal of high dignitaries of the State. The President appoints the Prime Minister and his Council of Ministers, Chief Justice and Judges of the Supreme Court and the High Courts, Chairman and Members of Union Public Service Commission, Attorney General, State Governors and other high dignitaries of the State. President of India is also the Supreme Commander of all the Defense Forces in India. He appoints the Chiefs of the Army Staff, the Navy and the Air Force. He has the powers to declare war and conclude peace. But all these powers have to be exercised by him subject to ratification of the Parliament. As mentioned earlier, the President exercises all the executive powers only on the advice of the Union Council of Ministers headed by the Prime Minister.

(ii) ***Legislative powers of the President***

Even though he is not a Member of either House of the Parliament, Article 79 states that the President is an integral part of the Union Parliament. He has the power to summon both the Houses of Parliament and also to prorogue them. He can dissolve Lok Sabha before the expiry of its term and order elections to it on the advice of the Prime Minister. He summons the Parliament at least twice in a year. Besides this, the President has the right to address either House or their joint sessions at any time. The President can also send messages to either House of Parliament on any matter which must be considered by the Parliament. The President has power to

summon a joint-session of both Houses of Parliament in the case of a deadlock between the two Houses. In May 1978, the President summoned a joint session of both Houses to pass the Banking Service Bill.

No bill passed by the Parliament can become an Act unless it is assented to by the President. When a bill is passed by both the Houses of Parliament, the President can (i) give his assessment (ii) withhold his assent or (iii) return the bill for the reconsideration of the Parliament. In case, a bill is returned to the House for reconsideration and if the same is passed by both the Houses with or without modification and sent to the President for a second time, the President is bound to give his assent. However, a money bill cannot be either withheld or returned for reconsideration of the Houses. The President's power to withhold his assent is known as the power of veto and is applicable to non-money bills only.

When the Parliament is not in session, the President promulgates ordinances in public interest. The ordinances have the same force and effect as the laws passed by the Parliament. They have to be placed before the Parliament within a period of six weeks from the day of re-assembling of Parliament. If there is a failure to bring the ordinance before Parliament for this approval or if it is disapproved, then the ordinance will be invalid. An ordinance, however, can be in force as long as Parliament does not meet.

Article 240 empowers the President to make regulations for the peace, progress and good Government of the Union Territories. Article 254 empowers him to remove the inconsistencies between the Laws passed by the Parliament and State Legislature and the subjects included in the Concurrent List.

Further, it is laid down that a money bill can be introduced in the Parliament only with the prior recommendation of the President. Such prior recommendation is also necessary for introducing bills in regard to the formation of new States, alteration of areas, boundaries, names of existing States etc. Certain bills passed by the State Legislature such as those

dealing with compulsory acquisition of private property or those which are derogatory to the powers of the High Courts or those seeking imposition of a tax on a commodity declared “Essential” by the Parliament, or likely to be inconsistent with the Union Legislation already in force, or those so considered essential by the Governor etc., require the assent of the President. Such bills are reserved by the Governor for the consideration of the president. When President’s rule is imposed in a State, the President approves all such bills sent to him by the Parliament with regard to the matters included in the State List.

The President nominates 12 members to the Rajya Sabha and two members belonging to the Anglo-Indian community to the Lok Sabha. The annual reports of the Comptroller and Auditor General, Finance Commission, Union Public Service Commission, etc., are placed before the Parliament at the instance of the President.

**(iii) *Financial Powers of the President***

Article 112 of the Indian Constitution deals with the financial powers of the President. The President accords approval for introducing financial bills in the Parliament. No money bill can be introduced in the Parliament without his consent. The President should in respect of every financial year cause to be laid before the Parliament the annual financial statement of the Government of India for that year. The Contingency Fund of India is also placed under his disposal. Further, he appoints the Chairman and Members of the Finance Commission to advise him on financial matters. It may be noted that the President shall not refuse to give his assent on the money bills due to the fact that he himself has recommended such bills for consideration and approval of the Parliament.

**(iv) *Judicial Powers of the President***

The President enjoys vast powers in judicial matter. He appoints the Chief Justice and Judges of the Supreme Court and Chief Justice and Judges of State High Courts.

The President has the power to grant pardon, reprieve, suspension, remission or commutation of punishment or sentences of court martial. The powers of pardon of the President pertain to such offences which are related to violation of Acts on subject under the Union List. These powers of granting pardon are given to the President for revoking extreme rigidity in criminal laws and for protecting the persons on humanitarian considerations. Lastly the President has the right to seek the advice of the Supreme Court on some constitutional, legal and diplomatic matters. According to Article 143 the President may refer any question of public importance involving a question of law as well as of fact to the Supreme Court for seeking its opinion. In 1972, President Sanjeeva Reddy sought the advice of the Supreme Court for creating special courts to try the emergency excesses. He may or may not accept that opinion.

(v) ***Emergency Powers of the President***

Part VXIII of the Indian Constitution deals with the Emergency powers of the President. The intention behind the Emergency provisions is to safeguard the sovereignty, independence and integrity of the Indian Union. For this purpose, the President is constitutionally empowered to declare three types of emergencies namely:-

- (i) National Emergency arising out of war, external aggression or armed rebellion;
- (ii) Emergency arising due to the breakdown of the constitutional machinery which would ultimately result in President's rule in the State;
- (iii) Financial Emergency.

If the President is satisfied that the security of India is threatened by foreign attack or by armed rebellion he can make a proclamation of emergency in respect of the whole of India or any part of the Country. It is noteworthy that the President can make such a proclamation even when he feels that there is

imminent danger to the security of India. Such an emergency was declared in India in 1962 (Indo-China war), 1965 (Indo - Pakistan war), 1971 and 1975 (declared by Indira Gandhi to let her government remain in power).

The President can declare such an emergency only on the basis of a written request by the Council of Ministers headed by the Prime Minister. Such a proclamation must be approved by the Parliament within one month. Such an emergency can be imposed for six months. It can be extended by six months by repeated parliamentary approval. During the proclamation of emergency, the President can modify the distribution of powers between the Union and the States and suspend the enforcement of the Fundamental Rights.

If the President, on receipt of report from the Governor or otherwise, is satisfied that the Government of a State cannot be carried on in accordance with the provisions of the Constitution, he can make a proclamation of emergency. Such an emergency must be approved by the Parliament within a period of six months. It is imposed for six months and can last for a maximum period of three years with repeated parliamentary approval every six months. If the emergency needs to be extended for more than three years, it can be done by a constitutional amendment, as has happened in Punjab and Jammu and Kashmir. During such emergency the President can assume to himself all or any of the functions of the State Government. The administration of the State is carried out by the Governor on behalf of the President.

Finally, the President can declare a financial emergency under Act 350, if he is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened. Such an emergency must be approved by the Parliament within two months. It has never been declared. Such a situation had arisen but was avoided by selling off of the gold assets of India. It remains enforced till the President revokes it.

During such an emergency he can direct the Union as well as the State Government to observe canons of financial propriety as he may deem desirable. He can also ask them to rescue the salaries and allowances of all or any of State servants. He can direct the States to reserve their money bills for his consideration. He can even order the reduction of judges of the Supreme Court and High Courts.

### ***Position of the President & important Presidential Interventions***

The President of India is the constitutional head performing a nominal and ceremonial role. However, it does not mean that President did not have difference of opinion with the Prime Minister on the politics of the Government on certain occasions. But such difference did not assume serious proportions culminating in any constitutional crisis. Whenever such differences arose they were attempted to be resolved informally or through party functionaries. The first President of India, Dr. Rajendra Prasad, though a close associate of Nehru, did not agree with the Prime Minister on certain issues. Although Dr. Prasad was not in full agreement with the Hindu Code Bill, he concurred with the Policy of Government. Similarly, in 1959, he first declined to give his assent to the proclamation of State Emergency in Kerala. Later he signed the emergency declaration in Kerala at the insistence of Nehru. On November 28, 1960, Dr. Rajendra Prasad, in his address to the Indian Law Institute, New Delhi, remarked “there is no provision in the Constitution which in so many words lays down that the President shall be bound to act in accordance with the advice of his Council of Ministers. By way of reply Prime Minister Nehru stated in December 1960 at a Press Conference that the President has always acted as constitutional head. We have modeled our Constitution on the Parliamentary system and not on the Presidential System, although we have copied or rather adopted many provisions of the US Constitution, because our Constitution is a federal one. Essentially, our Constitution is based on the U.K. Parliamentary model. That is the basic thing. In fact, it is stated that whenever it does not expressly say anything we should follow the practice of the House of Commons in UK.

K.M. Munshi argues for an independent Presidency and says that there is no provision in the Constitution of India which expressly lays

down that the President is bound by the advice of Council of Ministers. Further the President is elected by the Parliament as well as State Legislatures. As such he is also expected to protect the interests of the States. He also takes oath to defend, protect and preserve the Constitution from violation and encroachments from any quarters including the Government.

These arguments generated a debate on the eve of the Fourth General Election. Thus the doctrine of independent President attracted favorable response from the opposition parties in the later sixties. In order to prevent the idea gaining momentum in 1976, the 42<sup>nd</sup> Constitution Amendment Act was passed which stipulated that the President shall be bound by the advice of the Council of Ministers. The amendment ended all misgivings about independent presidency. However, the 44<sup>th</sup> Constitution Amendment of the Janata Government restored the earlier position. Further, it also stated that the President is empowered to ask the Council of Ministers to reconsider its advice on any matter.

In mid 1980 decade, President Zail Singh had withheld assent to a legislation passed by Parliament that gave sweeping powers to the State to intercept mail. This was considered by the President to be an encroachment on citizens' freedom of speech and liberty as guaranteed by the Constitution.

In the early 1990, President Venkatraman withheld assent to a legislation passed by outgoing parliament that gave pension benefits to themselves. This was interpreted by the President to be in the nature of self-aggrandisement.

In 1979, the then Prime Minister Charan Singh did not enjoy Parliamentary majority. He also did not convene parliament. Since then, Presidents have been more diligent in directing incoming Prime Ministers to convene Parliament and prove their majority within a reasonable deadline dates (2-3 weeks). In the interim period, the Prime Ministers are generally restrained from taking policy decisions.

Since the nineties, Parliamentary elections have generally not resulted in a single party or group of parties having a distinct majority. In such cases, Presidents have used their discretion and directed Prime

Ministerial aspirants to establish their credentials before being invited to form the government. Typically, the aspirants have produced letters from various party leaders pledging support to their candidature. This is in addition to proving majority within weeks of being sworn in.

In late nineties, President Narayanan introduced the important practice of explaining to the nation (by means of Rashtrapati Bhavan communiqués) the thinking that led to the various decisions he took while exercising his discretionary powers; this has led to openness and transparency in the functioning of the President.

### ***President's rule in Goa***

Due to serious political instability, President's rule was imposed in the State of Goa on March 4, 2005, keeping the State Legislative Assembly under suspended animation. Bye elections to fill 5 vacancies in the Goa Legislative Assembly were held on June 2, 2005. The President's rule was revoked on June 7, 2005 and the Government, headed by Shri Pratapsingh Raoji Rane of the Indian National Congress, was installed.

### ***President's rule in Bihar***

After elections to constitute a new Legislative Assembly of Bihar held in the month of February, 2005, no party or combination of parties was able to secure a majority in the Legislative Assembly so as to form a Government, resulting in the imposition of the President's rule in the State and keeping the Legislative Assembly under suspended animation. In his communication dated May 21, 2005, the Governor of Bihar recommended dissolution of the Legislative Assembly. On May 23, 2005, the President was pleased to issue Presidential Order, dissolving the Legislative Assembly of Bihar. The Rajya Sabha and Lok Sabha approved the extension of President's Rule beyond September 6, 2005 for a period of another six months on August 1, 2005 and August 2, 2005, respectively. In the elections to constitute the new Legislative Assembly held in the month of October – November, 2005, the National Democratic Alliance comprising Janata Dal (United) and Bhartiya Janata Party got an absolute majority. On November 24, 2005, President's rule was revoked. The Governor

administered the oath of office of the Chief Minister to Shri Nitish Kumar, along with 25 other Ministers.

## **B. The Prime Minister of India**

The Constitution of India provides for a Parliamentary form of Government in India. In such a form of Government, there is a President with nominal powers and acting as the constitutional ruler, while the Prime Minister is vested with real powers and acts as a real head of Union Government. The President exercises his powers on the advice of the Council of Ministers headed by the Prime Minister.

### ***Appointment of the Prime Minister***

The Prime Minister is appointed by the President. However, the President has to appoint only such person as Prime Minister who commands a majority in the Lok Sabha. If there is no single party available with a majority in the Lok Sabha or there is no recognized leader of the majority party, the President can use some discretion in the appointment of Prime Minister. Even in this case the President has to ensure that only such a person is appointed as Prime Minister who shall be able to muster majority support in the Parliament.

### ***Tenure of the Prime Minister***

The Prime Minister holds office for a term of five years. Usually the term of Prime Minister is co-terminus with that of the Lok Sabha. Theoretically the Prime Minister holds office during the pleasure of the President, but actually he remains in office as long as he enjoys the confidence of the Lok Sabha. If he loses the confidence of the Lok Sabha, the Prime Minister must either tender his resignation or the President can dismiss him.

### ***Role of Prime Minister in Indian Polity and in Indian Administration***

The Prime Minister of India plays a very pivotal role in Indian polity and administration. Broadly speaking, as the chief executive, he

performs two types of functions: Political and Administrative. These are explained below:

The political role of the Prime Minister can be studied under the following heads:

**1. *In relation to the Council of Ministers***

The Prime Minister occupies a key position in the Council of Ministers. All members of the Council of Ministers are appointed by the President on the advice of the Prime Minister. However, the Prime Minister has to keep several practical considerations in mind while forming the Council. After the Council of Ministers is constituted, it is the prerogative of the Prime Minister to allocate various portfolios among the Ministers. He can also reshuffle these portfolios subsequently in the interest of administrative efficiency. In case of any difference of opinion between the Prime Minister and the other ministers, the Prime Minister can either advise the Minister to tender his resignation or recommend his dismissal to the President. As the Chairman of the Council of Ministers, the Prime Minister determines its agenda and its proceedings and he influences the decisions of the Council of Ministers in a decisive manner. Above all the Prime Minister coordinates the working of the various Ministers and ensures that their policies and programmes do not conflict. In case of any conflict, the job of conflict resolution lies with the Prime Minister.

**2. *In relation to the President***

The Prime Minister is the chief channel of communication between the Council of Ministers and the President. He communicates all the decisions of the Council of Ministers to the President and submits these matters for the reconsideration of the Council of Ministers whenever the President wants the Council to reconsider them. The Prime Minister has also to furnish such information relating to the administration of affairs of the Union and proposals for legislation as the President may call for. The President acts on the advice of the Prime Minister with regard to appointment of important officials like the Chief

Justice of India, the judges of the Supreme Court, the Judges and Chief Justice of the High Courts. Comptroller and Auditor General, Chairman and members of Union Public Service Commission, Finance Commissioner, Election Commissioner etc.,.

3. ***In relation to the Indian Parliament***

The Prime Minister is intimately connected with the Parliament. In fact he is appointed as Prime Minister only because he is the leader of the majority party in Lok Sabha. After his appointment, the Prime Minister and his Council of Ministers is collectively responsible to the Parliament and stays in the office as long as it enjoys the confidence of a majority of members of the Lok Sabha. The Prime Minister has to justify the policy and programmes of his Government on the floor of the Parliament. In fact all important policy announcements are made by the Prime Minister on the floor of the Parliament. The Prime Minister also exercise control over the time table of the House. Its sessions are convened and prorogued by the President on the advice of the Prime Minister. The President dissolves the Lok Sabha also on the advice of the Prime Minister.

4. ***In relation to the political party, that he represents***

The relationship between Prime Minister and Party is also very strong. As a leading member of the party, he greatly influences its working. The Prime Minister is aware that the continued existence of his Government depends on Party support and solidarity. Therefore, he tries to maintain the best of relations and control over other leaders in his Party. Quite often the Prime Minister acts as the President of the Operational Wing of the Party.

## C. **The Union Council of Ministers**

The real authority in the Union Government is located in the Council of Ministers led by the Prime Minister. Even though, we have adopted the Cabinet form of Government, nowhere in the original Constitution of India the word “Cabinet” occurs. It only provides for the Council of Ministers.

### *The Constitutional Status of Council of Ministers*

The Indian Constitution under its Articles 74, 75 and 78 provides that:

- (1) There shall be a Council of Ministers headed by the Prime Minister to aid and advise the President in the exercise of his functions.
- (2) The question pertaining to what advice was tendered by the Council of Ministers to the President will not be inquired into by any court.
- (3) The Prime Minister shall be appointed by the President and on his advice other Ministers will also be appointed by the President.
- (4) The Ministers shall hold the office during the pleasure of the President.
- (5) A Minister will cease to be a Minister if he does not become a member of either House of Parliament within a period of six consecutive months.
- (6) The Council of Ministers will be collectively responsible to the House of the People.
- (7) It shall be the duty of the Prime Minister to communicate to the President all the decisions taken in the Council of Ministers pertaining to the Administrative affairs of the Union and the proposals for Legislation to furnish such information as the President calls for; and to submit for the consideration of the Council of Ministers. If it is so required by the President, any matter on which a decision has been taken by a Minister but which has not yet been considered by the Council.

### ***Formation of Council of Ministers***

The Council of Ministers is technically created by the parliament. Membership of either House of Parliament is a precondition for the appointment as a Minister. However, a non-member of Parliament can also be appointed as a Minister, provided that he could get elected to either House of Parliament within a period of six months from the date of assumption of office as a Minister.

The Prime Minister recommends to the President the name of those whom are to be appointed as Ministers. The President simply appoints them and administers the oath of office and secrecy. The President is bound by the advice of the Prime Minister in the appointment of ministers. The selection of Ministers and their portfolios is a matter of exclusive prerogative of the Prime Minister. The Prime Minister has to consider several factors before forming the Council. It is a very complicated issue to select the Ministers. In this, he is invariably influenced by administrative, political and communal considerations. Always the seniority and/or merit of the individuals do not matter.

The Council of Ministers owes its allegiance first to the Prime Minister. It will be extremely useful to select the Ministers on the basis of efficiency and experience but quite often they do fit in because of political expediency.

### ***Classification of Ministers and size of Cabinet***

The task of recommending the number and types of ministers was entrusted to Shri Gopalswamy Ayyangar, a senior minister in the Central Government in 1948-49. His report submitted in November 1949 formed the basis of the reorganization of the Government machinery. Three categories of Ministers were envisaged – Cabinet rank Ministers, Ministers of State and deputy ministers. The number of Ministers was not fixed and was left to be determined by the Prime Minister depending upon the quantum of work from time to time.

However, the Constitution (91st Amendment) Act, 2003, which limits the size of all ministries in India, came into force on July 7, 2003. This Act stipulates that the strength of a council of ministers should not exceed 15 percent of the total number of members in the

Lok Sabha (in case of the central government) or the relevant state assembly. An exception has been made only for smaller states such as Sikkim, Mizoram and Goa where the strength of the assembly is 40 or less. There, the state government can have a maximum of 12 ministers.

### ***Powers and Functions of the Council of Ministers***

The functions and responsibilities of the Cabinet Minister are well known. He is not merely the head of the Ministry assigned to him. His responsibilities in fact, embrace the entire field of Central Administration. A Minister of State may be made the head of a Ministry or he may be attached to an individual Cabinet Minister who runs the Ministry as a Cabinet Minister. But he is not a member of the Cabinet and attends Cabinet Meetings only when invited. If on the other hand, he is attached to a Cabinet Minister; his responsibility may take one of two forms. He may be given charge of a department which forms part of the portfolio of the Cabinet Minister. In such a situation, he performs all the functions and exercises all the powers of a Cabinet Minister in relation to that department, subject, of course, to the overall responsibility of the latter and under his supervision and guidance. Also, he may assist a Cabinet Minister by being placed in charge of specific items, he exercises all the powers of the Cabinet Minister, subject, again to the overriding responsibility of the latter. A Deputy Minister is never in charge of a Ministry. He is attached to a Cabinet Minister and performs such functions as may be assigned to him by the latter.

The Council of Ministers performs a variety of functions which can be studied under the following categories:

#### **1. *Legislative Functions.***

The Council of Ministers performs important Legislative functions. Most of the important bills and resolutions are introduced in the Parliament by the Members of the Council of Ministers. With the backing of the majority of the members in the Parliament, they get these bills enacted into laws. It is true that other members of Parliament can also moot Legislative

proposals but they cannot be accepted unless the Council of Ministers supports them.

2. ***Executive Functions.***

The Council of Ministers formulates the executive policy of the country and implements the same. Each Member of the Council of Ministers is in charge of some department and is responsible for its functioning. The Council also tries to bring about necessary coordination in the policies and programmes of various departments. The Council of Ministers plays an important role in filling various political, judicial and diplomatic posts. It also recommends the names of persons who have rendered outstanding and distinguished services for awards etc. to the President.

3. ***Financial Powers.***

The Council of Ministers prepares and presents the budget of the country before the Parliament. Though the Parliament is competent to modify the recommendations of the Council of Ministers, in actual practice it approves the budget in the same form in which it is presented by the Council of Ministers. Any reduction or refusal of demands presented by the Council of Ministers is taken as a censure and may lead to vote of the confidence against the Ministry and may entail its resignation or lead to the dissolution of the Lok Sabha.

4. ***Foreign Affairs.***

The Council of Ministers plays a vital role in determining the foreign policy of the country. It determines the nature of relations that India is to have with other countries. All the treaties and agreements with other countries are also considered and approved by the Council of Ministers. It also plays an important role in the appointment of diplomats, recognition of new States etc.

### ***Position of the Council of Ministers***

Under the Parliamentary system of Government adopted in India, the real executive authority rests with the Council of Ministers and the President is duty bound to act according to the advice of the Council of Ministers. The original Constitution was somewhat vague on the point whether the President was bound by the advice of the Council of Ministers or not. This vagueness was removed by the 42<sup>nd</sup> Amendment which made it obligatory for the President to act on the advice of the Council of Ministers. The position was somewhat modified by the 44<sup>th</sup> Amendment which authorized the President to refer back a matter to the Council of Ministers for reconsideration. But the President has to act according to the advice tendered to him by the Council of Ministers after reconsideration of the matter so referred to them by the President.

#### **D. Cabinet and Cabinet Committees**

##### ***Meaning and the Role of the Cabinet***

The Council of Ministers must be distinguished from the Cabinet. In fact the Cabinet is the real directing and controlling instrument of Government, both in administration and in legislation, although it is a body which finds no mention in the Constitution. Not all the Ministers are included in the cabinet although all are necessarily bound by its decisions. The Cabinet is relatively a small body consisting of more important ministers. It is the Cabinet which ultimately shapes the Government policies on different matters and functions on the principle of collective responsibility. It meets frequently and normally atleast once in a week. The individual Ministers are competent to act on most issues falling within their spheres.

The major functions of the Cabinet are:

1. To approve all proposals for legislation embodying the policies of the Government.
2. To make all major appointments.
3. To settle all inter-departmental disputes.
4. To coordinate the various activities of the Government and to watch the progress in the execution of its policies.

The Cabinet determines the national policies, has supreme control over the executive and brings about, on a continuing basis co-ordination of the activities of the several ministries. It ordinarily meets once in a week and even more often if the occasion demands. As a rule, its meeting is presided over by the Prime Minister. But a senior Minister, to be nominated by him, may also preside when he is out of town for some length of time. After the meeting is over, the Cabinet Secretary, who remain present in it, prepares and circulates a summary embodying the decisions arrived at the meeting.

The important cases/proposals within the purview of the Cabinet are-

- (i) Cases involving legislation including the issue of ordinances.
- (ii) Addresses and messages of the President to Parliament.
- (iii) Proposals to summon or prorogue Parliament or dissolution of the Lok Sabha.
- (iv) Cases involving negotiations with foreign countries on treaties, agreements, etc.
- (v) Cases pertaining to the proclamation of emergency under Articles 352,-360 of the Constitution.
- (vi) Cases relating to commencement or cessation of a State of war and other related matters.
- (vii) Proposals for the creation of new public corporations or companies.
- (viii) Cases relating to the appointment of public Committees of equity and consideration of the reports of those committees.
- (ix) Cases involving financial implications on which a decision of the Cabinet is desired by the Finance Minister.
- (x) Cases which a Minister may put before the Cabinet for the decision or direction thereon.
- (xi) Cases of disagreements between different Ministries.
- (xii) Cases which the President or the Prime Minister may require to put before the Cabinet.

### ***Committee System in the Cabinet***

In view of the exhaustive expansion of the Governmental business and the complexity of administration and also in view of the fact that the Cabinet is the supreme organ of coordination, it had become

necessary to effect division of labour among the members of the Cabinet. This has necessitated the formation of the Cabinet Committees. The Committee system of the Cabinet helps in the efficient and expeditious functioning of the Government. These Cabinet Committees comprise a few senior Ministers who manage the major portfolios. These committees assist the Union Cabinet in taking decisions without delay. The Prime Minister normally acts as the Chairman of all these Committees. He selects the members and prescribes the work to be carried out by these committees. The Members meet several times under the leadership of the Prime Minister. But these committees enjoy only advisory powers though they do influence the decisions of the Cabinet in respect of matters allotted to them.

### ***Logic behind the Formation of the Cabinet Committees***

To relieve the Cabinet of some burden of work, the Cabinet Secretary in fact, recommended in his report (1949), the setting up of standing committees of cabinet over defined fields, with appropriate strengthening of the Secretariat and other organs of these committees. These were the instruments to organize coordination on a decentralized basis. The Cabinet Committees may also include non-cabinet ministers. This flexibility in membership enables interested Ministers to exchange views and arrive at agreed solutions without involving the Cabinet, thus reducing pressure of work upon the latter. As a result the Cabinet is left free to devote itself to more important matters. Secondly, the Cabinet committees which as said earlier, include non-Cabinet Ministers as well, provide the latter an opportunity of making known their views on matters with which they have some direct concern. Thirdly, the arrangements promise continuous coordination. Fourthly, there is also sharing of work with the result that many matters which could otherwise travel up the Cabinet for determination are settled at the level of Cabinet Committees.

The Cabinet Committees are divided into two types:

- (i) Standing Committees which are of a permanent nature; and
- (ii) Adhoc committees.

The Standing Committees generally include the Political Affairs Committee; the Economic Affairs Committee; Committee on Parliamentary Affairs, and the Appointment Committees.

Adhoc Committees are constituted from time to time as and when new problems of great importance come up, and when they require special study by a group within the Cabinet before a final decision is taken by the Cabinet as a whole. Within the respective fields of activities of these committees, there is also provision for setting up of sub-committees as and when necessary. These Committees help the Cabinet to function efficiently, expeditiously, and with a considerable degree of expertise.

A subject requiring Cabinet decision may either belong directly to the appropriate committee or may be referred to it by the Cabinet for in-depth scrutiny before the latter takes a decision. Though the Cabinet is the highest policy-making body in the Government, some of the Cabinet Committees have come to exercise real authority and the Cabinet merely accepts the decisions already taken there.

The membership of the Cabinet Committees varies from three to eight. Their Chairmanship is shared between the Prime Minister and the Home Minister. Of all the committees the most powerful is the Political Affairs Committee and it consists of the senior most Ministers in terms of their political stature or the importance of the portfolio held by them. It functions as a “Super-Cabinet” in providing higher direction to the Government. Another powerful body is the Appointments Committee.

## **E Ministries and Departments**

Although the Council of Ministers is collectively responsible to the legislature, the individual Ministers are allotted different departments for which they are individually responsible to the Council of Ministers as well as to the Legislature.

### ***Allocation of work***

Article 77 (3) of the Constitution authorizes the President to make rules for the more convenient transaction of the business of the

Government and for its proper allocation among Ministers. Under Rule 4 of such Rules, the President, on the advice of the Prime Minister allots Ministries/Departments to the charge of the Ministers form time to time.

In this way the working of a particular Ministry is entrusted to a particular Minister subject to the overall control of the Prime Minister and the Cabinet. Initially the number of Ministries was small. The usual norm was that most of the Ministries comprised only one department with one secretary. With the expansion of the functions of the Government, the number of departments has increased. If each department were to be placed under the charge of a Minister, the size of the Ministry would become rather large. It has, therefore, become necessary to group a number of departments into a single ministry. A large number of ministers now have more than one department with a Secretary at the head of each. Thus a Minister now usually has more than one Secretary to supervise.

### ***Principle of Classification***

The distribution of work among different departments can be made on the basis of the following considerations:

- (a) functions to be performed
- (b) processes involved
- (c) clientele to be served
- (d) area of operation

The allocation of work can, however, not be made on the basis of any single criterion. All the four principles or criteria mentioned above are used to arrive at a proper division of work among different Government Departments. The principle on which this division of work could be arrived at is illustrated by a few examples given below:

<b><i>Basis</i></b>	<b><i>Ministries –Departments</i></b>
1. Function	Education, Defence, Health and Family Welfare
2. Process	Law, Steel and Mines'
3. Clientele	Ministers of Welfare and Labour
4. Areas	External Affairs.

The allocation of work between different Ministries keeps changing from time to time. Sometimes the allocation is influenced not by the functional requirements of the jobs to be done, but by personal considerations. Independent Ministries or Departments are carved out for some political leaders to be accommodated as was done in case of Agriculture and Rural Development in 1978-79. The division of work is thus not always on rational considerations.

### ***Functioning of the Ministries/Departments***

A typical Ministry now consists of one or more departments each under the charge of a Secretary. Usually a Cabinet Minister is in-charge of a Ministry with a number of Ministers of State and/or Deputy Ministers to assist him according to the work allotted. The functioning of a ministry can usually be divided into three different levels.

- (a) Political level
- (b) The Secretariat level
- (c) The executive level

It is proposed to study here the working of these three levels under three different sections.

### ***Political Head***

The Minister, the Minister of State, the Deputy Minister and the Parliamentary Secretary are the political officers who are in charge of a Ministry. They come to occupy their position on the strength of their place in the party and not by virtue of any expertise or technical qualifications. Broadly speaking the functions of Minister in-charge of a Department are of four kinds.

- (i) The Minister initiates the broad policies which the department has to follow and decides all the important policy questions which may arise in the functioning of the department.
- (ii) The Minister exercises general supervision over the implementation of his policy by the Department.

- (iii) The Minister bears the responsibility for the policies and the administration of his Department before the Parliament. He answers in parliament the questions relating to his Department. He has to pilot the legislation and to represent his department before the Parliament as well as the people.
- (iv) One of the most important functions of the Minister is to represent his Ministry in the cabinet. He has to keep in mind the principle of joint responsibility of the Cabinet and ensure coordination of his policies with those of other Ministers.

The Ministers of State, the Deputy Ministers and the Parliamentary Secretaries share such of the duties of the Cabinet Minister as he may assign to them. Usually the responsibility of some specific work is allotted to a Minister of State while the Deputy Ministers and the Parliamentary Secretaries provide general assistance to the Minister in Charge.

***The Secretariat Organization***

Immediately below the political head, there is the Secretariat organization of the Department. The Functions of the Secretariat is to provide to the Minister, mature and expert advice for the formulation of policies and watch over the execution of these policies when they have been formulated. The Secretariat may be called the brain centre of the administrative body directing and controlling the administrative activities. The head of the Secretariat organization of a department is called the Secretary. For the convenient transaction of business, the Department is further sub-divided into convenient units as mentioned below:

<b>Department</b>	<b>Secretary</b>
Wing	Additional Secretary/Joint Secretary
Division	Deputy Secretary
Branch	Under Secretary
Section	Section Officer

The scheme obviously suggests that the Department is sub-divided into a number of wings each headed by a joint Secretary/Additional Secretary. Each Wing is sub-divided into divisions each headed by a

Deputy Secretary; a division into branches each headed by an Under Secretary and a Branch into sections each headed by a Section Officer.

### ***The Executive Organization of the Department***

The Secretariat, as we have seen, is responsible for discharging the policy making functions of the Government. Below the Secretariat, there is, in most of the departments, the executive organization with a head of its own known as the Head of the Department. Such executive head is designed differently in different departments. Usually he is called Director or Director General but there are also designations such as inspector General, Adviser, Commissioner.

## **F The Central Secretariat**

The Central Secretariat is at the apex of the administrative pyramid, of course functioning under the overall control of the Ministry. The existing structure of the Secretariat has evolved over a period of 200 years.

### ***Evolution***

The functioning of the secretariat in our country has by and large been based on the principle of separating the question of policy from the current administration so that the latter can be handed over to a separate agency which enjoys a certain amount of freedom in the field of execution. If the same persons are required to perform the policy making functions as well as day-to-day administration, the performance of both accounts is likely to suffer. According to L.S. Amery, in such a situation of dual functioning, it is the policy-making functions which are likely to suffer most. Routine business is always more urgent and calls for less intellectual efforts than the policy making functions. As the human mind tends to follow the path of least resistance, the routine functions get attended to while the policy and planning questions are deferred. It may be of interest to note here that in this matter of separation of policy making and executive functions, Indian system is akin to the Swedish system but differs from the British system. In Britain the Ministry is an integrated entity

embracing in a single organization both policy making and implementing agencies. The Indian system has, however, operated on the principle of separation of these functions.

### ***Advantages of the separation***

Many arguments have been advanced in favour of the Indian system of the separation of functions. Some of the important arguments are given below:

- (i) Freedom from day to day problems of execution keeps the policy makers free to do the necessary thinking for forward planning. The policy making functions, by their very nature, require a lot of analysis and thinking. The responsibilities of day-to-day functioning do not permit any time for such analysis.
- (ii) The secretariat, under the system of separation of functions, can act as dispassionate adviser to the Minister. The proposals coming from the executive agencies are examined from the larger point of view of the Government as a whole. Being a little away from the actual scene of operation, they can take a broader view of things than the operating people can. That is why the Secretary in the Secretariat is a Secretary to the Government as a whole and not only to his Minister.
- (iii) The system of functioning also avoids over-centralization. The executive agencies have to be given reasonable amount of freedom in the implementation of policies and in the discharge of functions allotted to them. If the field functions were to be administered from the Secretariat this would certainly require the orders of the Minister in almost all significant cases, thus taking away the freedom of the field.
- (iv) The separation of the functions also keeps the size of the secretariat reasonably small. If the field functions were also included in the secretariat, their coordination could become rather difficult. At present the limited number of secretaries, who are trained to think in terms of Government as a whole, are better able to evolve coherent policies for execution by the field. This advantage would be lost if the two functions are combined in the Secretariat.

## ***Functions***

With this background we may now proceed to study the functions performed by the secretariat in our country. The secretariat by and large is policy making body which functions under the directions and control of the Council of Ministers. In fact, the main function of the secretariat is to assist the Minister in the discharge of his responsibilities under the Constitution. In brief the secretariat performs the following functions:

- (i) It helps the Minister in making policies and modifying them from time to time as and when it becomes necessary. It gets the feed back from the field agencies about the execution of the policies decided by the Minister. On the basis of analysis of the feed back data, the secretariat advises the minister either to adopt some new policies or to modify the existing ones.
- (ii) Our democratic system of government is based on the Rule of Law. Many of the policies are expressed in terms of new legislation. While the legislative function of enacting the law vests with the Parliament, some one has to draft the law and place it before the Parliament. The Secretariat assists the Minister in preparing such legislation.
- (iii) Sectoral Planning and Programme Formulation – the plans for different sectors of the Government are prepared and placed before the Minister by the Secretariat. They have also to translate these plans into various implementable programmes. This is one of the very important functions of the Secretariat and is of great consequences in giving policy guidance to the field agencies.
- (iv) Financial control –
  - (a) Budgeting and control of expenditure in respect of activities of the Ministries/Departments; and
  - (b) According or securing administrative and financial approval to operational programmes and plans and their subsequent modifications.
- (v) Supervision and Control – The Secretariat has to exercise the necessary supervision and control over the execution of the policies and programmes by the executive departments or semi-autonomous field agencies. While they have to desist from interfering in the day-to-day working of these field

organizations, the secretariat has to evaluate their performance and their working results with a view to advising the Minister in respect of further policy formulation.

- (vi) Coordination and interpretation of policies - assisting other branches of the government and maintaining contact with the State Governments.
- (vii) Initiating measures to develop greater personnel and organizational competence both in the Ministry/Departments and its executive agencies. The Secretariat has to see that proper policies of recruitment, training, etc. of personnel at all levels are evolved so that adequate number of personnel of proper qualifications and experience are available at all times to man the various positions in the secretariat as well as in the field formulations.
- (viii) Assisting the Minister in the discharge of his parliamentary responsibilities. The secretariat has to prepare replies to the Parliamentary questions, call-attention notice, adjournment motions etc, which have to be replied to by the Minister. They have also to advise the Minister with regard to various policy statements and interventions in the debates in the Parliament.

From the operational point of view the functions of the secretariat can be divided into two categories mentioned below:

- (a) to see that all papers quoted in the correspondence notes are forthcoming, properly arranged and paged and have correct marginal references.
- (b) To verify the facts
- (c) To point out the law and rules
- (d) To supply other relevant facts and figures available in the department.
- (e) To put up precedence and papers containing previous decisions and policies and to point out the relevant portions of the papers so put up.
- (f) to draw attention to statutory or customary procedure required for the disposal of the case.
- (g) In routine case(s) where there are established precedence to put up draft for approval.
- (h) To bring to notice at the proper time where matter requires action or order.

### *Secondary Category*

- (i) To examine the cases and see that all matters requiring decisions are brought forward.
- (ii) To tabulate and summaries the information if necessary;
- (iii) To prepare drafts according to final decisions.

### *Staffing*

We will now consider the staffing for the secretariat under two main heads, namely (i) officers and (ii) staff.

#### *Staffing Officers*

At the time of independence there was no Central Secretariat Service to provide a permanent set of officers for the Secretariat. Various secretariat positions were manned by officers drawn from the provincial Governments but most of them returned after a spell of work in the central secretariat. This arrangement is known as “tenure system”, as each officer so deputed has to serve the Centre for a fixed number of years ranging from 3 to 7 years. The original system dates back to 1905. It was introduced by Lord Curzon who believed, India may be governed from Simla or Calcutta, but is administered from the plains”. He felt that the most important work of administration was carried out in the districts. He, therefore, felt that the officers having the experience of district work should be brought to the secretariat. In this way the Secretariat can keep in touch with the realities of the field situations. After a fixed tenure in the secretariat the officers must go back to renew their field experience which fades with the passage of time in the secretariat.

Staffing of the secretariat by officers drawn from the States has been commenced by a number of committees and commissions and has been the accepted policy of the Government.

### *Central Secretariat Service (CSS)*

The need for a Central Secretariat Service (CSS) was felt even before 1947. A scheme for setting up of such a service was approved by the Central Government in 1948 and was called the Central Secretariat Reorganization and Reinforcement Scheme. It provided for a new service, called the “Central Secretariat Service (CSS) to replace the old imperial Secretariat Service. The new service was originally organized in four grades:

- (a) Under Secretary Class - I
- (b) Section Officer Class – I
- (c) Section Officer Class – II
- (d) Assistants Class III (Non-Gazetted)

In 1959, however, (a) and (b) were merged into one continuous Class-II grade. Also a new selection grade above Grade-I was created which was to consist of the post of Deputy Secretary and above.

### *Office Service*

The office component of the secretariat service manned by the personnel drawn from the two services viz., Central Secretariat Stenographer’s Service and Central Secretariat Clerical Service.

### *Central Secretariat Stenographer’s Service*

The service has been reorganized from 1<sup>st</sup> August, 1969. In 1973 it consisted of four grades, namely, Selection Grade, Grade-I, Grade-II and Grade-III. Their nomenclatures were changed and service conditions improved by the Third Pay Commission and later by the Fourth Pay Commission in 1986, and the Fifth Pay Commission.

### *Central Secretariat Clerical Service (CSCS)*

This service has only two grades, namely UDC and LDC. Recruitment to this service is at the level of LDC. It is made through an all-India competitive examination for 90% of the vacancies and remaining vacancies are filled up by a limited departmental examination of

Class-IV personnel who are matriculates and have more than five years service to their credit. The examination for direct recruitment was also conducted by UPSC. It is now conducted by the Institute of Secretariat Training and Management under the Department of Personnel. The vacancies in the grade of UDC are filled by promotion from LDCs subject to the rejection of the unfit.

## **G The Cabinet Secretariat**

One of the most important institutions in a Cabinet form of Government is the Cabinet Secretariat. As the name implies this organization provides the secretariat assistance to the Cabinet. But, it has acquired many other functions, most important of which is the co-ordination of the various departments of the Government.

The origin of the Cabinet Secretariat can be traced back from the time of the British period. When the work of the Government of India expanded, the Governor-General distributed the work of different departments among the various members of the Executive Council and retained only some important functions with himself. He was assisted by a Private Secretary in these functions. In the beginning, the Private Secretary did not accompany the Governor-General to the Executive Council, but during the regime of Lord Wellington, the Private Secretary, for the first time, was asked to accompany the Governor-General to the meetings of the Executive Council. Later on, in 1935, the Private Secretary was designated as the Secretary to the Executive Council. He performed twofold functions, Private Secretary to the Governor-General as well as Secretary to the Executive Council. A little later the two functions were separated and were assigned to two different persons holding two different posts. Thus, the post of the Secretary of the Executive Council came into being. This post, later on, when India became independent, began to be called the Cabinet Secretary. The office attached Cabinet Secretary began to be called Cabinet Secretariat. The efficiency of the Cabinet depends, to a large extent, on the Cabinet Secretariat whose functions are to prepare the agenda of the Cabinet meeting, to provide information and material necessary for its deliberations and to draft records of the discussions and decisions, both of the Cabinet and its committees. It keeps the President, the Vice-President and all the

Ministries informed of the major activities of the Government. It has three wings viz. the civil wing, the military wing and the intelligence wing. The civil wing provides secretarial machinery for the Cabinet and the various Committees of the Cabinet. The military wing is responsible for all secretarial work connected with meetings of the Defence Committee, National Defence Council, Military Affairs Committee and a number of other Committees concerned with defence matters. The intelligence wing concerns itself with matters relating to the Joint Intelligence Committee of the Cabinet. The head of the Cabinet Secretariat is the Cabinet Secretary. The Cabinet Secretary is usually the senior most civil servant of the country and the official precedence gives him the first place among the civil servants.

### ***Functions of the Cabinet Secretariat***

The Cabinet Secretariat has three wings namely, (i) Civil Wing; (ii) Military Wing, and (iii) Intelligence Wing. The main civil wing provides secretariat for the cabinet. It also provides secretariat services for the various standing committees and adhoc committees of Secretaries which function under the Chairmanship of the Cabinet Secretary. It also deals with framing of rules of business of the Union Government. The Military Wing is responsible for the secretarial work concerned with the meetings of the Defense Committee, National Defense Council, Military Affairs Committee and a number of other committees concerned with Defense matters. The Intelligence wing concerns itself with matters relating to the Joint Intelligence Committee of the cabinet. The functions of the Department of Cabinet Affairs can be studied under the following heads:

- i) the role as the Secretariat of the cabinet;
- ii) its role as originating department;
- iii) its role as a coordinating department
- iv) its role in implementing decisions of the cabinet.

#### **i) The role as the Secretariat of the Cabinet**

The foremost function of the Cabinet Secretariat is to perform the necessary secretariat work relating to the meetings of the Cabinet and the committees. This includes the circulation of

agenda notes for the consideration of the Cabinet. After the meetings of the Cabinet and Cabinet Committees, the Secretariat prepares the proceedings and circulates them to the members. Whenever necessary the secretariat also procures the implementation report and presents them to the Cabinet or the Cabinet Committee as the case may be.

In addition, it has to circulate a number of other papers to the President, Vice President, Members of the Cabinet/Cabinet Committees, Council of Ministers for information. A list of such papers is given in the IV<sup>th</sup> Schedule to the transaction of Business Rules, 1961. Some of the important papers so circulated are economic review, fortnightly political reports from the State Governments, and the Union Territories, monthly summaries from Ministries/Departments giving an account of their activities and decisions, monthly notes from missions abroad; quarterly reports on the Five Year Plans, reports on agricultural production, reports on public sector undertakings, reports on administrative reforms, reports of the UPSC, reports on the working of the industrial/commercial Undertakings of the Central Government; brief notes on important matters from ministries, trade agreements, arrangements in pursuance of the general directions and decisions of the Cabinet and any other papers which the Prime Minister may wish to circulate to the members.

## **ii) The role as originating Department**

The Department has rather a limited original function which can be divided into the following parts:

### **(a) Important Appointments**

The Appointments of the Minister is done by the President on the advice of the Prime Minister. Once the appointment is approved by the President, the Department is to look after the matters like swearing in ceremony, assumption of office, etc. Similarly, the work relating to resignation, relinquishment of charge, change in portfolio, and so on are also looked after by this

department. The necessary gazette notifications are also issued by them.

(b) Rules and Allocation of Business

Article 77(3) of the Constitution authorizes the President to make rules for the more convenient transactions of business of the Government and for its proper allocations among ministers. Work relating to the drafting of such Rules is handled in the Cabinet Office. The allocation of work among the ministers is also handled in this office. The re-organization of the Departments and the Ministries requires some amount of thinking. This input is provided by the Cabinet Secretariat. Since the activities of the Government are expanding, it often becomes necessary to create new departments resulting in need for re-organization of the Ministries. Therefore, such allocation or reallocation of business is also a continuous process.

(c) General Coordination and follow-up

General coordination and follow up of the Cabinet decisions is also the responsibility of this department. In this matter the department does not supersede or cross over other ministries or departments nor does it take over any of their functions or responsibilities, it is the duty of the department to:

- assist in resolving difficulties, delays, which may arise in any field of activities between the Ministries and Departments;
- watch progress on important administrative measures of the Government of India which affect more than one ministry;
- assist in coordinating the major administrative activities and policy of the Government of India;
- watch the implementation of the decisions in the Cabinet as a whole.

For the performance of these duties the Department has to issue circular and instructions for the guidance of the ministry. It also conveys the directions of the Cabinet or the Prime Minister on administrative and allied matters.

### **iii) Role as a Coordinating Department**

In every administrative system a number of specialized departments have to be set up to undertake different kinds of activities. To enable the Government to function as a whole it is necessary to coordinate their activities so that coherent policies and actions emerge out of the system. Various mechanisms have been evolved to achieve such coordination. The department of Cabinet Affairs is one of the agencies charged with the duties of securing effective coordination. As early as in October, 1945, a Coordination Committee of the Executive Council of the Viceroy was established. The Committee was intended for dealing with the coordination work on behalf of the council in respect of civil and military affairs. In his capacity as Secretary to the Coordination Committees of the Council, the Council Secretary performed the following duties without any particular executive authority.

- (a) to assist in coordinating the major administrative activities of the Government;
- (b) to assist in resolving the difficulties or delay on account of inter-ministerial conflict;
- (c) to watch the progress of the administrative measures affecting more than one ministry;
- (d) to submit to the Coordination Committee of the Council such matters as required for its decisions or instructions.

The Secretary to the Coordination Committee has no executive authority and had to perform his function on behalf of the Council. He served all the ministers and was at the disposal of the ministries for consultations in any matter for which his assistance was required. His duty was to assist the smooth and speedy progress of business with the cooperation and confidence of all ministries. The work of Coordination previously done by the Coordination Committee of the Council

is now undertaken by the whole Cabinet and a number of its committees.

At the higher level the essential function of the coordination is performed by the Cabinet. However, the Cabinet cannot undertake this task on a continuous basis. Therefore, the device of the Cabinet Committees has been put into operation to achieve the necessary coordination at a level lower than that of the full cabinet. Such Committees are set up by the Cabinet or Prime Minister under Rule 6 of the Government of India (Transaction of Business) Rules, 1961. There are a number of Cabinet Committees such as:

- (a) Appointments Committee
- (b) Economic Coordination Committee
- (c) Committee on Parliamentary and Legal Affairs
- (d) Political Affairs Committee
- (e) Food and Agriculture Committee etc.

At the official level a number of standing committees of the Secretaries with the Cabinet Secretary as Chairman have been set up. Specific functions have been assigned to these committees. Some of the important committees are:

- (a) Committee on Economic Secretaries;
- (b) Secretaries Committee on Foreign Affairs;
- (c) Scientific Advisory Committee to the Cabinet.

These Committees assist the Cabinet and Cabinet committees on matters which fall within the scope of their functions. Since the Cabinet Committees are not expert bodies, the Secretaries' Committees have been formed to provide the necessary expertise and to consider the matters in details before they are considered by the Cabinet Committees or the Cabinet. Whenever there is a difference of opinion among different ministries/departments, the Cabinet Secretary as senior colleague tries to get the matter sorted out in coordination meetings of the Committees of Secretaries. For this purpose, apart from the meetings of the regular committees, the Cabinet Secretary may also discuss the matter informally with a number

of Secretaries and try to achieve consensus. Rule 4 of the Transactions of Business Rules lays down that when matter concerns more than one ministry a decision can be taken only when all the ministries concur with it. Their differences of opinion are also supposed to be resolved by such formal or informal consultations between the Secretaries and the Ministers. The formal consultations take place in the Secretaries' Committees and the Cabinet Committees. Informal discussions are organized by either the Secretaries themselves or by the Cabinet Secretary. This is a very important role. Achieving coordination in different departments having varied experiences and different points of view is a difficult and painstaking process. If this function is not well performed the output of the Government will not be commensurate with the efforts put in by the different ministries/departments.

**(iv) Role in implementing the Decisions of the Cabinet**

As already mentioned, the Cabinet Secretariat conveys to the concerned departments and the ministries the decisions of the cabinet and Cabinet Committees. Naturally, in the subsequent meetings of the Cabinet or the Cabinet Committees the question of implementation of these decisions often arises. The Cabinet Secretariat has, therefore, to keep a watch on the progress of implementation of the decisions of the Cabinet and its Committees. For the purpose the Cabinet Secretariat has issued instructions that a monthly statement showing the progress of the cases relating to each ministry be sent to the Cabinet Secretariat. These statements are scrutinized with reference to the decisions of the Cabinet communicated to the Ministries by the Cabinet Secretariat. In case of any delays in the implementation, the Cabinet Secretariat brings the facts to the notice of the ministries at the highest level and get the action expedited.

***Rules of Procedure***

The work relating to the cabinet and its committees is governed by the rules of procedures in regard to the proceedings of the Cabinet which

were approved in 1947. There are three methods of disposal of cases by the Cabinet:

- (a) Discussion in Cabinet
- (b) Circulation for expression of opinion
- (c) By discussion in a committee of the Cabinet.

For the cabinet meetings, the notice of the meetings is sent to all the cabinet ministers along with agenda notes. The Ministers of State in independent charge of any particular department are sent a special invitation to attend the meeting, whenever a question relating to their department is considered by the Cabinet. They are also invited when an opinion expressed by them on any other Ministry's case is being considered by the Cabinet.

All arrangements for the meetings are made by the Cabinet Secretary and other officials of the Cabinet Secretariat. Secretaries and senior officers of the other ministries remain in attendance at the meeting when an opinion expressed by them on any other Ministry is being considered. However, they are called inside only when desired by their Minister or the Prime Minister.

The minutes of the meetings are drawn up by the officials of the Cabinet Secretariat present in the Cabinet meeting. They are submitted to the Prime Minister for approval within 24 hours. After the approval of the Prime Minister the Minutes are circulated to the Cabinet Ministers. Ministers of State in dependent charge of the Ministry and the Secretaries concerned. In case any minister suggests any changes in the proceedings, it is submitted to the Prime Minister for the orders. If the Prime Minister accepts the amendments, the revised minutes are circulated.

At the end of each Cabinet meeting the Cabinet Secretary briefs the Press on those important decisions taken that can be disclosed to the Press. Similar briefing is given whenever necessary in case of meetings of the Cabinet Committees.

## ***Cabinet Secretary***

The Head of the Cabinet Secretariat in India is the Cabinet Secretary. This office was created in 1950 and its first occupant was Mr. N.R. Pillai. Usually one of the senior-most civil servants is appointed as Cabinet Secretary. This has resulted in very short tenures for the Cabinet Secretaries in India. For example, there had been 9 Cabinet Secretaries in the first 25 years of the creation of the office. It means that the average tenure of the Cabinet Secretary is less than three years inspite of the extensions given to some of the Cabinet Secretaries. However, in England the post of the Cabinet Secretary is a selection post and comparatively younger persons are appointed as Cabinet Secretary.

The importance of the role of the Cabinet Secretary has often been affected by the size and importance of the Prime Minister's Secretariat. As already mentioned earlier, in Britain the Cabinet Secretary also functions as Secretary to the Prime Minister. The Prime Minister's office there is a very small one rendering assistance only in routine functions. Almost the same situation prevailed in India during the period of Pt. Jawahar Lal Nehru. At that time the Cabinet Secretary was playing a very important role in the overall coordination of the Government work as well as in tendering mature advice to the Prime Minister and the Cabinet. However, during the time of Lal Bhadr Shastri and later Indira Gandhi, the Prime Ministers' Office (PMO) was considerably strengthened. The obvious result has been that the importance of the Cabinet Secretariat has reduced and the PMO has emerged as the rival centre of power at official level which enjoys more proximity to the Prime Minister.

To compare the position of the Cabinet Secretariat with the Prime Ministers Office (PMO), we must look at how the PMO has evolved. Only then we would be able to decide whether there has been any encroachment by the PMO over the role and functions of the Cabinet Secretariat.

The PMO was brought into existence not as a policy making institution, nor for monitoring the performance of the Government, nor was it supposed to supervise the ministries. It was only to assist the Prime Minister in the discharge of his political and parliamentary

role. It was to keep a record of his political engagements and assist in public relations work. It was to prepare answers to the questions which the Prime Minister was expected to reply in Parliament. It was also to place before the Prime Minister any proposal of any Ministry. It was thus an assisting agency, at most, both staff and auxiliary agency.

Prime Minister Nehru assigned importance to the PMO only to the extent its initial purpose was concerned. He gave more importance to Cabinet Secretariat in view of the prevailing cabinet system of governance. He did not concentrate power in the PMO. However, since the Prime Ministership of Shri Lal Bhadur Shastri, the role of the PMO, its status itself was changed from that of an "office" to that of a "Secretariat". This implied that from now on it had to play a policy making as well as monitoring role. Although Prime Minister Shastri did not intentionally try to give extra importance to the PMO, the kind of persons who were appointed to the PMO gave it an enhanced prestige and status. Mr. L.K. Jha was appointed to this office as Secretary in this office and he emerged as a very important person in running the affairs of the government. After Mr. Jha, Mr. P.N. Haskar and Mr. P.C. Alexander also remained equally powerful. This was the period when the Cabinet Secretariat was undoubtedly overshadowed by the Prime Minister's Secretariat.

During emergency, all decisions were taken by the PMO. All proposals were placed before the PMO and all files were routed through it. No references were made to the Cabinet Secretariat. The PMO thus became the real cabinet.

The position of the Prime Ministers Secretariat was sought to be changed by the Janata Party in 1977. The nomenclature was again changed from Prime Ministers Secretariat to Prime Ministers office. Thus it was in line with Janata Party's Commitment to the principle of collective leadership instead of the concentration of all power in the Prime Minister.

However, with the return of Smt. Indira Gandhi as Prime Minister, the importance of the PMO once again increased. Prime Minister Rajiv Gandhi tried to initially give equal importance to both the Cabinet Secretariat and the PMO. However, in spite of this, the importance of the Cabinet Secretary went down because the Prime Minister was

more keen to appoint and consult “experts” in the cabinet secretariat rather than the Cabinet Secretary. Moreover, towards the later period of his regime, he started giving more importance to the PMO and tried to concentrate more powers in the PMO.

Prime Minister Narasimha Rao too instead of depending on the Cabinet Secretariat, concentrated more powers in the PMO. He was never very sure about the loyalty of his cabinet colleagues and thus decided to rely more on the PMO.

However, with the emergence of coalition governments, the position of the Prime Minister has certainly weakened. The Constituents of these coalitions have always objected to the concentration of more and more powers in the Prime Minister or the PMO. They have again and again advocated and emphasized collective leadership. Since the Cabinet of coalition governments comprises of leaders from different parties, more emphasis is now being given on the cabinet secretariat and the powers of the PMO are being curtailed.

Thus we can observe that both the Prime Minister’s Office (PMO) and the Cabinet Secretariat have seen a chequered history. The role and status of either of them has not remained the same and has been varying across time. At times, the PMO has dominated while at times the Cabinet Secretariat has dominated. The role and status of either of them has depended on the position and status of the incumbent Prime Minister, the political climate of the country, the type of government at the centre and also on the personality of the incumbent officials in these institutions.

## Chapter V

### Boards and Commissions

We have already studied departmental form of organization of Government business with a single chief executive. This is the usual form of organization employed in most of the Government departments. However, the institution of plural chief executive is also not unknown in this country as well as in other countries. The organizations, in which plural executives are employed, are called Boards/Commissions. For several kinds of Government's activities Boards and Commissions are found more useful than a single chief executive. For this reason this form of organization has been used quite often.

#### **A. Why Boards and Commissions**

There are several advantages in the Commission form of organization. However, it is not equally suitable for all kinds of government business. We shall begin with a study of the advantages of the single chief system which is the most extensively employed in the Government organizations. We shall then pass on to the advantage of the plural executive system.

#### ***Advantages of the single Chief Executive System***

- (i) The most important advantage of this system is that it vests administrative authority in a single individual who can be held responsible for the results. It is he who plans the programme, executes it and applies the necessary correctives. He would, therefore, naturally be accountable for the actions which he has taken in his individual judgments. However, the responsibility in a Board or Commission is shared between a number of individuals. This leads to the diffusion of authority whereby nobody can be held responsible for the results of the decisions collectively taken.
- (ii) The single chief executive system is less expensive. In the Commission system, the meetings of the Commission have to be organized, a number of high level functionaries have to be

paid their remunerations as well as the traveling and other allowances. All this adds to a lot of expenditure. On the other hand, in a single executive system all those expenses can be avoided as no meetings of the Commission have to be organized. Files can move within the department for decision-making.

- (iii) If the chief executive is competent enough, the single executive system can lead to very quick decisions. The decisions of the Commission or the Board obviously take time. Sometimes the meeting of the Board is not due for another week or two weeks. Even when the meeting is due there may be violent differences of opinion leading to delays in decision making.
- (iv) Since in a single executive system, an individual has authority to take decisions he feels a greater sense of involvement. Such an individual tends to apply more energy as it makes him conspicuous. In a Commission or Board system, an individual feels that he need not apply any more efforts than others because the advantage of such effort will go to the Board and not to him individually. The Board then moves at the speed of the slowest person.
- (v) The line of authority in a Board or Commission system is not very clear. This may confuse the line functionaries as to whose orders they should obey in case there is disagreement among the members. This kind of problem does not arise in a single chief executive system where the line of authority is very clear.

### ***Advantages of Plural Chief Executive***

However, Board/Commission system has several advantages mentioned below:

- (i) Usually the decision making in a government department is a time consuming process. It has to pass through so many levels and has to undergo consultations at so many stages. The inevitable result is delay in taking decision. However, in case of plural executive, if the Board/Commission is properly constituted the consultation process can take place across the Board. Decisions can, therefore be arrived at more quickly than in case of a single chief executive system.

- (ii) An individual is more likely to succumb to pressure than a plural body like a Commission or a Board. The plural system, therefore, is more conducive to administrative integrity.
- (iii) These Commission and Boards are neither wholly expert committees nor purely representative bodies. A properly constituted Commission or Board is a combination of both. This brings out a correct balance between specialization brought in by the experts as well as democratic spirit brought in by representatives of various interests.
- (iv) Very often these Boards and Commissions are required to perform quasi-legislative and quasi-judicial functions in addition to the normal administrative functions. Such functions are better performed by a plural body than a single individual. It may help pooling the wisdom of the members reducing the possibilities of collusion with the clients or of individual judgment going wrong due to personal bias etc.
- (v) A Board or Commission may also be very suitable when quick changes in policies are required. The built-in process of consultations may help it in arriving at quicker solutions of newly emerging problems.
- (vi) A Board or Commission form of organization can help relieve the Central/State Governments to the responsibility of control over day-to-day functioning of a service organization or the management of a business enterprise. It gives the necessary autonomy to the organization. At the same time, the government can devise certain control mechanisms to monitor the progress of the organization without undermining its autonomy.

The above discussion does not establish a conclusive case for either of the two types of organizations. The choice of one against the other should be determined by the administrative circumstances of each case. The most usual and the logical form of organization appear to be the single chief system. But there are many circumstances in which the plural chief system may be found better suited. However, L.D. White observes that in general the burden of proof is on the advocates of Boards/Commissions in preference to a single executive. Even when a Board or Commission type of organization is preferred, the work of running the day-to-day administration or the organization is left to a single chief executive working under the overall supervision

and control of the Board/Commission. This type of organization is very much prevalent in the private companies where the Board of Directors gives the necessary policy decisions, while the actual business is run by a Managing Director assisted by a team of executives. The Board does not interfere in the day-to-day functioning of the Managing Director but retains control by calling for strategic information as well as by reserving some strategic decisions for themselves.

## **B. When is a Board/Commission Desirable?**

Willoughby has tried to analyze one question as to under what circumstances the Board/Commission type of organization is most suitable. He has observed that this type of organization is more suitable in respect of following types of services/circumstances:

- (i) Board or Commission system is most suitable for organizations which have to perform quasi-judicial or/and quasi-legislative functions. The obvious examples are Public Utility Boards. They perform quasi-legislative functions in as much as they formulate the rules and regulations for determining the rates and conditions of providing these services. They perform quasi-functions as they adjudicate upon issues that affect public and private rights as provided in the rules. Trusts and developments authorities also come under this category.
- (ii) The Board/Commission system is also very suitable for those organizations whose functions require the exercise of wide discretion of powers of a general control character.
- (iii) It is also suitable in case of organizations where a number or variety of interests is affected as in the case of arbitration or conciliation boards. In such matters a plural Board/Commission is likely to inspire more respect and confidence than an individual. The system is also suitable in case of organizations which are subject to a lot of political pressure and group rivalries. Various interest groups tend to get away the decisions of the Government authorities in their favour by a variety of means. In such situations the Board or Commission is in a better condition to balance the various pulls and pressures.

An obvious example is Tariff Commission.

In short the single head is the best alternative where the major policies and objectives of the Department are well settled, where the techniques and standards are well developed, where the activities are of a routine nature, and where executive promptness and vigor are essential to protect the vital interest of the community, such as public order and security. On the other hand, a Board/Commission is more suitable in planning new undertakings where the questions are not well settled and constant consultations are required for deciding policies for every changing situation.

### **C. Class of Board/Commission**

The Boards/Commissions can be classified on a number of different criteria. Some of the important ones are discussed presently.

The broad classifications are as shown in the next page:



### ***Classification on the Basis of Nature of Authority***

On the basis of nature of authority, the Boards/Commissions can be classified into three categories:

- (i) Advisory Boards/Commissions.
- (ii) Boards/Commissions performing policy making functions.
- (iii) Boards/Commissions performing policy making and executive functions.

#### **(i) Advisory Boards/Commissions**

Advisory Boards do not lie into the hierarchical structure of the government organization. They are outside it and are usually associated with the Head of the Organization only for the purpose of advice. They do not share responsibility for doing the work of the department or for the formulation of its policy. They only tender advice which may or may not be accepted by the Head of the Department.

The Advisory Boards/Commissions may on the one hand be useful for securing the necessary expertise from Government and non-Government sources and may on the other hand secure the cooperation of the people by establishing a two-way communication between them and the organization.

#### **(ii) Boards/Commissions performing Policy Making Functions**

These Boards/Commissions are high powered bodies mainly performing policy-making functions. An obvious example is Planning Commission.

#### **(iii) Policy-making and Executive Boards**

There are a number of Boards/Commissions which perform both the policy-making and executive functions. For example, Railway Board is responsible for policy formulation in regard to all matters concerning Indian Railways. At the same time, it is also responsible for all operational matter connected with the

running of the railways. Other similar Boards are Posts and Telegraphs Board, Atomic Energy Commission, etc.

### ***Classification on the Basis of Legal Status***

On the basis of legal status the Boards/Commissions can be classified in the following categories:

- (i) Boards/Commissions established by the provisions of the Constitution.
- (ii) Boards/Commissions established by some special statute.
- (iii) Boards/Commissions established by the resolutions of the Government.

We describe in brief the basic characteristics of these Boards/Commissions.

#### **(i) Constitutional Boards/Commissions**

The Constitution itself provides for the establishment of several commissions. These are:

- (a) The Union Public Service Commission
- (b) The Finance Commission
- (c) The Election Commission
- (d) Backward Class Commission
- (e) Official Languages Commission

These Boards enjoy the greatest amount of autonomy. They are appointed directly by the President and do not come under the general administrative control of any particular Ministry in their day-to-day working. The members of these commissions are appointed by the President. They enjoy a security of tenure and cannot be removed from their office except by a special procedure provided in the Constitution itself. This guarantees their autonomy of functioning. Their reports are placed on the table of each House of the Parliament. The membership of these commissions gives a great deal of prestige to the incumbent.

#### ***(a) Union Public Service Commission***

The Constitution makes it obligatory for the central government to constitute a Public Service Commission to assist it in the recruitment, promotion and maintenance of discipline amongst the Central and All India Services. The exact strength of the Commission is not specified in the Constitution. The President is empowered to determine the strength. The President appoints the Chairman and other members of the Commission on the advice of the Central Ministry. The Constitution provides that, as nearly as may be, one-half of the members must be persons who have held office for at least ten years under the Government of India. A member of the Union Public Service Commission holds office for a period of six years from the date he assumes his office or until he attains the age of sixty five years, whichever is earlier. A member of the Commission may address his resignation letter to the President. The Chairman or any other member of the Commission can be removed from his office by the order of the President only on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure laid down, reported that the Chairman or the member, as the case may deserve, to be removed. The President may remove the Chairman or any other member, as the case may be, if he is adjudged insolvent or is engaged in any paid employment out-side the duties of his office or is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

➤ Functions of the Commission:

It shall be the duty of the Commission to conduct examinations for appointments to the services of the Union Government. The Commission shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts and on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for

such appointments, promotions or transfers. The Commission is also consulted on any claims for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State, in a civil capacity and any question as to the amount of any such awards as well as on all disciplinary matters affecting the persons serving under the Government of India or the Government of a State.

It shall be the duty of the Commission to present annually to the President a report as to the work done by the Commission and the President shall cause it to lay before each House of the Parliament.

(b) *Election Commission*

In order to hold the elections freely and fairly; the Constitution provides for an Election Commission that consists of the Chief Election Commissioner and such number of other Commissioners, as the President may from time to time fix. They are appointed by the President. If other Commissioners are appointed as members of the Election Commission, the Chief Election Commissioner acts as the Chairman. The President may also appoint, after consultation with the Election Commission, such Regional Commissioners, as he may consider necessary, to assist the Election Commission in the performance of its functions. The Chief Election Commissioner cannot be removed from his office except in the like manner and on the like grounds as a judge of the Supreme Court. The conditions of service of the Chief Election Commissioner cannot be changed to his disadvantage after his appointment. Any other Election Commissioner or a Regional Commissioner cannot be removed from office except on the recommendation of the Chief Election Commissioner.

➤ *Functions of the Commission:*

The powers and functions of the Commission are determined not only by the Constitution but also by the Acts of Parliament. The main powers and functions of the Commission are — to superintend, direct and control the preparation of electoral rolls; conduct elections/by-elections for Parliament, State Legislative Assemblies and the offices of the President and Vice President; receive election petitions challenging the validity of elections and appoint tribunals to enquire into them; examine the returns of election expenses filed by the candidates; entertain and decide the applications for removal of disqualifications; give recognition to political parties about their status, as to whether they are national parties or regional parties and allot/withdraw symbols to/from political parties.

(c) *Finance Commission*

The Constitution provides for a Finance Commission consisting of a Chairman and four other members. The President of India appoints all of them. The Chairman is a person having experience of public affairs and the four other members are selected from among the persons who are qualified to be appointed as judges of a High Court, have special knowledge of the finances and accounts of the governments, have had wide experience in financial matters and in administration and have special knowledge of economics. Every member of the Commission holds office for such a period as is specified in the order of the President appointing him and is eligible for reappointment. The members of the Commission render whole-time or part-time service to the Commission, as the President in each case specifies. The Commission has the power to require any person to furnish information on such points or matters as in the opinion of the Commission may be useful.

➤ ***Functions of the Commission:***

It is the duty of the Commission to recommend to the President as to — the distribution and allocation of the net proceeds of taxes; the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India and any other matter referred to the Commission by the President in the interests of sound finances.

The President causes to lay before each House of Parliament the recommendations made by the Finance Commission and on the action taken by it.

**(ii) Statutory Boards/Commission**

Several Boards and Commissions are set up by the special status of Parliament. Some of the important ones are:

- (a) University Grants Commission
- (b) Railway Board
- (c) Central Board of Direct Taxes
- (d) Central Board of Excise & Customs
- (e) Oil & Natural Gas Commission
- (f) Atomic Energy Commission

These statutory Boards are to be under the general administrative control of the Ministry concerned. Some of them, however, form the Ministries e.g. Railway Board, Atomic Energy Commission. Even others are, however, free from regular departmental procedures. They enjoy a great deal of autonomy in their day-to-day functioning. However, their members do not enjoy the same degree of security, independence and prestige as those of the Constitutional Boards.

**(iii) Boards/Commissions set up by Resolutions**

Several Boards/Commissions are set up by the executive resolutions of the Government. Some of the examples are:

- (a) Central Social Welfare Board
- (b) The Handicraft Boards
- (c) The Handloom Boards
- (d) The Central Ground Water Commission, etc.

These Boards are created for a specific period of time, although the same Board may be appointed again and again. They are usually attached to the Ministry concerned and are known as attached Boards. Many of them are only advisory in nature. Their members do not have any definite tenure. The autonomy of these Boards is thus limited. However, some of these Boards/Commissions are very high powered ones like the Planning Commission.

### ***Classification According to Location of Board/Commission***

According to the location of the Board/Commissions, they may be classified into the following categories:

- (i) Boards/Commissions taking over the functions of the Ministry.
- (ii) Boards/Commissions which are in the nature of Heads of the Departments but outside the Ministry.
- (iii) Boards/Commissions in subordinate positions.

#### **(i) Boards as substitutes of Ministries**

There are some boards which perform all the functions of a Ministry and some of them perform the executive functions also. The examples of such boards/commissions are:

- (a) Railway Board
- (b) Post & Telegraph Board
- (c) Atomic Energy Commission

These bodies are often called Administrative Boards/Commissions. Such Boards/Commissions are suitable for organizations which are engaged in commercial or operating functions.

## **(ii) Boards as Heads of the Department**

There are several Boards/Commissions which are not substituting the Ministry but are functioning as important Heads of Department under the Ministries. Some examples of these Boards are:

- (a) Central Board of Direct Taxes
- (b) Central Board of Excise & Customs

These Boards give the executive directions to the field agencies and are also responsible for their general performances level. They may be rightly called the Executive Boards/Commission. They also deal with very important subjects and have been found very useful.

## **(iii) Boards in Subordinate positions**

These type of Boards/Commissions are a kind of department Broad tied down in some intermediate levels of administrative hierarchy. They are not empowered to control or run the whole department, although some of them perform an essential activity more or less autonomously. The obvious examples are Boards of Education. They are concerned with laying down syllabi and courses and conducting the examinations. They do not perform other functions like running of the colleges, appointment of teachers, etc. These are the functions of the regular education department.

### ***Classification according to the functions***

The Boards/Commissions can also be classified according to the functions they perform. Three categories can be identified on this basis:

- (i) Development Oriented Boars
- (ii) Regulatory Boards
- (iii) Mixed Boards

**(i) Development Boards**

Those Boards/Commissions which are engaged mainly in some developmental activities are classified as development Boards. Some of the examples are:

- (a) Industrial Promotion Boards
- (b) All India Handloom Board
- (c) All India Handicraft Boards
- (d) Export Promotion Council, etc.

All these organizations attempt to promote the development of some industries, agriculture or other economic activities.

**(ii) Regulatory Boards**

The type of Boards tends to regulate some of the activities of the people. Agricultural Marketing Boards are the obvious examples. They regulate the marketing activities of the agricultural produce.

**(iii) Mixed Boards**

There are several boards which performs both the development and regulatory functions. For example, Tobacco Board takes up many schemes for improving the cultivation of tobacco. At the same time, it takes up the regulation of marketing activity of tobacco.

The Boards/Commissions are an important form of organization which tries to reconcile administrative efficiency with the popular control of Government activity. They can be very useful in certain circumstances where the rules, regulations, procedure and policies have not been yet stabilized. They are, however, not a panacea for every administrative situation.

## Chapter VI

### The Judiciary

The judiciary is the third branch of government along with the legislature and the executive. It is concerned with some of the basic concerns of the state for settling dispute, application of laws to maintain law and order in society and to ensure justice to the people, among various means to achieve this. The judicial process is the foremost to settle disputes according to the laws of the State, the society is likely to move towards the 'state of nature' as described by Hobbes. The laws are the basis for bringing order in society by means of the judiciary.

The judicial process helps the process of legitimacy of the state. A belief that the state has a 'right to rule', that the rule is beneficial to the society and serves the interests of the people go a long way to ensure their voluntary obedience. The rule and ruler is just and the people will get justice in the hands of the rulers which make them accept the state. People resent unjust rule and unjust rulers.

Justice has a moral connotation while it emphasises on 'what is right' and 'what is wrong' from the point of view of the well being of the society. In this sense, it defines the rights and obligations of the individuals. Justice in a narrower sense refers to the laws of the state which the individuals must obey. Thus, a distinction is made between 'just' and 'legal'. The judiciary is mainly concerned with the letter, though broader considerations of justice are ever present. The law courts have to keep in view standards of 'fairness' and 'reasonableness' while applying the laws to individual cases.

The state is the source of laws that regulate the working of society. The legislature makes those laws. There are other kinds of laws also, e.g. customary laws, that have to be kept in view. Laws also circumscribe the working of the state. They prescribe the limits to the sovereign power in terms of the objectives of the state. Valmiki's *Ramayana*, 'Shanti Parva' of *Mahabharata* and Kautilya's *Arthashastra* talk of the conduct of the king according to *Dharma*. Defining the powers and functions of the government

and of its different organs is the main concern of a constitution in modern states. By doing so the constitution puts limits on the governmental powers. The laws govern the functioning of the state. Protecting the individuals from the excesses and arbitrary interference and oppression of the state is also ensured by justice. It is in this sense that the constitution is called the fundamental law of the land. The judiciary is the guardian of the constitution.

Judiciary performs many functions in the state. It settles disputes between individuals, between the individuals and groups, between the individuals and the state. While doing so it selects the law that is appropriate to the individual case. The Supreme Court of India has two types of jurisdictions – original and appellate. Cases that can be heard by the Supreme Court directly are under its original jurisdiction e.g., disputes between the states and enforcement of Fundamental Rights. The appellate jurisdiction refers to the case on which High Court has given a judgement, but the affected party wants to appeal against that judgement. The appellate jurisdiction applies to three types of cases – constitutional, civil and criminal.

It becomes necessary also to interpret the laws and advise the state. The Supreme Court of India performs advisory function under Article 143 of the Constitution. Under this provision the President can refer a matter of public importance to the Supreme Court of India for the opinion. Interpretation of the constitution is an important function of the judiciary. Such interpretations are important for the constitution and political process. The decision of the Supreme Court on India regarding powers of the Parliament to amend the constitution pointed out that this power is limited: the basic structure of the Constitution cannot be changed by the Parliament. The judgements in the Keshavanand Bharati case (1973) and Minerva Mills case (1980) stressed this limitation. The meaning of the basic structure of the Constitution has been elaborated by the Supreme Court since then in several cases that came before it.

In the functioning of judiciary the judicial process is as important as the substantive issues of law. It is often said the ‘justice should not only be done but it should also be seen to be done’. There is elaborate procedure that is followed by the judiciary – the law courts, the judges, the lawyers through the arguments.

The judiciary has a place of importance in a federation. The constitution in a federal form of government is in the form of a contract document between the central government and the federal units. The constitution therefore has supremacy over the governmental units. The judiciary is the guardian of the Constitution with reference to the powers of the federal units. In this process the judiciary settles the disputes between the union and the states as well as between the states.

The constitution guarantees rights to its citizens. Bill of Rights in the American Constitution and the Fundamental Rights in the Constitution of India are such rights to the citizens of the two countries. The judiciary ensures that these rights are available to the citizens. If an Indian citizen feels aggrieved on account of any infringement of the Fundamental Rights he/she can approach the Supreme Court of India directly. The Fundamental Rights fall within the original jurisdiction of the Supreme Court. We have noted above that the judiciary in a federal form has an important position. The US Constitution provides for judicial review of the actions of the legislature and the executive. Since the Constitution is supreme these actions can be reviewed to see if the constitutional provisions have been followed. In case of any violation, the legislative and executive actions can be declared null and void. In India the scope of judicial review mainly covers three areas: the distribution of powers between the union and states, powers of the executive and the legislature and the Fundamental Rights guaranteed under Part III of the Constitution. There is another difference between the US and Indian Judicial review. In the former, judicial review is on the basis of the “due process of law” while the Indian Constitution uses the phrase “according to the process established by law”. By this clause, the powers of the judicial review of the court are restricted.

Independence of the judiciary from the other organs of the state goes a long way to preserve its status. This is done by keeping the appointments of judges, their tenure, emoluments and the working conditions independent of the control of the other two branches of the government, i.e., the legislature and the executive. In India, the President as the head of the State appoints the judges in consultation with the Chief Justice. Specific qualifications are prescribed for the appointment of the judges. The tenure of the judges is also ensured. Both the constitutional provisions and the process of government must maintain the independence of judiciary.

In a unitary form of government, there is a single organisation of judiciary while in a federation the union and the states have their own judicial units. Thus, in India we find Supreme Court at the top and the High Courts in the States. Below the High Courts, the Subordinate Courts function under the supervision of the High Courts. At the District level, the civil cases are heard by the District Court and the Court of Session Judge looks after the criminal cases. The Courts of First Class Magistrates and of other Magistrates function under the District Court and the Sessions Court. In the cities of Delhi, Kolkata, Mumbai and Chennai, the Metropolitan Magistrates' Courts look after the judicial functions. The judicial function of the government is managed by the hierarchy of these judicial institutions.

### ***Supreme Court of India***

The Supreme Court of India has original, appellate and advisory jurisdiction. Its exclusive original jurisdiction extends to any dispute between the Government of India and one or more states, or between the Government of India and any state or states on one side and one or more states on the other, or between two or more states, if and insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends.

In addition, Article 32 of the Indian Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* to enforce them. The Supreme Court has been conferred with power to direct transfer of any civil or criminal case from one State High Court to another State High Court, or from a court subordinate to another State High Court.

**Public Interest Litigation:** Although the proceedings in the Supreme Court arise out of the judgments or orders made by the Subordinate Courts, of late the Supreme Court has started entertaining matters in which interest of the public at large is involved, and the Court may be moved by any individual or group of persons either by filing a *Writ Petition* at the Filing Counter of the Court, or by addressing a letter to *Hon'ble The Chief Justice of India* highlighting the question of public importance for invoking this jurisdiction.

Such a concept is known as **Public Interest Litigation**, or **PIL** and several matters of public importance have become landmark cases. This concept is unique to the Supreme Court of India, and perhaps no other Court in the world has been exercising this extraordinary jurisdiction.

### ***High Courts of India***

The **High Court** stands at the head of a State's judicial administration. There are 21 High Courts in the country, three having jurisdiction over more than one state. The Union Territories come under the jurisdiction of different State High Courts. Each High Court comprises a Chief Justice and such other Judges as the President may, from time to time, appoint.

Each High Court has powers of jurisprudence over all subordinate courts within its jurisdiction, namely the District and Sessions courts and other lower courts. It can call for returns from such Courts, make and issue general rules and prescribe forms to regulate their practice and proceedings and determine the manner and form in which book entries and accounts shall be kept.

The **District and Session Courts** comprise the lowest level of courts, and are trial courts of original jurisdiction, applying both federal and state laws. States are divided into districts and within each, a District and Sessions Judge is head of the judiciary. A District Judge presides over civil cases, while a Sessions Judge over criminal cases. These judges are appointed by the Governor of the state in consultation with the state's High Court. There is a hierarchy of judicial officials below the district level, many selected through competitive examination by the state's public service commissions.

Civil cases at the sub district level are filed in sub district or *munsif* courts. Lesser criminal cases are entrusted to courts of magistrates functioning under the Sessions Judge. At the village level, disputes are frequently resolved by *Panchayats* or **Lok Adalats** (*People's Courts*), appealable to the District and Sessions Court.

### ***Changing role of the Indian judiciary***

In the traditional concept of judiciary, the judge is depicted by an image, where the eyes of the judge are covered by dark cloth with hands holding the balance. This obviously means that the judges are supposed to have a very open mind on every issue without having any personal opinions at all.

Further, this also implies that the judges would not allow themselves to be influenced by the events happening around them.

Rightly or wrongly, Indian judiciary has now come to play a very vital role in influencing the various aspects of the administration and governance of the country. At one time, it was thought that the role of judiciary is only to interpret the laws and regulations and provide judgements exclusively from the legal point of view. This perspective regarding the judiciary has undergone sea change in recent times.

Unlike in the past, judiciary is now entertaining a number of subjects which do not merely involve legal issues but also the issues relating to administration, governance and personal life style of individuals.

There are many judgements given in recent times, which have no legal bearing but largely constitute the views and opinions of the individual judges. Perhaps, this is the reason as to why a number of judgements are reversed and re reversed in the higher courts.

Further, in recent times, one also comes across a number of observations of the judges, particularly during the hearing stages, which are not judgements but severe indictments of one party or the other by way of opinions and views. Pronouncements have also been made by the judges during the hearing stage which are not based on the arguments made during the hearings but based on the information available to the judges from press and media or other sources. Many wonder as to whether observations can be made by judges during the hearing which may amount to 'pre judging' the case.

In other words, judiciary is now going through a phase of revolution in the country and judges are having a larger than life image. The responsibility vested with the judiciary has also gone up by leaps and bounds, as judiciary appears to have the ultimate say in all matters.

While the judges now command considerable prestige and respect in society, one cannot deny the fact that several of the judges have been caught in corruption charges in recent times. Many vague allegations have been made against several of the judges, which could create a bad image in the course of time, which should be avoided, particularly in view of the vital role expected of the judiciary.

The quality of the judges has to be maintained and protected at the highest level and they should be made to observe several restraints, which are called upon because of the nature of the duties that they discharge. The protection of the quality of the judges is now the most vital need of the day. Obviously, this means that the selection process and promotion process for the judges should be made more transparent, stringent and based on well established parameters.