

INDIAN ADMINISTRATION

(POL3E02)



STUDY MATERIAL

THIRD SEMESTER

M.A. POLITICAL SCIENCE
(2019 Admission onwards)

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ELECTIVE

POL3E02 : INDIAN ADMINISTRATION

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MODULE - I

INTRODUCTION

1.1. Evolution of Indian Administration

The evolution of Indian Administration can be traced back to the Vedic period. Though India in its modern sense is a recent origin in comparison with the Vedic era, the genesis of administration can be indebted to the distant past attached to the Vedic age. India had a monarchical form of government and had a great tradition of village administration. The earliest known grassroots level administration was carried out through a village system of administration. A sort of decentralisation along with its antithesis; centralisation of power with a monarchical head was prevalent in ancient India. History of Indian administration traces its earliest known form to the monarchical system. Since the earliest times, the monarchical system was used in public administration in the execution of governmental functions. In the long history of Indian administration, a number of administrative organisations rose and fell. However, there are two basic features of the Indian administrative system which continued right down the ages- the importance of the villages as a primary unit and co-ordination between the two opposite trends of centralisation and decentralisation. To put it in a nutshell the present administration is a developed since from Vedic period. Abundant sources are available to get a clear picture of the history of Indian administrative system. A lot of

information regarding the organisation and functions of Indian administration is obtained from Vedic literature, Buddhist treatises, Jain literature, Dharmasastras, Indian Puranas, Ramayanas, Mahabharata, Manu Smriti, SukraNiti and Arthashastra

1.1. Vedic tradition

Indian 'Administration' traces its earliest known form to the tribal system which later emerges as a monarchical system. We gain a lot of knowledge about ancient Indian Administration from ancient religious and political treatises. In the early Vedic period there were many tribes who elected their own chiefs and he handled all their responsibilities and the administration of the tribes and the Sabha (Assembly of elders) and Samiti (Assembly of people) were the tribal assemblies. The chief protected the tribe but had no revenue system or hold over land thus wars were resorted to and the booty shared among the tribes.

The Vedic tradition of administration was related to the concept of wisdom that development was associated with the purity, the ethics and morale, the karma-yoga, the knowledge, the evenness of mind, objectivity of work and the selfless faith in action or detachment from the results etc. The Vedic tradition of administration had been subscribed to certain values like humility, pride, self-control, steadfastness, renunciation, absence of ego etc.. A civilised society was expected to give way for attainment of 'purushartha'; Dharma (Righteousness/Religion), Artha (Economic Development), Kama (Sense Gratification) and Moksha (Liberation). In

other words a civilised society was the one which had control over the four 'purushartha' and it was the duty of the administrator to facilitate social environment for self-actualisation in line with 'purushartha'.

The law and justice were connected to the concept of Dharma in the influencing era of the Vedic age. The Dharma was speaking of a proper and natural development of a universal moral order in line with morality and religious teachings. The first form of the 'State' in India can be traced back to the times of Manu(original name Satyavrata) the first King and progenitor of mankind according to Hinduism. People were fed up with anarchy as there was no neutral judge/arbitrator in between to solve issues of society, and so they appointed Manu as King and paid service fees as taxes for looking after them and ensuring mutual benefit and justice to everyone in society owing to his wisdom and philosophical attitude and the King was divine and regarded as descended from God.

1.2. Buddhism and evolution of Sangha rules

Being moved by the then existing social order, Siddhartha Gautama, who had been well versed with the Sanskrit smriti, the Dharmasastras and Dharmasutras, abandoned the worldly life and pursued new social life devoted to search for truth and peace. The enlightened Siddhartha alias Buddha had designed a code for Sangha system of life; was called the VinayaPitaka. The system of rules given in the VinayaPitaka was in the form of Sangha rules.

The VinayaPitaka, the first division of the Tipitaka,¹ provides a textural framework upon which the Sangha (monastic community) was built. The Buddhist legal system was Sangha oriented. The VinayaPitaka had elaborations on how harmonious relations could be maintained within Sangha and the protocols to be maintained among the monks (*bhikkhu*) or the nuns (*bhikkhuni*). The Pratimoksa² in ViniayaPitaka contains the list of offences from least significance to the most serious nature along with remedies. To inculcate social order the buddist monks chant the Pratimoksa twice a month.

1.3. Jainism

Being perched with a social system known for vertical as well as horizontal divisions, the Jainism put forward realistic solution for division in Indian society. The distinctive Jain take on karma is that it is an actual, material substance. This is in contrast with Buddhism, where karma is a kind of psychic energy with which only volitional actions are infused, or Hinduism, where it tends to be a kind of universal law of attraction. Karmic particles pervade the cosmos and are drawn to the soul, or *jiva*, of a living being by the passions that distort a soul's inherent purity as a consequence of its affective

¹ Traditional term for Buddhist literature.

² The Pratimoksha vows comprise the basic rules of monastic discipline. Novice monks and nuns take thirty-six vows. Fully-ordained male and female sangha (*bhikshus* and *bhikshunis*) are governed by 227 to 354 vows depending on the school and tradition. These rules are contained in the Vinaya, the collection of the Buddha's teachings on monastic discipline.

reactions to stimuli. A major emphasis of Jainism is therefore ascetic practice that is designed to curb the reactions of attraction and aversion that we generally feel for pleasant and unpleasant experiences, as well as to purge the soul of the karmic particles already present within it. The soul in a state of calm equanimity does not attract additional karmic matter. And the unpleasant experiences associated with ascetic practice—the hunger induced by fasting, or the discomfort of meditating for long periods in uncomfortable positions—borne patiently, can accelerate the ‘burning off’ of bad karma.

1.4. Dharmasastras

The term dharmasastra, in a general sense, is used for both the dharma-sutras, which are in prose, and the dharmasastras stricto sensu, which are in verse. The individual dharmasutras and dharmasastras are also called smritis, and the entire corpus of these texts is referred to as part of "the" smṛti (literally, "memory"), i.e., a form of revelation inferior only to the higher form of revelation contained in the several Vedic texts (śruti). They are Sanskrit written texts on religious and legal duties. Dharmashastras are voluminous and there are hundreds of such texts. The two most important features of the Dharmashastras are that they provide rules for the life of an ideal householder and they contain the Hindu knowledge about religion, law, and ethics and so on.

1.5.1. Topics covered in the Dharmashastra:

Dharmashastra contains three categories or topics. The first is the âchâra, which provides rules on daily rituals, life-

cycle rites, as well as specific duties and proper conduct that each of the four castes or varnas have to follow. The daily rituals include practices about daily sacrifices, the kind of food to eat and how to obtain them, and who can give and who can accept religious gifts. The life-cycle rites are the rituals that are conducted on important events in one's life like birth, marriage, and tying of the sacred thread. Acharas also provide rules for duties for all the ashrama. Ashrama are the four stages of life that include: Brahmacharya (the student life), Grahastha (the householder), Vanaprashtha (the forest dweller), and Sanyasa (the renouncer). The second topic enumerated in the Dharmashastra is the 'vyavâhara'. Vyavahara are laws and legal procedures. They include the 'rajadharma' or the duties and obligations of a king to organize court, listen and examine witnesses, decide and enforce punishment and pursue justice. The third category is called the 'prâyaschitta', which lays down rules for punishments and penances for violating the laws of dharma. They are understood to remove the sin of committing something that is forbidden.

1.5.2. Textual Hermeneutics:

Traditional hermeneutics deals with the study of interpreting written texts in the areas of religion, law and literature. The Dharmashastra tradition uses the textual hermeneutics known as 'Purva-Mimamsa' to interpret its texts. Purva-Mimamsa provides in detail the knowledge of how to interpret the Vedic texts, including the Dharmashastra text.

1.5.3. Important Dharmashastra Texts:

There are literally hundreds of texts that fall under the category of the Dharmashastra texts. Dharmasutra are the first four texts of the Dharmashastra. The Sanskrit meaning of Dharma-sutra is righteousness-thread or string. The written format of the Dharmasutra is the prose style. They deal with the subject matter of dharma and are like guidebooks on dharma with rules of conduct and rites. Dharmasutra discuss the rules for duties for all the ashrama: the student-hood, the householdership, the retirement or forest dwelling, and renunciation. Also, they provide the rites and duties of kings and court proceedings. Other issues that are Dharmasutras cover include rules about one's diet, crimes and punishments, daily sacrifices, and funeral practices. The most important Dharmasutra texts are the sutra of Apastamba, Gautama, Baudhayana and Vaisistha, and they come from various geographical locations in India and are composed at different times between 600 and 100 BC approximately. Some of the most prominent Dharmashastra texts are Manusmriti (200BC-200CE); YajnavalkyaSmriti (200-500CE); Naradasmriti (100BC- 400CE); Visnumriti (700- 1000CE); Brhaspatismriti (200-400CE); and Katyayanasmriti (300-600CE). These texts were often used for legal judgments and opinion. It is not clear if single or multiple authors wrote these texts. They differ in format and structure from the Dharmasutra and are written in the verse form.

The four upayas or approaches, expedients, devices, ways of realising the aim or object of diplomacy have existed

since the period of epics and the Dharmasastra. The upayas are sama- dama- bheda- danda: conciliation, gifts, rupture and force. Means of overcoming opposition are based on the overlapping of the four upayas and six gunas

The first form of the 'State' in India can be traced back to the times of Manu (original name Satyavrata) the first King and progenitor of mankind according to Hinduism. People were fed up with anarchy as there was no neutral judge/arbitrator in between to solve issues of society, and so they appointed Manu as King and paid service fees as taxes for looking after them and ensuring mutual benefit and justice to everyone in society owing to his wisdom and philosophical attitude and the King was divine and regarded as descended from God.

As per the Ramayana and Mahabharata/Later Vedic times it goes to portray the role of the King as the whole and sole of administration being helped by his principal officers who were the Purohit and Senani where the Purohit (Priest) wielded much more authority than the kshatriya (Warrior clan) kings. Other figures of administration were Treasurer, Steward, Spies and Messengers, Charioteer, Superintendent of Dices. This is also mentioned in the Manu Smriti and SukraNiti. No legal institutions were there and the custom of the country prevailed as the law and capital punishment was not practiced but trials took place where justice was delivered by the King in consultancy with the Priest and Elders at times. By the time Kautilya wrote the ArthaShastra the Indian Administrative system was well developed and the treatise of

Kautilya gives a very first detailed account of the same.

1.5. Kautilya and State Craft

The Kauṭīliya Arthaśāstra – written at the turn of the 4th to the 3rd century BC – is a classical work of political theory and International Relation theory. The Arthaśāstra is a theoretical and normative work which features six pivotal idea clusters: 1) state power, 2) raison d'état, 3) correlation of forces between competing states based on 4) the saptāṅga theory of the seven “state factors” (prakṛ ti). The correlation of forces predetermines which of six alternative foreign policy options – the 5) śādguṇya theory – will be selected. The background of Kauṭīliya's 'realist' statecraft is 6) matsya-nyāya theory – a political anthropology which features anarchy, conflicts of interest and power struggle. Kauṭīliya's idea of political realism anticipates much of the modern notion which is associated not only with Machiavelli and Hobbes, but particularly with Hans J. Morgenthau and also with Max Weber, Helmuth Plessner and Friedrich Meinecke.

The Arthasastra consists of 15 Books in Sanskrit sutras. The 15 books could be classified under:

1. Concerning the discipline of economics and statecraft.
2. Duties of government Superintendent.
3. Concerning the Law
4. Removal of thorns
5. Conduct of courtiers.
6. Sources of sovereign State.

7. End of six fold policy
8. Concerning vices of the king and calamities that may arise as a consequence
9. Work of an invader
10. Relating to a war
11. Conduct of a corporation
12. Concerning a powerful enemy
13. Strategic way of capturing a fort
14. Secret means like occult practices and remedies to keep of enemies or traitors
15. Plan of the treatise and thirty two methods of treating a subject

The book is an abstract, theoretical and ideally suited for scenario planning or contingency planning of foreign policy issues. By studying the text in the context of the history of that time and given the unchanging nature of statecraft, it can be related to contemporary international politics. The first concept that needs to be understood is that of the *vijigisu* (would be conqueror). The defence of a state is the responsibility of the ruler. Kangle clearly explains that the problem of the defence of a state is intimately bound up its foreign relations. The state needs to be defended against foreign states. Foreign relations in the text are mainly discussed from the standpoint of the *vijigisu*. In other words, it seeks to show how a state, desirous of extending its influence and expanding its territory, should conduct its relations with foreign states.

Kautilya's greatest contribution was to conceptualise the state as a set of functions. These functions required not merely a definition of the government but a much fuller explanation of what constituted the state. This is first expressed in the Kautilya Arthashastra. The seven constituent elements or prakritis are: svamin (king or ruler), amatya (body of ministers and structure of administration), janapada/rastra (territory being agriculturally fertile with mines, forest and pastures, water resources and communication system for trade), durga/pura (fort), kosa (treasury), danda/bala (army) and mitra (ally).

With regard to foreign policy Kautilya had a metanarrative of 'the ought to be' stages in foreign relations. The formula of *sadgunya*, which sums up foreign policy, consists of six *gunas* or policies: (1) *samdhi*, making a treaty containing conditions or terms, that is, the policy of peace; (2) *vigraha*, the policy of hostility; (3) *asana*, the policy of remaining quiet (and not planning to march on an expedition); (4) *yana*, marching on an expedition; (5) *samsraya*, seeking shelter with another king or in a fort; and (6) *dvaidhibhava*, the double policy of *samdhi* with one king and *vigraha* with another at the same time.¹⁴ The general rule is that when one is weaker than the enemy, *samdhi* is the policy to be followed; if stronger than him, then *vigraha*. If both are equal in power, *asana* is the right policy, but if one is very strong, *yana* should be resorted to. When one is very weak, *samsraya* is necessary, while *dvaidhibhava* is the double policy of *samdhi* with one king and *vigraha* with another at the

same time. These concepts continue to feature in popular literature and stories such as those in the *Panchtantra*. In Book Three on the war between the crows and owls, the six options of *sadgunya* (peace, war, change of base, entrenchment, alliance and duplicity) are demonstrated.

The formula of *sadgunya* or the six concepts of foreign policy is associated with, though it does not necessarily presuppose, the theory of *rajmandala* or circle of kings. This *mandala* is said to consist of 12 kings or states. The 12 kings are: (1) *vijigisu* (the would be conqueror); (2) *ari* (the enemy); (3) *mitra* (the *vijigisu*'s ally); (4) *arimitra* (ally of enemy); (5) *mitramitra* (friend of ally); (6) *arimitramitra* (ally of enemy's friend); (7) *parsnigraha* (enemy in the rear of the *vijigisu*); (8) *akranda* (*vijigisu*'s ally in the rear); *parsnigrahasara* (ally of *parsnigraha*); (10) *akrandasara* (ally of *akranda*); (11) *madhyama* (middle king bordering both *vijigisu* and the *ari*); and (12) *udasina* (lying outside, indifferent/neutral, more powerful than *vijigisu*, *ari* and *madhyami*).

The neighbouring princes, samantas, may normally be supposed to be hostile. But it is possible that some may have a friendly feeling towards the vijigisu, while others may even be subservient to him. Neighbouring states thus fall in three categories, aribhavin, mitrabhavin and bhrytyabhavin (Kautilya)

Conquest is of three types: *dharmavijay* (the righteous conqueror), *lobbhavijay* (the greedy conqueror) and *asuravijay* (the demoniacal conqueror). Yuddha or war is also of three

kinds: *prakash-yuddha*, ‘open fight’ at a place and time indicated; *kuta-yuddha*, ‘concealed warfare’ involving use of tactics in battlefield; and *tusnim-yuddha*, ‘silent fighting’ implying the use of secret agents for enticing enemy officers or killing them.²³ It is stated that when the *vijigisu* is superior in strength, and the season and terrain are favourable, he should resort to open warfare. If the *vijigisu* not superior to the enemy, and the terrain and season are unfavourable, *kuta-yuddha* is recommended. Examples are attacking when the enemy is vulnerable, feigning retreat and drawing him into battle, or night attack.

The empire was divided into a Home Province capital territory or administrative unit under direct control of the central government and four to five outlying provinces (States), each under a Governor or viceroy responsible to the central government. The provinces possessed a good amount of autonomy in this feudal-federal type of organisation. Provinces were further divided into districts, districts into rural and urban centres with a whole lot of officials in charge at various levels. Departments to carry out execution of policy were created in all of these divisions with specialists dominating in the Mauryan era. Elites were preferred in job recruitment and the procedure for appointing is the same as it is practiced today. A centralised data bank of all government transactions and records were maintained in an organisation of the centre just like the cabinet secretariat and this performed audit and inspection functions of the three tiers of government that is local, state and central.

This set up is very much similar to our present times where Union Territories and National Capital Territory are administrative units under Central rule where representative of the centre in the form of administrators or Lieutenant Governor appointed by the President rule the affairs under the direct supervision of the President and Central government. The states are under a governor (viceroy in olden times) appointed by and reporting to the President (King in olden times). The President is advised by his minister(s) and the sovereign power lies in the country's people. Also, the federal setup of powers given to states under the state list, and the district administration organisation and hierarchy. Civil servants were recruited to perform the duties of policy implementation. King was the head and his functions were military, judicial, legislative and executive, similar to modern state's functions of the President, he was to be well equipped in all areas of study especially economics, philosophy, statecraft and the three Vedas.

Kautilya stated that whatever pleases the king only is to be avoided and only that which pleases the people is what needs to be followed. Kautilya stated that the king was like the Father and all the people or subjects of the country or empire were his children. This shows how he takes care of them. This attitude of Kautilya conceptualized as welfare state in modern times.

Corruption was not tolerated at all and dealt with severely where the ill-gotten money was confiscated. Kautilya had his own criteria for selection of officers for the same. Once

basic qualifications were met he tested them on their attitude to piety, lucre or revenue, lust, fear. Those who completed this criteria of piety were appointed as judges or magistrates and those who crossed the test of revenue became revenue collectors, and those pass the test of lust are appointed to the king's harem. The candidates passing the test of fear are appointed as king's bodyguards and personal staff. And those who pass all the tests are appointed as councillors.

There were two courts according to the Arthashastra called the Dharmasthya (civil cases court) where the matters are disposed off on basis of dharma, procedural law, conventions, royal decree; and Kantakashodhana (criminal cases court) where accused is convicted on basis of testimony and eye witness of spies, etc. Similar to today's times where there are separate courts having the subject matter jurisdiction of civil or criminal issues. Agriculture was the mainstay and taxes on the goods produced as well as its imports and exports were the source of revenue and the expenditure focused on public administration, national defense, army, salaries of govt. officials. Agriculture plays an important role even today in our country. Therefore, as one can see Kautilya's arthashastra deals with a proper strategy and system of centralised autocracy with a welfare objective in mind before performing any function by the king and his minister.

Weaknesses of the Kautilyan State:

- i) Over charged with supervision - too much of checks and balances.

- ii) Prominence on individuals instead of institutions.
- iii) Fundamental mistrust of officials.

The Guptas carried forward the Mauryan legacy of administration in many respects.

1.5.1. Kautilya Administration and Modern Personnel Administration and Public Administration

1) Personnel Administration :

A system of recruitment was there and job description as well. Salaries were clearly spelled out of ministers and government officials. It also stated a view of job permanency and increment in salary or position (promotion) if the official concerned provided extraordinary service. Personnel were to be transferred from time to time as per Kautilya because it would avoid corruption and misappropriation of government funds. Removal and tenure of officials and ministers were at the pleasure of the King just like the Governor and Attorney General, etc. hold office at a term that specifies 'pleasure of the President'.

2) Public Administration :

The King is the sole source of authority and appoints and dismisses personnel and divides the work of govt. into different ministries under several ministers and officials. Kautilya stresses on the need for specialist and generalist personnel at different levels of administration with full accountability to the King, thus talks about division of labour and coordination between them for efficient administration. As discussed above there was a clear system of recruitment,

pay and terms and conditions of service very much resembling the modern State. Modern state is more concerned about development whereas the Kautilyan model talks about collecting revenue and employing activities to help in expediting and ensuring revenue, so it talks mainly of control instead of development. It talks about local self- government that very much resembles a precursor to the Modern State local self-government model.

Kautilya's Arthashastra is more about political science that is how to conduct State affairs rather than focusing on the philosophy that underlies it. He is very practical in his approach with a strict focus on amorality so that the King's rule and administration are neutral without offending anyone, and also on rationality and an organized as well as efficient way of running a system with a great deal of focus on accountability and honesty and vigilance.

1.6. Mughal Administration:

The Mughal administration was the most organised and long lasting and has even carried on to the modern times. The reason for this stability was the long lasting more than 3 centuries rule of the Mughal sultanat. Akbar was the architect of this system since his grandfather and father Babur and Humayun respectively had their hands full with battles and socio-economic uncertainties leaving little time for administrative activities.

A very detailed, reliable and brilliant account of Akbar's empire, society and administration is given in the

famous detailed document/text by AbulFazl titled Ain-i-Akbari (Constitution of Akbar), lot of earlier tradition of administration were adopted by Mughals. The Mughal administration did carry forward a lot of the earlier traditions in political and administrative matters already existing in India as mentioned above but they upheld greater centralization and a rigid structure without paying much interest to social services of health and welfare as also morals as compared to the Mauryan rulers. Theirs was an Islamic state and right from the principles of government, church policy, taxation rules, departmental arrangements to the titles of officials all was imported wholesale from the Person-Arab crescent of khalifs of Iran and Egypt. However, even though the recruitment was mainly based on caste and kin they also did recognize merit and talent and did open up the civil services for Hindu people. Its source of revenue was taxation on land and agriculture and was highly urbanized. In the lower levels like of politics, village and lower levels of officials the Indian usage and customary practices were allowed whereas at the court or darbar and in higher official circles the foreign imported model of policy prevailed. The sovereign was the king who was paternalistic and he had supreme authority over everything. He did have a number of ministers to help, advice and assist him in the discharge of his functions, out of which the more important were four- the Diwan who was in charge of revenue and finance, the Mir Bakshi at the head of the military department, the Mir Saman in charge of factories and stores, and the Sadr-us-Sudur who was the head of the ecclesiastical and judicial department.

Administration was based on coercion in the name of the King by the officials. The main functions of the officials were to maintain law and order, safeguard the King's interests from internal uprising and revolts, defend and extend boundaries of the empire and collect revenue and taxes. Every officer of State held a mansab (official appointment of rank and profit and expected to supply certain number of troops for State military service) thus the bureaucracy was essentially monetary in character. The officials ranged from Commanders of 10 to 10000 and were classified into 33 grades. Each grade carried a certain rate of pay, from which its holder was to provide a quota of horses, elephants, etc and the State service was neither hereditary nor was it specialized. Grading system is practiced even today in recruitment matters.

The pay was received in form of either cash or jagir for a temporary period from which he could collect revenue equivalent to his salary. Thus, the jagirs though having no hold over the land extracted revenue at their whims and fancies from the land. The Army of the Mughal empire must be understood in terms of the Mansabdari system. And apart from that there were the knights who were called the gentleman troopers and owed exclusive allegiance to the King. The cavalry was the most important unit, the infantry was made up of townsmen and peasants and the artillery with guns and the Navy. The corruption within the army where the soldiers played more allegiance to the immediate boss rather than the king proved to be its undoing and thus could be easily overpowered by the Marathas during the time of Jahangir.

The Policing system of the Mughals was entrusted to village headman's and subordinates in villages and to Kotwals in cities and towns. And at the district level the faujdars took over. It was a precursor to modern policing system of India. The administration at the Centre was personal and paternal and operated with a fair degree of efficiency as long as the King kept an eye and controlled effectively. The two highest officials were the Vakil and the Wazir of which the former was higher in position and functioned as the regent of the State and maintained over all charge of the same.

The Wazir was the head of the revenue department and was known as Wazir when he acted as a Prime Minister. Chief Diwan supervised revenue collection and expenditure and was the head of the Government's administrative wing supervising work of all high officials. All provincial diwans and their subordinates reported to him and he signed and authorised all government transactions. A Musatufi audited the income and expenditure of the government and the Waqia Navis kept a record of all important farmers.

The Khan-i-Saman was the high steward of the royal expenditure and the Mir-i-Bakshi who was the paymaster General of the empire. The Provincial or State Administration was also known as Subahs (for states or provinces) and was headed by the Subedar or the Governor. He was appointed by the King and was given a office insignia and instrument of instructions which defined the powers, functions and responsibilities. As executive head he was in charge of provincial administrative staff and ensured law and order

there. He also handled local civil intelligence agencies and controlled the local zamindars and contained their political influence. Provincial Diwan was appointed by the central Diwan and was next in the line of importance after the Provincial governor. He appointed Kiroris and tehsildars to extract revenue from the ryots in time. He also exercised audit functions and had full control over public expenditure. He was assisted in office by the Office Superintendent, head accountant, treasurer and clerk. The provincial Bakshi performed the same function as the central bakshi. The Sadr and Qazi were two officers at provincial level who were sometimes united in the same person but the Sadr was basically a civil judge but did not handle all civil cases and the

Qazi was concerned with civil suits in general and also with criminal cases.

1.6.1. District and Local Administration Under Mughal Rule :

The Subah or Province was further divided into Sarkars which were of two types. One was ruled by officers appointed by the emperor and those under the tributary rajas. Each Sarkar was headed by Faujdar, he was the executive head who had policing and military functions and could surpass the provincial rulers to speak directly to the imperial government. The Amalguzar was in charge of the revenue and the other head of the Sarkar. The Kotwal did the policing. The qazi performed the judicial duties. The Sarkars were further divided into parganas and the parganas further divided into Chaklas headed

by officials called Chakladars. Qanungos kept the revenue records and the Bitikchi was the accountant and Potdar was the title of the treasurer. This was the hierarchy for a sound and efficient administration Akbar kept the land revenue at 1/3 and Todar Mal brought in reforms as in a standard system of land revenue collection that included survey and measurement of land, classification of land based on its fertility and fixing the rates. Justice was administered based on the Quranic Law as the Mughal state was a Muslim State. Fatwas were issued when required and ordinances by the emperor. The principles of equity were followed and the Emperor's interpretations only was allowed till the point it did not run contrary to the sacred laws.

Briefly, the principles the Public Administration throughout the Moghul period could be listed as: Centralisation; personalized administration; civil service; dissimilar stages of administration; division of work; bureaucracy having military character; revenue administration based on well laid down principles; administration based on fear of force; administration based on regulations, traditions, and practices; and inadequate unity of command (one could find gaps through illustrations like the position of provincial Diwan, who was directly under the Imperial Diwan and not under the Governor, and the position of Faujdars, who were though under the Governors, yet could have direct communication with the imperial government).

1.7. BRITISH ADMINISTRATION: 1757-1858

Feature Characteristics of the East India Company The

East India Company, recognized on 31st December 1600, was a monopoly, mercantile Company, which was granted through the British crown the right to trade in the eastern parts. A trading station, with a number of factors was described Factory. A settlement (number of factories) was under an Agent. Factor was the term applied to an agent transacting business as a substitute for another in mercantile affairs. Employees were graded, writers, factors and merchants. Recruitment of officials, their nomenclature, conditions and circumstances of service were governed through rules and practices appropriate to commercial business. Usually, patronage was the method of recruitment and promotion in the services. Patronage was in the hands of the Proprietors or Directors of the Company. In the early years of Company rules, officials were regularly moved around, from one district to another. They had no training on the job and learnt the hard way through trial and error. They were ignorant of the laws, customs and languages of the local people. Given very low salaries, the Company's servants were recognized to be corrupt. The system of governance was commercial in character. It was basically government through Council. The Council had executive and legislative powers with the Governor or the Governor-General having the casting vote. With the acquisition of more territorial sovereignty and the need to take prompt decisions, more power came to be concentrated in the head or Chairman of the Council, but the fundamental principle of communal rule and responsibility remained. It was also a government through Boards. But the Board of Revenue had the longest history and the mainly

distinguished record of work. Later, there was also the Railway Board. The Board made possible counseling, discussion, deliberation and even legislative and judicial activities. Questions of policy and principle, conduct and action were settled in the Board.

It was a government through record. When transactions were commercial, records were brief and manageable. But political dealings made record keeping cumbersome and voluminous. Notes, minutes, dispatches and reports became an integral part of British administration. All this was in a way necessary because only through written reports and records could control be exercised through officials in the governmental hierarchy. With the Company headquarters in far absent England, record keeping helped check absolutism and uncontrolled power. The East India Company mismanaged administration of acquired territories in India. One instance of it is through Clive's Double or Dual Government of Bengal, Bihar and Orissa. While the Company took over direct responsibility for defending these territories from outside attack, internal matters, like revenue collection was still left to the Nawab and his officers who worked on behalf of the Company. This was because the Company did not know the local customs and practices and felt comfortable leaving the existing system of revenue collection intact. But this resulted in use of the worst type as maximum revenue was extracted from the people. Though it was done in the name of the Company, which got a bad name on this account, the Nawab and his men pocketed a lot and grew rich at the cost of the Company.

1.7.1. The Regulating Act of 1773

This Act deserves special mention because it was the first action on the part of the British Government to regulate the affairs of the Company in India. The Company, through a Charter, had only been given trading rights through the British Crown. When it acquired territories in India and slowly but surely converted itself into a ruling body, the Parliament could not accept and regularize this development.

1.7.1.1. Changes Introduced through the Regulating Act in England

The Court of Proprietors of the Company was reformed. Formerly, a shareholder, holding a stock of £ 500 and over, became a member of the Court of Proprietors. The Regulating Act raised it to the minimum to £ 1000. This made the Court of Proprietors a compact, better organized body to discharge both its duties and responsibilities. Changes were also made in the Board of Directors. It was now to consist of 24 members elected through the Court of Proprietors every 4 years, 6 directors retiring every year - instead of all the Directors being elected every year as before. This gave the Board some stability and facilitated better management.

The Governor of Bengal was now designated as the Governor-General of Bengal and Governors of other provinces in India were subordinate to him. The Governor-General was to be assisted through a council of four members sent from England. Decisions were to be taken through majority vote and the Governor-General Warren Hastings had a casting vote. The

British territories in India came to be controlled from Bengal and that in turn was subject to control from England. The Regulating Act set up the Supreme Court at Calcutta with Lord Chief Justice and three judges. This was the Supreme Court of Judicature, the highest court in British India. It had power to exercise civil, criminal, admiralty and ecclesiastical jurisdiction. It had jurisdiction over British subjects and Company's servants. But its relations with the existing courts were not defined.

1.7.1.2. Effects of the Regulating Act

The changes in the Company's organisation in England made it more effective managing body at headquarters. The Act created a centralized administration in India, creation the Bombay and Madras Governors subordinate to the Governor-General of Bengal. There was a felt need for a uniform policy for the whole of British India, therefore, avoiding much wasteful expenditure. The creation of the Supreme Court made for better justice to British subjects. The Regulating Act brought in a system of checks and balances. It made the Governors subordinate to the Governor-General, the Governor-General subordinate to his Council and the Supreme Court effective in its control over the Governor-General in Council. The Regulating Act laid the foundation of a Central administration and instituted a system of Parliamentary control. It marked the beginning of the Company's transformation from a trading body to a Corporation of a new type, entirely administrative in its object and subordinate to Parliament.

1.7.2. The Amending Act of 1781

This Act amended the jurisdiction of the Supreme Court. It was deprived of its right to action arising in the collection of revenue. Landholders, farmers or other persons linked in land revenue work were not sheltered through the Supreme Court. In the same way, no person, just through virtue of being the Company's employee, could be subjected to the Court's jurisdiction. Even though the Court's jurisdiction extended over all the inhabitants of Calcutta, the Court had to take into account personal laws of Hindus in case of Hindus and Quranic law in case of Muslims. The Amending Act recognized the appellate jurisdiction of the Governor-General and Council and confirmed their judicial authority to entertain all such pleas and appeals as they had done all beside as a Court of record.

The Governor-General and Council were further invested with —power and authority, from time to time, to frame regulations for the provincial courts and councils. Their legislation under this Act, was not to be subject to registration in the Supreme Court of Judicature, but was required to be finally approved through the Crown.

1.7.3. CONSTITUTIONAL CHANGES FROM 1784-1834

1.7.3.1. Pitt's India Act 1784

The shortcomings of the Regulating Act soon became manifest. To remedy these defects was not easy because it involved a complete separation of commercial and political

functions of the Company which was viewed with disfavour in England. The urge for a change was very strong and it could not be suppressed for long. In 1783, a bill was introduced through Dundas, but it failed. In the same year, Fox introduced two bills but these were rejected in the House of Lords. When William Pitt came to head the Government he was determined to introduce a bill on India and see it through. At the first attempt, it was defeated through a narrow majority and on second attempt after Pitt's party was returned to power it was introduced. Pitt's India Act provided for a body of six commissioners popularly recognized as the Board of Control. It consisted of one Secretary of State, the Chancellor of the Exchequer and four Privy Councilors appointed through the king and holding office throughout his pleasure. Three of the six shaped a quorum and the President possessed a casting vote in case opinion was equally divided. The Secretary of State was to preside over the meetings of the Board, which in his absence, done was through the Chancellor of the Exchequer or a Senior Commissioner. The Board of Control was empowered to superintend, direct and control the Company's affairs in India with regard to civil, military and revenue work. The Directors of the Company had to deliver to the Board, copies of all correspondence with the Company. The orders of the Board on civil and military government or revenues of India became binding on the Directors. According to the Act, the Board could transmit, through a secret committee of three Directors, secret orders to India on the subject of war, peace, or diplomatic negotiation with any of the country powers.

The Proprietors lost mainly of their powers. They could no longer revoke or modify a decision taken through the Directors with the approval of the Board of Council. The Directors retained their control of commerce and right to patronage except in the appointment of the governor-general the Governors of Madras and Bombay and the Commander-in-chief of the three Presidencies. The arrangement made through Pitt's India Act operated till 1858. Indian Government was subjected to a system of dual control in which the Company could initiate proposals subject to the revising and directing authority of the Board.

The Act reduced the number of members of the governor-general's Council to three. One of them was to be the commander-in-chief. This change enabled the Governor-General to get a majority even if he could get the support of only one. The Act clearly indicated the subordinate character of the Governments of Bombay and Madras and made independent action on their part, impossible. The Governor General in Council had the power and authority to superintend, direct and control other Presidencies in all matters. The whole diplomatic relations of the Company in India as also the finances necessary to support them were entrusted to the Governor General in Council. The subordinate governments were directed not to disobey any of the orders of the Supreme government on the ground of competence. They had to obey such orders in all cases except when they received positive orders and instructions from the Directors or the Secret Committee. They also had to send true and exact copies of all

such orders, resolutions or acts to the Governor General in Council. Pitt's India Act invested the Governor General in Council with much discretionary power to deal with emergencies. Though they had to obey orders from home, they could act on their own when the situation warranted it. Usually, in matters of war and peace, the Governor General in Council was to be guided through instructions of the Court of Directors. Hence, through Pitt's India Act, the Control of the Crown over the Company, of the Company over the Governor General in Council and of the supreme government over the subordinate Presidencies was greatly improved and fairly well defined.

1.7.3.2. The Amending Act of 1786

The Amending Act of 1786 took care of the problem related to the Councils of the Governor-General and Governors. The Act invested the Governor-General or Governor with power to override the decision of his Council and act without its concurrence in extraordinary cases involving in his judgment the interests of the Company or the safety and tranquility of British India. If the Governor-General or Governor had to use this extraordinary power, to overrule the majority, both sides had to put in writing their respective positions on the issue under dispute. If the Governor-General or Governor finally chose to act in his own way, he was personally to bear the responsibility of the measure adopted without the concurrence of the Council.

1.7.4. The central secretariat

In 1784, the Central Secretariat had three main

branches: General, Revenue and Commercial. Judicial branch was later recognized in 1793. Flanked by 1793 and 1834, the Central Secretariat worked through four branches. Of these, the civil section of the General branch was under the immediate control of the Supreme Board which consisted of the Governor General in Council and it was administered through Secretaries to Government in several departments. The Departments of Secretaries to Government Before 1756, all transactions of business were handled through one general department with the help of a Secretary and a few Assistants. Due to pressure of business and exigencies of war, the General Department had to be reorganized to secure efficiency and despatch. Accordingly, a plan was drawn up to have two Departments, that is, the Public Department which dealt with the affairs of trade, shipping, revenues, accounts and other matters of a public nature and the Secret Department which dealt with military plans and operations and all transactions with country powers. Separate records should be maintained for each. The two departments had to be jointly supervised through a Secretary and an Assistant Secretary, with a sub-Secretary attached to each Department. There were eight Assistants for the Public Department and seven for the Secret Department. Their specific duties were defined. The President and Council at Fort William accepted this plan and implemented it in 1764. In 1774, the Governor-General and Council took over the whole civil and military government of Bengal under the Regulating Act. With augment in the volume of administrative work and the supervision of military operations against the Marathas and Mysore, the Public and

Secret Departments had a Secretary each. The post of Assistant Secretary was abolished and a sub secretary was attached to each of the two departments. The duties of each were specified again and the Secret Department was removed to a separate house so that its records and papers were not 'exposed to improper inspection'.

1.7.4.1. Foreign Department

The affairs of foreign nations in India were part of the business of the Secret Department. These were now separated and vested in a Foreign Department, which was recognized in 1783 and placed under the charge of the Secretary to Government in the Secret Department. Military Department Matter relating to military expenditure, ranks, pensions and other claims of a military nature were previously dealt with through the Government in its General or Public Department. Warren Hastings, in 1776, suggested that military matters spread over dissimilar departments should be brought together under a new Military Department. This was done in 1777.

1.7.4.2. Revenue Department

When the Company acquired Diwani provinces in 1765, the collection of revenue was left to Indian officers who acted as mediators for the British. This arrangement sustained till 1769 when the Governor-General and Council appointed Supervisors in all districts to acquire knowledge of revenue possessions and report on abuses in the current system. But since their powers were limited and they failed in their duties, a new management was created. There was to be a Controlling

Council of Revenue at Murshidabad and another at Patna. Since these lacked co-ordination, a Controlling Committee of Revenue was set up in 1771 at Calcutta with powers to inspect, control and direct revenue affairs.

In 1772, the Company decided to stand forth as diwan and carry out all revenue administration through its own men. So a Committee of Revenue was shaped which worked beside with the Controlling Committee of Revenue. Finally in 1772, it was decided to have a Revenue Department at Calcutta in place of these several bodies. The Department had a Secretary, an Assistant Secretary, and a sub-secretary, a Persian Translator, an Accountant- General and many Assistants.

In addition to Department Secretaries to Government who acted under the direction and control of the Council, there were three inferior Boards to take care of details of execution. These were:

The Committee of Revenue shaped in 1781 to take care of revenue, justice and police.

The Board of Ordnance, shaped in 1775 to manage military stores.

The Board of Trade shaped in 1774 for commercial transactions.

In 1785, these were reconstituted as the Board of Revenue, the Military Board and the Board of Trade. In 1786, the old Secret Department was renamed as Secret Political Department. The Foreign Department was designated as Secret and Foreign Department. A new Secret and Military

Department was set up with Edward Rav as the Secretary of all the three departments. The old Military Department was reconstituted in 1786 as the Military Department of Inspection and was separate from the Secret and Military Department. With slight changes in nomenclature like dropping the words Secret in titles of Departments and creating a new Secret Department these sustained after 1787.

Changes in the Secretariat from 1787-1808

Cornwallis reorganized the Secretariat. A Secretary-General was appointed for the Public, Secret and Revenue Departments while each sustained to have a sub-secretary. This arrangement preserved the independence of each department while uniting all under the Secretary-General. Cornwallis also recognized a separate Judicial Department with proceedings kept under two separate heads, civil and criminal. Wellesley reconstituted the Secretariat and the changes he effected proved to be of a permanent nature. Through now there were four groups of Departments. They were: The Secret, Political and Foreign Departments. The Revenue and Judicial Departments. The Public Department including Commercial branch. The Military Department. Each of these departments had a sub-secretary and all acted under the orders of a Secretary-General who was usually nominated as Secretary to Government. Sub- secretaries became the Secretaries'. The Chief Secretary had powers of general, control and authority, but execution of details was not his job. Individual Secretaries were fully responsible for transaction of business in their respective Departments. There was a considerable

augment of salaries as well. He also opened new Departments since new territories were acquired through the Company. Wellesley, in sum, raised the status of the Secretaries to Government through raising their salaries and augmenting their responsibilities to contain research and planning.

1.7.5. Financial and Colonial Departments

With Wellesley's arrangement, secretaries had come to shoulder greater responsibility and distinguished themselves as extraordinary administrators. When Minto took charge, he chose to depend on his Secretaries and be guided through them rather than act on his own views and principles. Minto added two new Departments Financial and Colonial. The Financial business of Government was separated from the Public Department in 1810 and recognized as a separate Financial Department. The Colonial Department was intended to manage the affairs of Mauritius and Java which had come under the Company.

Reconstruction of Departments in 1815

The organisation of the Secretariat was again revised in 1815 in conventionality with a plan proposed through the Governor-General. This was partly in conventionality with the necessities of the Charter Act of 1813 which had directed that separate accounts to be maintained of the Company's territorial and commercial revenues. This separation had also been ordered through the Court of Directors and was necessitated through the policy laid down through the Parliament and the home authorities. According, a new

Territorial Department was created.; Departments under the governor-general and other civil departments

The office of the Governor-General consisted of the official establishment of his Private Secretary, his Interpreter and a number of Assistants. One of the main duties of the Private Secretary was to administer Darbar charges which were stipends paid to the Nawab of Bengal and others. Residents were appointed in several parts of the country. A Resident was appointed to get complete knowledge of what transpired at Courts of native rulers and uphold 'British interest against those of other foreign powers. The administration of political residencies, though mannered through the Secretary to Government in the Secret and Political Departments, was essentially connected up with the office of the Private Secretary to the Governor-General. Residents soon became very powerful and had large administrative staff. The other civil Departments incorporated the Treasury which handled money, supervised the financial possessions of Government and control of its expenditure, the Department of Audit and Accounts, the Persian Department and the Agencies specified as the Agent for stationery, agent for Indigo and agent for despatching ships to Europe. There was also the Post Office, the Mint and other establishments like that of Surgeons and Chaplains, the Clerk of the Market and the Coroner, under the Civil Department.

1.7.6. The administration of revenue

Land revenue was the mainly significant source of income for the Government and revenue settlement was one of

the mainly complicated functions of the Government. It involved the consideration of a multiplicity of rights and obligations and it differed in fundamental principles and details from place to place. The Company's servants had to gather proper information as to the economic possessions and social traditions of the people and the methods of revenue administration followed in the past. On the basis of facts therefore composed, they had to frame appropriate regulation for imposition of revenue and appropriate machinery for its collection. The Imperial Grant of the Diwani The Company got the grant of Diwani, that is, the right to collect taxes in Bengal, Bihar and Orissa in 1765. But it did not assume direct charge. Expediency and policy dictated such a course of action wherein the Company through the Resident, restricted its authority only to the superintendence of the collection and disposal of revenues. Because the British lacked knowledge and experience of revenue collection and they did not want to antagonize or alienate the natives, they preferred civil administration to continue in the hands of the Nawab or his minister. This meant that power was divorced from responsibility. The native officers, zamindars and others exploited the peasants. They were guilty of acts of oppression without any fear of punishment from the British Government as long, as they satisfied its revenue demands. Soon in 1769, the Government appointed supervisors in the districts of the diwani provinces to look into the produce of the land, revenues, taxes, etc. In 1770, two controlling Councils of Revenue, one at Murshidabad and another at Patna were appointed. No appointment could be made through the

Nawab's men without their permission. These piecemeal measures did not go far in solving the vital troubles which related to power being divorced from responsibility. The outbreak of famines, especially the one of 1770, added to the sufferings of the common people. Though, the Supervisors did do some good work in reconstructing revenue records.

In 1771, the Directors stated that they would takeover, through the agency of the Company's servants, the whole management of the revenues of Bengal, Bihar and Orissa. To provide effect to his decision, a Committee of Route was appointed in 1772 and supervisors were nominated as Collectors.

1.7.6.1. Formation of the Board or Council of Revenue

With the collection of revenue 'given over to Collectors, the Committee of Route favoured the discontinuance of the Controlling Committee of Revenue at Calcutta. Control had to be exercised through the Supreme Council. In 1772, so, the Committee of Route recommended the formation of the whole Supreme Council into a Board or Council of Revenue. This Board first met on 13 October 1772, when the Controlling Committee of Revenue at Calcutta also came to an end. The Committee of Route was abolished in 1773. The structure of Revenue administration was greatly simplified. It consisted of the Board of Revenue at the Presidency, with Collectors in the districts, assisted in joint responsibility through the native diwans.

1.7.7. District Administration and the District Collector

The position of the District Officer was the foundation

on which British rule in India rested. District administration through the mediators of the Central Government has been a vital characteristic of our Governmental system since times immemorial. The Mauryan Empire was divided into a number of provinces and each province was further divided into districts. Villages were governed through village communities. The district officer was responsible to the Provincial Governor and ultimately to the Emperor. A similar arrangement prevailed under the Guptas. The District sustained to be a significant area of administration even under the British. In 1772, Warren Hastings placed a district under a Collector who was a British. Two years later this arrangement was abandoned and again picked up in 1781. Through 1786, the district came to occupy a central place in the scheme of local administration. In 1829, some districts were grouped together and shaped a Division which was under a Commissioner of Revenue and Route. This Commissioner was given powers of supervision and control over the administration of the districts. Later, districts were sub-divided into subdivisions each under a sub-divisional officer.

One school of British administration readily accepted the theory that an oriental principle of government was that all power and authority should be concentrated in one officer at the head of each unit. Though it was not usually accepted, given the anarchy in the 18th century, there seemed to be no way out but to have such an arrangement. After the district was made the basis of administration in 1786, the Collector performed the duties of a Revenue Collector, Judge and

Magistrate. The District Officer had to assess and collect the revenue, try civil and revenue cases and maintain law and order.

Lord Cornwallis was not happy with this arrangement for an officer who assessed the revenue, and had to hear complaints against that assessment. The temptation would be to justify in his judicial capability what he had done as a Revenue Officer. Accordingly, in 1793, a new Regulation was adopted through the Governor General in Council through which Collectors would not try the revenue cases any longer. In each district, there were two significant officers - Collectors for collection of Revenue and the Judge Magistrate to maintain peace, supervise police work, apprehend thieves and robbers, try them as Magistrate and functions as the Civil Judge.

In 1831, there was a further change in the duties of District officers. Until this time, Collector composed revenue, while Judge-Magistrate was to act as the Civil Judge, maintain law and order, discharge other duties of general and administer lower criminal justice. These civil judicial duties were now (1831) handed over to a separate Civil Judge while the rest of the functions of the Judge - Magistrate were entrusted to the Collector. The Collector now discharged all functions of the Chief Executive officer of the district including the collection of revenue, administration of lower criminal justice and maintenance of law and order. This was much too heavy a burden for the Collector especially because he did not have a well-organized police force at his command nor trained assistants to help him. Lawlessness became a rife and in 1836,

Lord Auckland appointed a Committee described Bird Committee to investigate.

The Committee was of the opinion that these functions were too exacting and District Officer could not cope up with them. Since he paid more attention to revenue collection and neglected duties of general and police administration, something ought to be done. The Committee recommended that revenue functions should be placed in the hands, of separate functionaries described Collectors. This was effected and put into operation through 1845. But this division of labour did not improve the efficiency of police administration. Towards the secure of 1853, changes were again effected and there was a reunion of magisterial and revenue functions, because the separation of the offices of Collector and Magistrate had been injurious to the character of the administration and the interests of the people. The oriental theory of government was clearly enunciated and the principle of unity of authority in District administration advocated. In fact, there were three officers in a district, flanked by 1838 and 1859 namely the District Magistrate, District Collector and District Judge. In 1859, there was a reunion of officers of Collector and District Magistrate and henceforth they were held through one and the same officer. Later, the British' came firmly to consider that if District Magistrate could not punish the lawbreakers himself, his authority would be undermined. They upheld the combination of criminal justice with executive administration.

1.7.8. Board of revenue

British administration in its initial stages had a number of Provincial Revenue Councils at work and above them was a Secretariat at Calcutta. These Provincial Revenue Councils came to be replaced through a Board of Revenue which came to assume tremendous importance both in revenue collection and general administration for almost 140 years. The jurisdiction of the Board extended to the whole field of revenue administration including settlement, collection and receipt of public revenues. In 1788, Cornwallis revised the constitution of the Board of Revenue. The Board was concerned with the deliberation, superintendence and control. The details of management of revenue were left to Collectors who were responsible to the Board. In the exercise of its powers, the Board could summon any officer to explain his conduct, fine him or even suspend him with the final consent of Government.

The Collectors became very significant because they supplied, in the first instance, all the data on the basis of which the Board's report to Government would be prepared. Once decisions were taken and instructions issued, the execution of details was left to the Collectors who with the discretionary power they wielded, became supreme in district administration. Two more reforms were effected in the Board of Revenue on the recommendations of John Shore in 1788. They sought to effect total control of revenue administration through the covenanted civil servants.

In 1790, a regulation was passed which empowered the

Board to Act as a Court of review as well as appeal in all revenue cases. In the same year the Governor- General in Council, constituted the Board of Revenue into a Court of Wards. This was to bring under the Board, the affairs of all such estates as belonged to females, minors, idiots, lunatics and persons of doubtful character. From time to time, regulations were issued to guide the Board in this activity. Subsequently, Divisional Commissioners came to be appointed. In the history of the Board of Revenue from 1786, one sees two main growths - one jurisdictional and the other functional in character jurisdictionally, the extent of territories under its control increased progressively till 1807, when it sheltered Bengal, Bihar, Orissa, Banaras as well as the conquered Provinces. It was followed through a procedure of decentralization which was first marked through the establishment of the Board of Commissioners for the ceded and conquered Provinces.

This procedure sustained until two district Boards of Revenue came to be recognized in 1831 with a number of Commissioners of Revenue to take care of local supervision. Functionally, the controlling and supervisory character of the Board of Revenue remained unchanged. As for judicial powers, the Cornwallis principle (which favoured separation of judicial from revenue work) was reversed. This was necessitated through the exigencies of periodical assessment in the ceded and conquered Provinces where frequent judicial matters came up. A third development was the tendency of the Government to reduce the number of Board

members or to vest in a single member, the powers and authority exercised through the Board as a whole. This was done for the sake of speedy conduct of business, economy, and the want of trained men.

1.7.9. Role of divisional commissioners

The territorial jurisdiction of the Board of Revenue was unmanageable. So in 1822, separate Boards of Revenue were reconstituted. These were the Board of Revenue for the Lower Provinces or the Sadar Board, Board of Revenue for the Central Provinces or the Western Board. Despite this arrangement, each Board found that it was unable to manage the territory under its jurisdiction. Conduct of business was slow and corruption was on the increase. The major problem was that of aloofness flanked by the Board of Revenue at the Presidency and the Collectors in the districts. The need was felt for effective local supervision, especially in the ceded and conquered Provinces. Holt Mackenzie felt the solution lay in appointing local commissioners. William Butterworth Bailey improved on this arrangement through suggesting that these Commissioners of Revenue be given the duties and powers exercised through the Courts of Route and Superintendents of Police. Accordingly, a new plan was adopted on 1st January 1829. Under this new regulation, all British owned land was to be divided into 20 divisions excluding the territory of Delhi which was under a separate Commissioner and stood on a slightly dissimilar footing. The Governor General in Council could transfer any district from one division to another and augment or reduce the number of Commissioners according to

administrative needs. The Divisional Commissioners were to exercise the duties, powers and authority vested in the Boards of Revenue and Courts of Wards. In the exercise of their powers they were subject to the control and direction of a Sadar or Head Board of Revenue stationed at the Presidency and guided through the orders of Government.

1.7.10. Reforms in British administration: 1858 to 1919

The Act of 1858 ended the Company rule and the system of Double Government through Board of Control in England and the Court of Directors of the company introduced through the Pitt's India Act, 1784. Indian Administration came directly under the Crown. The Act created the office of the Secretary of State who was a cabinet minister in the British cabinet. His salary and establishment was paid from the Indian revenue. He was assisted through a council of fifteen members to create him familiar with Indian affairs. With the end of the East India Company, British Parliament lost much interest in Indian affairs and the Secretary of State for India became the defacto government of India. He had overriding powers over, the Council in deliberations, appointments and the supremacy of Home government over the Government of India as firmly recognized.

1.7.11. The national movement and administrative reforms

While the British recognized a regular system of government in India from 1857 to 1947, the slow pace of constitutional experiments showed uneasy compromises, the

British Statesmen were creation with the exigencies in the Indian situation. The policy of apparent association, so, went had in hand with the policy of oppression, and constitutional advances were always barbed with restrictive circumstances so that the core of executive bureaucratic responsibility would remain untouched. Such contradictions seem to be inevitable with imperialism because imperialism itself is incompatible with democratic theory and practices. The contradictions were clearly exposed in Lord Lytton's repressive policy, the Arms Act, the Vernacular Press Act, holding of Imperial Darbar throughout severe famine, abolition of cotton import duty to serve British textile interest... The Ilbert Bill controversy (1883) also was an eye opener to Indians. The Bill was to empower Indian magistrates to try criminal cases of white people which were objected through the whites. Equally eye opening were the attempts to keep Indians out of higher jobs, especially the Indian Civil Service. All these clearly indicated the imperialist belief in white man's supremacy.

The Indian National movement organized itself in the Indian National Congress (1885). Initially influenced through the Western educated upper middle class, it aimed at securing reforms through peaceful and constitutional means. The British rulers also felt that this would remove misunderstanding about the intentions of the government and would save the empire. The moderates had faith in the British sense of justice and fair play. Their aim was gradual reforms with constitutional means. The Congress programme tossed flanked by extremists and

liberals till it became a mass movement, in the real sense and demanded nothing short of Purna Swaraj’.

1.7.11.1. The Morley-Minto reforms 1909

The Indian Councils Act (1909) considerably increased the strength of legislative councils - the Imperial and provincial. For the Imperial, the Supreme Council, the number of additional members was raised from 16 to 60. For major provincial councils, the number was raised to 50 and for minor provinces it was fixed to 30. The additional members were both nominated and elected. The principle of election was functional representation. In the Supreme Legislative Council, the official majority was maintained through in the provincial councils, the non-officials shaped the majority. The Act definitely expanded the functions of the legislative councils. These concerned discussions on the budget (The Annual Financial statement), discussion on any matter of general public interest and thirdly the power of asking questions. The Act also increased the number of Executive Councilors in the three major Presidencies - Bombay, Madras and Bengal. Indians were now appointed as members of the Secretary of States’ Council (1907) and members of the Governor-Generals’ Council (1909). Some other significant characteristics of the Act of 1909 incorporated: right of separate electorate to the Muslims; the Secretary of the state for India was empowered to augment the number of the Executive Councils of Madras and Bombay from two to four; two Indians were nominated to the Council of the Secretary of state for Indian affairs; and empowering Governor-General to

nominate one Indian Member to his Executive Council, etc.

Constitutional reforms were reflected in the changing structure of the governmental machinery as the government moved towards the federal form. Creation of new departments, their reorganization and setting procedures for smooth conduct of department business naturally became inevitable.

Departmental organisation not only creates administration smooth but also streamlines its processes and secures economy in its operation. In the beginning, administration was grouped under two broad segments one covering General, Foreign and Finance and the second covering Secret, Revenue and Judicial departments. In 1843, administration was divided into four departments, Military, Foreign, Home and Finance. The Home department dealt with legislation also. In 1855, a separate department of Public Works was recognized with the development of irrigation and railways. In the course of time three main departments were recognized. The Legislative Department (1869) took over the legislative work of the Home Department. Obviously, it did not initiate or originate legislation. The second department was Agriculture, Revenue and Commerce created in 1871 mainly to work as a guiding agency in the context of recurring famines. The third department was Industries and Commerce recognized in 1905. The Railway Board also was constituted in the same year. It was to look after the Industrial and commercial development of the country. Due to the controversy flanked by Curzon and Kitchner over the military administration in India, the Military department Was divided

into two separate departments, the Army Department and the Military Supply Department. In 1911, Education department was created. The creation of departments reflects the rising-volume of work attended through them.

It is throughout this period that the concept of departmental responsibility grew: Lord Dalhousie assigned each member of the Council some specific departments and introduced the classification of papers as urgent, routine, unimportant and significant. Only urgent papers would go directly to the Governor-General. Finally, in 1862 the portfolio system came into operation. The sharing of work was made specific and the system of noting was introduced. In 1882 the flat file system was adopted. Lord Curzon improved upon this system to reduce delay to minimize official pedantry; the emphasis was on discouraging excessive noting and encouraging personal communication.

Before the Charter Act of 1833, the Court of Directors of the East India Company controlled the selection and appointment of Civil Servants. The nominations were made individually through the Directors. Young Englishmen took writer ship as a career and they entered into a covenant to serve the company faithfully and honestly. They were, so, described as 'Covenanted Servants'. The uncovenanted personnel were not a part of regular graded service. Also the security of service was limited. The distinction flanked by the two was, though, getting blurred over a period. With the Act of 1833, the disciplinary control of the Government of India was recognized over civil servants. The significant issues in the

development of civil service were the age of recruitment, division of service flanked by executive and judicial branches and the need and entry of Indians into these services. Lord Salisbury in 1874 reduced the upper age limit to nineteen and the lower to seventeen. This affected Indian candidates. Though the division of service into administrative and judicial branches was not favoured, Sir Campbell devised the system of Parallel lines of Promotion and a covenanted servant would choose after some years of service one or the other line. As the number of covenanted servants was restricted, the need for expanding uncovenanted services to fill in subordinate services was felt. This became obvious with provincial services and growth in governmental work.

A centralized financial system was introduced in 1833 as the earlier structure was too diffused for effective control and economy. Lord Ellenborough created the post of a Finance Secretary at the Central stage and brought all financial operations under the review of the Government of India. It realized effective control and economy but ended in delay in final approval. Ellenborough really wanted to have a Finance Member on his council. For Central control the office of the Comptroller General of Accounts was created and he remained in charge of appropriation audit. In 1860, the system of budget was introduced. Financial relations were decentralized for the first time in 1870 when Lord Mayo made provincial government responsible for the management of local finance in some areas which were primarily of provincial interest. This relieved the Imperial Finance too because provincial

governments were expected to raise additional revenue through raising local taxes. Obviously provincial budgets were required to be submitted to the Government of India for approval.

Local government institutions are both natural and useful. Village community government existed in India with a village headman performing both civil and judicial functions. But the present system of local government is entirely a British creation. The principle of election and the concept of representativeness were foreign to the old local government system. The Mayo resolution of 1870 stressed the need for introducing self government in local areas to raise local possessions to administer locally significant services and also to give local interest and care in the management of their funds. Municipal Acts were accordingly passed in several provinces with elective local bodies coming into subsistence. The first local government, the Madras Corporation was recognized in 1687. In a course of time, other Presidency towns also shaped local governments. Lord Ripon's resolution in 1882 has been regarded as the landmark in the history of local government in India. The resolution declared that 'it was not primarily with a view of improvement that this measure is put forward - It is chiefly desirable as an instrument of political and popular education'. The resolution extended election principle with an elected non-official Chairman. Ripon wanted to give for the new educated middle class an opportunity for association and thereby check rigid bureaucracy.

1.7.11.2. The Montague-Chelmsford reforms 1919

It is the declared policy of the Parliament to give for

the 'rising association of Indians in every branch of Indian administration and for the gradual development of self governing institutions with a view to the progressive realization of responsible government in British India as an integral part of the Empire'. In response to the spirit of the preamble, the Act provided complete popular control as far as possible in local government areas. There was also maximum popular representation and freedom to provincial government. This is reflected in the system of diarchy. The Government of India was still to be responsible to the British Parliament. But Indian legislative council was enlarged and made more popularly representative. In tune with the spirit of the declaration, the control of British Parliament over the Indian Government was relaxed and that of Central Government over the provincial government was reduced. The vital contention was that where the Government of India and the Central legislature were in agreement, the Home Government would not interfere.

Main characteristics of the 1919 Act incorporated:

- a. The Council Of the Secretary of state to have eight to twelve members with three Indian Members and at least one-half of them to have spent a minimum of ten years in India;
- b. The Secretary of the state to follow the advice rendered through the Council;
- c. The Secretary of state was not allowed to interfere in the administrative matters of the provinces concerning

Transferred subjects;

- d. To carry out their administrative affairs, the Governors were given Instrument of Instructions‘ as a guide; and
- e. Other than Muslims, the minorities including Sikhs, Anglo-Indians, Christians and Europeans were given right of separate electorate; etc.

1.7.11.3. The Central Government

The Central Government was more representative and responsive but not responsible. The Governor General at the apex of administration was still an autocrat, He had the powers of superintendence, direction and control over the whole administration and these were very effective powers. In theory, the Government of India was ruled through the Government of England and the Governor General who differed from the policy of the Secretary of State had no alternative but to resign. But in actual practice, the Governor General as the man on the spot accepted a great deal of power and influence. He could overrule the decisions of his Executive Council. He was the executive‘. The executive councilors were virtually his nominees, he had full control over foreign and political department (department dealing with princely States in India). Every bill passed through the Central or Provincial Legislature needed his assent, in some cases his prior assent. He could put any bill on the statute, also restore bills. He has used his powers to override the legislature.

The Legislature was broad based (the strength of the Council of States 60, and the Central Legislative Assembly

140). But its composition was faulty and powers very much restricted. The Communal representation introduced in the 1909 Act for Muslims was now extended to other communities like the Sikhs, the European therefore encouraging separatist tendencies in the Indian people. The Governor General therefore had too several powers and was not responsible to the Legislature.

Machinery of Diarchy at the Provinces The division of subjects into Central and Provincial (Federalism) and the further division at the provincial stage flanked by Reserved and Transferred subjects was a novel characteristic of the Mont-Ford Reforms. Diarchy means double government at the provinces. The Reserved 'subjects in charge of councillors, nominated' through the Governor and transferred subjects in charge of councillors - Ministers appointed through him. The reserved subjects were really key departments while transferred subjects were felt safe even if placed in the Indian hands. The councillor in charge of reserved subject was not responsible to the Secretary of State and the British Parliament. The ministers in charge of transferred subjects were responsible to the provincial legislature. The Governor exercised effective powers over the whole administration through the Instrument of Instruction and Executive Business Rules.

1.7.12. Administrative System under 1935 Act Main Characteristics

The White Paper and the Joint Select Committee report shaping the Government of India Act 1935 dropped and altered

several suggestions of the Simon Commission and the recommendations of the Round Table conferences. This confirms that 'British nation has no intention whatsoever of relinquishing effective control of Indian life and progress' (Winston Churchill). The Act retained the supremacy of the British Parliament and also the Preamble of the Act of 1919. It meant 'gradual realization of self governing institutions' as the goal and there was no mention of Dominion status and the inclusion of provisions to attain it. All rights of amending, altering or repealing the provisions were kept with the British Parliament. The Act removed dyarchy of the provincial stage but introduced it at the Central stage. It also introduced safeguards operated in the interest of the British. For the first time, the wide range of subjects were classified in the three list system and assigned to appropriate stage of government. This was a novel experiment.

Looking at the provisions of the Government of India Act 1935 it appears that the Joint Select Committee moved absent from some of the recommendations of the Round Table Conferences and the White Paper, for instance, introduction of indirect system of election for the Federal Council or the restrictions on the powers of the Federal court to preserve the supremacy of the Privy Council. The nature of safeguards, residuary powers with the Governor General, composition of the Federal legislature create it clear that the Act provided a Federal form, but lacked Federal spirit.

All India Federation The Act proposed a federation of British provinces and Princely States in India. The Princely

States had an option to join the Federation and the nature of relationship would differ from state to state according to the Instrument of Accession. But the Instrument of Accession once extended would be irrevocable.

The Act provided a bicameral legislature - the Lower House elected directly and the Upper House with a composite representation to princely states and affluent classes. The Act also gave more powers to the Upper House (The Council of States) - that of voting grants and creation ministers responsible to the Council too. The subjects allotted to the Federal Provincial governments were detailed in the Three list system. Muslim representatives wanted the United States of America model with strong provincial governments.

The Liberals favoured the Canadian model with strong Centre through keeping with it the residuary powers. At the Round Tables, Lord Sankey, the Chairman of the Federal Structure Committee, so, suggested the model of three list system detailing powers of both the Centre and the provincial governments and doing it exhaustively so as to leave very little powers in the residuary area. The subjects of common interest for the whole country and which demanded a uniform treatment were sheltered through the Federal list. These incorporated 59 items. Subjects primarily of provincial interests and where no uniform treatment was necessary were put in the provincial list. This contained 54 items. A third list sheltered subjects primarily of provincial interests where uniform action was or would be desirable. These numbered 36. Residuary powers to accommodate future needs were vested in the hands of the

Governor- General.

The Act provided a Federal Court to interpret the provisions and to decide over inter-province disputes. The principle of Dyarchy, that is, dividing governmental administration into reserved and transferred subjects and treating them differentially, was introduced at the Centre. The Act therefore proposed a Federal form of government for India and for the first time tried to bring British provinces and Indian States under one common constitution, It accepted the essential characteristics of Federation - a written constitution, division of subjects flanked by federal and provincial governments and thirdly, a Federal Court to interpret the provisions of the Constitution. The Act not only pointed out the direction of our constitutional development but also greatly influenced our constitution creation in independent India.

Legislature and Executive at the Provinces

The 1935 Act discontinued the application of dyarchy introduced at the provincial stage under the Act of 1919 as the experiment failed miserably. The distinction flanked by transferred and reserved subjects was removed and the whole administration was entrusted with the ministers responsible to the legislature. The provinces were given a separate legal status, specified subjects to operate according to the three-list system and provided a federal relationship with the Centre. But the All India Federation did not materialize and the powers given to the provinces became delegated authority under the devolution rules of the 1919 Act. Significantly, the Joint Parliamentary Committee report stated that each province' will

possess executive mechanism and legislature. It meant duality of power in ministers and the Governor at the provincial stage.

General show that the legal meaning to these phrases had significance in practice. The Governor-General was the final authority in case of disagreement flanked by the Centre and provinces over the concurrent list. Several Bills in the provincial legislature needed prior approval of the Governor-General. The executive authority of the provincial government was restricted. The Governor-General could provide direction, issue instructions to the Governor concerning the manner in which executive authority could be exercised in sure matters. Also in all matters where the Governor acted in his discretion or in his individual judgment, he was bound through the instructions of the Governor-General. On the face of it, several of these provisions would be formal and natural in the context of the formation of a federal state from the otherwise unitary administration. Restrictions of similar nature have found place in our present constitution too. Centre-State relations are more political than administrative. As it would have it, the 1935 Act put these powers in the executives who were politically not responsible to the elected legislature. Governor's power of acting in his discretion and in individual judgment to discharge his special responsibilities was very comprehensive. He had special powers with regard to Police Department and Services besides the power of creation ordinances. Further the powers under Governor's Act were more drastic than the power of certification given to him under the 1919 Act. Here he could bypass the legislature. The legislatures were broad based and

elections direct. But the principle of communal representation was extended to promote, new classes. Voting qualifications were minimum stage of literacy and other Monetary-qualifications like payment of income tax, etc. The voters therefore constituted hardly 27 per cent of the adult population of British India. It was an advance over the 1919 Act, but it was too short of adult franchise which would create democracy broad based. The legislative and financial powers too were restricted because of the ordinary and extraordinary powers of the Governor.

1.7.12.1. The administrative structure Organisation of Departments

In the reorganization of departments, natural grouping of subjects and administrative branches was the main consideration. The workload of the department also was a factor in reorganization. The whole administration was organized into eleven departments. Council of Agricultural Research was recognized in 1929. In 1937, the Foreign and Political Department was divided into two departments. Likewise, Department of Industries and Labour was bifurcated into two separate departments. In 1942, there was reorganization in Food Department and also three separate Departments of Education, Health and Agriculture were recognized. Though, departmental reshuffling was not always rational but influenced through economy thoughts and the exigencies of war. In 1947, there were nineteen departments, Home, External Affairs and Commonwealth relations, Finance, Transport, Railways, Education, Health, Agriculture, Food,

Industries and Supplies, Political (States), Legislative Works, Mining and Power, Labour and Information, and Broadcasting.

Procedural changes aimed at reducing delay in administrative procedure. The Maxell Committee (1937) looked into the Minister-Secretary relationship in the context of administrative stability. Gorawala Committee (1951) looked into the question of administrative integrity while Appleby Committee (1953) focused on training needs of officials especially the middle stage officials and the need to establish Organisation and Method Department for continuous appraisal of administration structures and processes.

The Public Service

The 1935 Act classified services as superior and other services. The Indian Civil Service, Indian Police and Indian Medical (Civil) Services were classified as superior services and controlled through the Secretary of State. These sustained to enjoy special rights and privileges (No adverse order against a member of the superior service could be passed without concurrence of the Governor. They had right to appeal to the Secretary of State against an adverse order.) The 1919 Act had recommended for the establishment of the Federal Public Service Commission and through it, Idealization of Services was realized. The profile of service that developed was that of a generalist associated with the formulation of policies and their implementation.

Administration of Finance

The financial arrangements under the Government of

India Act 1935 were based on the recommendations of the Niemeyer Committee. Revenue sources followed the list system. As such receipts from provincial subjects shaped the main income source for provinces. Provinces were given some additional sources of revenue too; for instance, share in succession duty other than landed property, share in income tax, grant in aid, etc. The provinces were also given power to raise loans on the security of their possessions. The Centre to secure financial stability for itself could for a period retain such sums as might be prescribed in the form of a fixed percentage of income tax assigned to the provinces. The Auditor General of India occupied a key position in financial administration. He controlled the accounts both of the Centre as well as the provinces. The Reserve Bank of India was recognized in April 1935. Financial control over expenditure was exercised through the Public Accounts Committee of the legislature. The centralized machinery of finance has been a characteristic of the Indian system since the Charter Act of 1833. The position of the office of the Comptroller and Auditor General in India, a statutory office in our present constitution, derives strength from this historic fact.

Local Administration

Local government being a 'transferred subject' received attention since the introduction of dyarchy under the Act of 1919. All provisions enacted in this field made local governments more representative and popularly controlled. The legislation also provided for representation for backward and depressed classes and for labour class. But as local bodies

were drawn in the nationwide political surge through civil disobedience movement, they lost the priority of attention. The traditional panchayat system had long been defunct. And the new local government could not take firm roots. The fact is that local government rural or urban grew as administrative necessity of managing local funds. Ripon's objective of political education was lost in executive directions that followed the Resolution. Older village panchayat system was based on a corporate spirit and the British tenancy legislation affected this base. The British administration of Justice was also centralized. The defunct panchayats, so, became a sink of localism and a den of narrow mindedness (Ambedkar). The Decentralization Commission also looked at the problem from administrative angle. It was only with the experiment of Community Development Movement and its subsequent development in Panchayati Raj that rural government structure became meaningfully involved in the larger processes of participative development.

1.7.13. The Legacy of British Rule:

The Free India inherited governmental machinery, as developed through the British. More than the machinery, it received from the British rule the feeling of importance attached to these institutions - the feeling of Raj, the importance of having a government, its necessity and accepting its strength. The traditional respect the 'Sarkar' accepted was as if passed on to the new government. The government is everywhere - One cannot escape it. There is an awareness of it, a sense of importance and acceptance that it

needs to be strong and stable. The Federal structure of government is also a significant legacy. India is a federal state with significant unitary characteristics. The 1935 Act which influenced its structure was unitary with strong federal characteristics.

The British administration was district-centered. It was headed through a generalist head with an overriding authority. The district head not merely represented government at the district stage; he was in fact government at the district stage. The district was subdivided into taluk as consisting of villages and also grouped upwards into firkas. This framework still continues. The All India services, especially the Indian Administrative Service and the Indian Police Service strengthen integration. It gives an All India character to governmental personnel and gives a steel frame to the administrative machinery. The structure of these services, their built and shape, their manner of functioning, inter-service and intra service relations and the ethos has influenced not only governmental functioning but governmental thinking too not only of the government but also of people at large.

Constitutional experiments were enlarging and strengthening legislatures. Beside side legislative institutions, legislative culture also was spreading even though the national environment was becoming uncongenial. The Indian National Congress under the leadership of Mahatma Gandhi was becoming agitational, anti-governmental and extra parliamentary. The essence of legislative culture is discussion and dialogue flanked by dissimilar interests, answerability of

the executive and acceptance of responsibility in case of failure of its actions. This was accepted and necessary skills were developed as people took part in the working of councils.

The legacy of judiciary, respect for the judicial structure, acceptance of its independence, and regard for its values has also taken firm root in the soil. The boycott of courts was not as strong as the boycott of legislature. Several of the leaders in the early freedom thrash about were from law profession who respected this tradition. The debates in the constituent assembly concerning judicial system also reflect this characteristic. Considering several reforms leading to independence it looks that the thread of British legacy runs through and reflects a degree of stability in the procedure of change in later year.

Constitutional Basis of Indian Administration

The Constitution has recognized parliamentary democracy in the country. Before independence the country had legislature at the Centre and in the Provinces. These did not possess full powers and authority as under the present Constitution. Throughout the periods of partial legislative control, 1920-35, 1937-39 and 1946-47, the public services were to an extent accountable to the popularly elected representatives and the ministers responsible to them. This was another characteristic of administrative stability after independence.

The pre-independence era saw the administrative organisations of the Central and the State (then described

Provincial) governments intact. This was a factor contributing to the undisturbed transfer of power from the British to the Indian hands. The administration of the country's security, law and order, finances, communication system, educational organisation and other elements of the infrastructure after 1947 sustained as before.

At independence on 15 August 1947, the following eighteen departments (re-designated as Ministries) functioned under the Government of India: External Affairs and Commonwealth Relations, Defence, Finance, Home, States, Legislative (Law), Commerce, Industries and Supplies, Railways, Transport, Communications, Labour, Agriculture, Food, Education, Health, Information and Broadcasting, Works, Mines and Power.

From five departments in 1858, at the transfer of the government in India from the charge of the East India Company to the control of the British Parliament (actually handled through British Government), to eighteen in 1947 indicated an enormous augment in the administrative activity. These nine decades of the British rule witnessed the beginning of the elementary social services like primary education, health and medicine, agricultural research, fiscal incentives for industries, etc. Legislative activity had commenced. The two World Wars introduced price and physical controls over the essential supplies including food, cloth, petrol and kerosene, etc., besides growth in armed services, war industries and supplies. In 1921, the number of departments stood at nine, which were increased to twelve in 1937. After 1919 the main

administrative activities in agriculture, education, health, and labour were mannered through the provincial governments, due to decentralization under the 1919 and 1935 Government of India Acts.

The Republic of India is governed by the Constitution of India, which was adopted by the Constituent Assembly on November 26, 1949 and came into force on January 26, 1950. The Constitution of India seeks to protect the fundamental, political and civil rights of the people. It also embodies the basic governance structure of the country. The Constitution of India has some distinct and unique features as compared to other constitutions to the world. As Dr. B.R. Ambedkar, the Chairman of the Drafting Committee puts it, the framers had tried to accumulate and accommodate the best features of other constitutions, keeping in view the peculiar problems and needs of our country.

The constitution creates three kinds of services: all India services common to the union and states to man certain “strategic posts” central services including the defence services and the states services. The constitution provides under article 312 for the creation of more common services if the council of states passes a resolution supported by an absolute majority and two thirds of members present and voting. In 1962 three more all India services were created under this article, namely, all India engineers’ service, Indian forest service and Indian medical service, thus making their number five, but only the Indian forest service was put into function. The constitution of India contains specific provision relating to the creation of

civil services at both levels, i.e., the union and state, a perusal of the articles 308, 309 and 311 would provide a clear insight into the position of civil service in India. Further, article 309 empowers both the union and state governments to make arrangements for their respective services. In fact, this kind of arrangement which exists under article 309 regarding the creation of civil services at the union and in the political system. So the question arises, what motivated the constitution makers to provide for such an arrangement, in this regard, they were guided more by the administrative, historical and sociological imperatives.

Transparency, accountability and adherence to the rule of law depends on a systemic arrangement and coherency between the three arms of the state, viz, the Executive, the Legislature and the Judiciary. The Constitution of India provides for a system of governance based on the above-mentioned three arms within a federal framework with greater powers in the hands of the Union Government or Government of India or the Central Government (also referred to as the "Centre"), which governs the Union of India as a whole. In India, the Parliament is the supreme legislative body. As per Art 79 of the Constitution of India, the Council of Parliament of the Union consists of the President and two Houses, which are known as the Council of States (Rajya Sabha) and the House of People (Lok Sabha). The President has the power to summon either House of the Parliament or to dissolve the Lok Sabha. Each House has to meet within six months of its previous sitting. A joint sitting of two Houses can be held in certain cases.

The post-independence administration in India was fairly stable due to the sustained tenures of public services which were in office before independence. The Indian Civil Service and the Indian Police Service were the two All India Services that helped the country to hold together. The other All India Services incorporated the medical, engineering, forest, educational and others. The Indian Civil Services was the mainly pivotal and prized of these services. Its members occupied positions in the executive councils of the Governor General of India and the provincial Governors. Mainly of the posts of Secretaries to the departments in the Central and provincial governments and of heads of executive departments were held through them. ICS men were district collectors and magistrates/deputy commissioners. Before independence, the officers of the ICS and other All India Services were appointed through the Secretary of State for India. After independence, under the India Independence Act, 1947, the ICS and other officers in All India Services, who sustained in office, became officers in the service of the Government of India. At independence about two hundred and fifty European ICS officers retired, while about fifty of them opted to be in office here. Vallabhbhai Patel, India's Home Minister realized the dire need of the Indian members of the ICS continuing in service here after 1947. He assured to honour the existing conditions and security of their tenure. They did contribute to the stability and stability of the Indian administration.

After independence the Indian Civil Services was replaced through the Indian Administrative Services. A larger

number of the officers in the IAS and the Indian Police Service (that replaced the Imperial Police Service) were required to replace the former services. They had to man the posts in the recently merged princely states. Much more than that, the character of these All India Services had changed after independence. India became a democracy after independence. The services had now to serve the people of the country, and not the imperial masters. The ICS men were not only officials; they were a part of the colonial government. The officials of independent India - no more rulers - had to imbibe the democratic temper of its polity. This marked a change from the pre-1947 scene.

The All India Services Act, 1951 of the Indian Parliament provided for the formation of two services, the Indian Administrative Service and the Indian Police Service. This was an outcome of the deliberations in the Constituent Assembly of India. The Constitution contains a separate Part XIV titled 'Services under the Union and the States. Article 312 of the Constitution relates to the All India Services.

A new All India Services, the Indian Forest Service, was constituted in July 1966, though an amendment to the All India Services Act, 1951 effected in 1963 provided for the formation of three new All India Services, viz., the Indian Services of Engineers. The personnel belonging to the Central Services work in the several departments of the Central Government. They are organized into four groups, A, B, C and D, on the basis of the pay scales of the posts in them. The following are some of the Central Services: Central

Engineering Services, Central Health Service, Central Secretariat Service, Indian Audit and Account Service, Indian Defence Accounts Service, Indian Foreign Service, Indian Postal Service, Indian Revenue Service, Central Legal Service, Central Information Service, Indian Statistical Service, Indian Economic Service. Before 1947, specialist officials worked in several functional departments of the Central Government, but after independence, dissimilar services (cadres) were shaped. Statistical Service, Economic Service, Information Service and Foreign Service were some of the new cadres shaped to cater to the emergent needs of the Central Government. The Indian Foreign Service attracts intelligent young graduates beside with the Indian Administrative Service; the entrants to it reach the highest position of Ambassadors to foreign countries. Some of these are: Forest Service, Agricultural Service, Animal Husbandry, Prohibition and Excise, Judicial, Police, Jail, Medical, Public Health, Educational, Engineering, Accounts, Sales Tax and Industries Service. A few of these services did exist before 1947, but now the strength of these has gone up. Besides, Class III and IV Services are on roll.

The new public services share, to a long extent, the attributes of political impartiality, selection on merit and integrity like in the ICS and other services before independence. The public services in free India are committed to the objectives of the Constitution. The local bodies and cooperatives have their own personnel.

The cardinal functions of the Legislature include overseeing of administration, passing of budget, ventilation of

public grievances and discussing various subjects like development plans, international relations and national policies. The Parliament is also vested with powers to impeach the President, remove judges of the Supreme Court and High Courts, the Chief Election Commissioner, and the Comptroller and Auditor General in accordance with the procedure laid down in the Constitution of India. All legislations require the consent of both the Houses of Parliament. The Parliament is also vested with the power to initiate amendments in the Constitution of India.

The President serves as the Executive Head of the State and the Supreme Commander-in-Chief of the armed forces. Article 74(1) of the Constitution of India provides that there shall be a Council of Ministers, with the Prime Minister as its head to aid and advise the President.

The President appoints the Prime Minister, Cabinet Ministers, Governors of States and Union Territories, Judges of the Supreme Court and High Courts, Ambassadors and other diplomatic representatives. The President is also authorised to issue Ordinances with the force of the Act of Parliament, when Parliament is not in session.

The President must consult the Council of Ministers and the Prime Minister before taking any executive decision. It is important to note that the Council of Ministers (usually known as the "Cabinet" and constituted of the members of the ruling political party/ alliance) and the Prime Minister (usually the leader of the political party/ consensus candidate of the alliance; also heads the Cabinet) are members of Parliament

and, therefore, by convention, in their hands rest the legislative and executive powers of the Centre.

The federal units, ie, the States, have their own set-up in terms of legislatures (normally referred to as the "State Legislature") and state administrative wings similar to that of the Centre. Here, the Governor is the head of the Executive, though the real power rests with the Chief Minister and his/her Council of Ministers. There are certain territories in India that are not States, but are known as Union Territories and these are governed directly by the Centre.

The Constitution of India prescribes the separation of legislative and administrative powers between the Union and the States. Areas such as, defence, railways, maritime, interstate trade, airways, banking, etc, are under the jurisdiction of the Centre (Union List) and areas such as public order, police, agriculture, etc, fall under the jurisdiction of the States (Statelist). There is a third category of list also which is termed as the Concurrent List. It covers areas such as criminal law and procedure, economic and social planning, trusts, bankruptcy, etc, over which both the Centre and the States have legislative and executive powers, though in case of conflict between the two, the Centre's position prevails.

The Indian Judiciary as of today is a continuation of the British legal system established by the English in the mid-19th century. Before the arrival of the Europeans in India, it was governed by laws based on the Arthashastra, dating from 400 BC, and the Manusmriti from 100 AD. These were the influential treatises in India, texts that were considered

authoritative legal guidance, however, till today the legacy of the British system is manifested from the fact that India falls into the genre of common law system. The procedure and substantive laws of the country, the structure and organisation of courts, etc, emanate from the common law system.

The Judiciary of India is an independent body and is separate from the Executive and Legislative organs of the Indian Government. The Judiciary in India provides the people of the nation the necessary "auxiliary precaution" required to ensure that the Government functions in favour of the people, for their amelioration and for the betterment of society.

The judicial system of India is divided into four basic levels. At the apex level is the Supreme Court, situated in New Delhi, which, under the scheme of the Constitution of India is the guardian and interpreter of the Constitution of India, which is followed by High Courts at the State level, District Courts at the district level and LokAdalats at the village and panchayat level. The Supreme Court and High Courts have the special constitutional responsibility of enforcing the "Fundamental Rights" of the citizen, as enshrined in Part III of the Constitution.

1.8. Role of Public Administration in India

Administration as an activity is as old as society itself. But as an area of study it originated, with the publication of Wilson's essay on study of Administration in 1887. Administration is commonly divided into two types, Public and Private Administration. As an aspect of government

activity it has existed since the emergence of political system(s). While public administration relates to the activities carried out by government, private administration refers to the management of private business enterprises. The word 'administer' is derived from the Latin word 'administrare', which means to care for or to look after people, to manage affairs. Administration may be defined as "group activity which involves cooperation and coordination for the purpose of achieving desired goals or objectives".

The concept of developmental administration has dramatically changed the entire scope of administration. It says about larger goals of administration and it has an altruistic or enlightened role in the developmental programmes of people. It is the people centred vision and the merit of development administration is judged from the point of fulfilment of public policy rather than the procedural clearance of bureaucratic administration. Public administration adheres to principles and procedures of legal or normative aspects of management. The rationale of public administration eschews policy goals of a democratic government and is virtually quite ignorant of its due process. Traditional public administration behaves like an impersonal being with little attention to the broad goals of administration. The Concise Oxford Dictionary defines 'development as gradual un-folding, fuller working out, well-grown state, stage of advancement, etc. Thus it refers to the growth into a higher, fuller, and mature condition.' The students of 'development administration', however, view development as the dynamic change of a society from one state

of being to another without positing a final mature condition. In public administration scholars have tried to define development administration in the light of the spirit of these meanings of development. Thus it has been stated that "Development Administration is the blending of all the elements and resources (human and physical) . . . into concerted effort to achieve agreed upon goals. It is the continuous cycle of formulating, evaluating and implementing interrelated plans, policies, programmes, projects, activities and other measures to reach established development objectives in a scheduled time sequence" (Sakendra Prasad Singh)

Many scholars like George Gant, Ferrel Heady and others have sought to conceptualise development administration as different from traditional administration. They explain that these two types of administration differ from each other in terms of purpose, structure and organisation, attitudes and behaviour, capabilities, techniques and methods. This is the implicit meaning of the observation of John Gunnell who says, "The increasing shift of development scenario requires increased diversification and specialisation of knowledge and skills and high level of managerial ability for integrative coordination. Quickening the pace of development there is an additional need for a new breed of administrators of superior calibre and vision with a passion for achieving results and those who can take risks and introduce innovations. There is an increasing need to have heightened sensitivity to the welfare of the poor sections and greater responsiveness to the

political process." It follows that development administration has to have different features and should be based on different requisites than the traditional or law and order or general administration. The distinction between the traditional and development administration has been presented by S.P. Verma and S.K. Sharmas follows:

Traditional	Developmental
Regulatory Administration (routine operations)	Unpredictable new tasks or problems (rapidly changing environment)
Oriented towards economy and efficiency (emphasis on individual performance)	Oriented towards organisational growth and effectiveness in achievement of goals (emphasis on group performance and inter-group collaboration)
Task orientation and conformity to rules and procedures (Concern for security, playing safe, comfort, status and power)	Relationship oriented with emphasis on high programme standards (willingness to take risks, encouraging innovation and change)
Sharp and elaborate hierarchical structure (strict and authoritative, climate of mistrust)	Structure shaped by requirements of goals (flexibility and continuously changing roles, mutual trust and confidence)
Centralised decision-making (past experience as the main guide to problem solving)	Wide sharing decision-making. (Empirical approach to problem solving and use of improved aids to decision-making)

Traditional	Developmental
Emphasis on maintaining status quo(resistance to organisation change)	Continuing organisational development in responseto development in response to (development of an organisation, which is dynamic, adaptive and futuristic)

1.9. The Union State Relations in India

Indian Constitution is neither purely 'federal' nor purely 'unitary'. The federal form is clearly manifest in the constitutional distribution of powers between the union and the states not only in the legislative field but also in executive and administrative fields. In normal times, the constitutional scheme has to ensure autonomy of the states in regard to the spheres of activities earmarked for the states in the Constitution. Specific subjects have been allocated to the exclusive fields of the centre and the states respectively and certain subjects have been allocated to the 'concurrent field' with the stipulation that in the 'state' and 'concurrent' fields, the states should have the freedom to follow their own policies except to the extent that Parliament itself decides to legislate under the powers given to it under the Constitution.

Historically, a highly centralised colonial government had slowly been transformed into a semi-feudal set-up. In post-Independent India, the needs of planned development, national integration and maintenance of law and order resulted in a considerable degree of centralisation of powers in the hands

of the centre. Single party rule for a long period of time has also contributed to the increasing preponderance of the centre. Centre-state relationship in reality is a matter of interaction between the two levels of governments in course of discharge of their duties to people. In administering subjects like education, health, agriculture, etc. the two levels of governments have to interact in the interest of efficient management of these functions. Administrative problems assume political colour when the interactions are conditioned by considerations of power and hegemony. As the Administrative Reforms Commission commented "The problem of Centre-State relations has acquired new dimensions and new importance in recent times due to several political parties being in power at the Centre and in the States."

India is a federal state. Article 1 of Indian constitution says that 'India ie. Bharath shall be a union of states. The division of power between union government and state government is made possible by a written constitution. The union and the states derive their authority from the constitution which divided all powers - legislative, executive and financial as between them. The result is that the states are not delegates of the union, but they are autonomous within their own spheres as allotted by the constitution. The Seventh Schedule (article 246) of Indian constitution gives way for division of power between the central government and state government.

The Union List contains 97 items and comprises of the subjects which are of national importance and admit of

uniform laws for the whole of the country. And the legislative powers to legislate these matters are solely vested in the union parliament. The integral subjects which falls within the ambit of Union List are: Defense, Foreign Affairs, Currency and Coinage, War and Peace, Atomic Energy, National Resources, Railways, Post and Telegraph, Citizenship, Navigation and Shipping, Foreign Trade, Inter-State Trade and Commerce, Banking, Insurance, National Highways, Census, Election, Institutions of higher education and others.

The state list contains 66 items and speaks about the subject matters those are related to local or state interest hence it directly falls within the legislative competence of state legislature. The major ones of the State List are: state court fees, prisons, local government, public order, police, public health and sanitation, hospitals and dispensaries, pilgrimages within India, intoxicating liquors, relief of disabled and unemployable, libraries, communications, agriculture, animal husbandry, water supply, irrigation and canals, fisheries, road passenger tax and goods tax, capitation tax and others.

The concurrent list is the most distinctive feature of Indian Constitution as it cannot be found in any other federal constitutions. Among the 47 items enumerated in the list, all can be legislated by both union parliament and the state legislature as both of them possess the concurrent power of legislation. This particular list mostly serves as a device to loosen the excessive rigidity of the two-fold distribution. It is mostly reckoned as the twilight zone of the constitution as it allows the legislative power to vary from state legislature to

parliament based on the importance of the matters. Like in case of not so important matters, state legislature takes the charge and in case of important ones, Parliament does the same. Also in terms of amplification of laws passed by union parliament state legislatures do have the rights to introduce supplementary laws for the same. Few of the major listed subjects are as follows; criminal law, criminal procedure, preventive detention for reasons concerned with the security of state, marriage and divorce, transfer of property other than agricultural land, contract, actionable wrongs, bankruptcy and insolvency, trust and trustees, administration of justice, evidence and oaths, civil procedure, contempt of court, lunacy, prevention of cruelty to animals, forests, protection of wild animals and birds, population control and family planning, trade unions, education, labour welfare, inland shipping and navigation, foodstuffs, price control, stamp duties, and others. Initially, the strength of the said list revolves around 52 but following the 42nd Constitutional Amendment, five more entries were inserted.

Residuary powers are those items which are not included in either of the lists is given to the central government for legislation.

1.10.11. Centre-state administrative relations

As earlier pointed out, the Constitution has clearly delimited the scope of legislative and executive authority of the union and the states. It is at the same time expressly provided under Article 256 of the Constitution that the executive power of the 'states shall be so exercised as to

ensure compliance with the laws of Parliament. Also the union executive power extends to the giving of such directions to the states as may appear to the Government of India to be necessary for the purpose. It is further stipulated under Article 246 of the Constitution that if the state government fails to endorse the laws passed by the Parliament within its jurisdiction, the union government can issue directions to the states to ensure their compliance. Adequate provisions have been made in the Constitution for the division of executive powers between the centre and the states. The executive power of the centre extends primarily to matters with respect to which Parliament has exclusive authority to make laws. Similarly the executive powers of the states extend to all those matters which are within their legislative domain. But with regard to the matters which are in the concurrent list there are three courses of action with the parliament in reference to the enforcement of legislation. It can leave it entirely to the states or may take over the task of enforcing it or it may take upon the enforcement of a part of the law, leaving the rest of it to the states for enforcement.

The executive power of the union also extends to giving of directions to the states as to the construction and maintenance of means of communication declared to be of national or military importance. The union government can give directions to the states for the protection of railways within the states.

There is a constitutional provision under which the President may, with the consent of a state government, entrust

either conditionally or unconditionally to a state or to its officers, functions in relation to any matter falling within the ambit of union executive power. A state can also, with the consent of union government confer administrative functions on the union.

India, being a federation, the Constitution establishes dual polity with the union at the centre and the states at the periphery. The dual government system-and the division of powers are key features of the federal system. Since cooperation and coordination between the central and state governments are necessary for smooth running of the federation, the Constitution provides for a detailed division of executive, legislative and financial powers. The administrative relations between the union and states can be discussed under two parts (a) powers exercised by union over the states as granted by the Constitution and (b) powers exercised by extra constitutional agencies.

Division of Administrative powers between the centre and the states

- a. Directives by the union to the state governments: The executive power of the union also extends to giving of direction to the state under Article 256 for their compliance. This power of the Union extends to the limit of directing a state in a manner it feels essential for the purpose. For instance, the union can give directives to the state pertaining to the construction and maintenance of means of communication declared to be of national or military importance or protection of railways within the

state. This is essential to ensure the implementation of parliamentary laws throughout the country. Non-compliance of the directives might lead to a situation where the union can invoke Article 356, for imposition of President's rule in the state and take over the administration of state.

- b. Delegation of union functions to the states: Under the constitutional provision of Article 254 the President may, with the consent of the state government entrust either conditionally or unconditionally to the government, functions relating to any matter falling within the ambit of union executive power. Under clause (2), Parliament is also entitled to use the state machinery for the enforcement of the union laws, and confer powers and entrust duties to the state. A state can also, with the consent of union government confer administrative functions on the union.
- c. All India Services: Besides central and state services, the Constitution under Article 312 provides for the creation of additional "All-India services" common to both the union and states. The state has the authority to suspend the officials of All India Services. The power of appointment and taking disciplinary action against them vests only with the President of India. The idea of having an integrated well- knit All India Services to manage important and crucial sectors of administration in the country which was the legacy of the past was incorporated in our Constitution. Their recruitment, training, promotion disciplinary matters are determined by the central government. A member of

the Indian Administrative Service (IAS) on entry into the service is allotted to a state where he/she serves under a state government. This arrangement wherein a person belonging to the All India Service being responsible for administration of affairs both at the centre and states, brings co-operation in administration.

- d. Deployment of Military and Para-military Forces: These can be deployed in a state by the union, if situation warrants, even against the wishes of the state government.
- e. Constitution of Joint Public Service Commission for Two or more States: Subject to the provisions of the article 315, there shall be a Public Service Commission for the Union and a Public Service Commission for each State. Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States. There is also a provision in the Constitution wherein, on request by two or more states the UPSC can assist those states in framing and operating schemes of joint recruitment to any service for which candidates with special qualifications are required.
- f. There is also a provision in the Constitution wherein, on request by two or more states the UPSC can assist those states in framing and operating schemes of joint

recruitment to any service for which candidates with special qualifications are required chain of courts to administer both union and state laws with the Supreme Court at the apex of hierarchy of courts. The practice of having one set of courts which was present in our country under the Government of India Act 1935 continued thereafter under our Constitution.

The state governments are empowered to undertake the administration of justice and to constitute courts for this purpose. Hence, there is a High Court in each-state as the highest court within the territory of state which is required to administer both the union and the state Laws. Hence, the Constitution stipulates that the Chief Justice of the High Court be appointed by the President in consultation with the Chief Justice of India and the Governor of the State. The Constitution also provides for creation by the Parliament through law, a common High Court for two or more states. For example, the states of Assam and Nagaland have a common High Court. The administration of justice falls entirely within the sphere of state irrespective of whether a matters pertains to civil or criminal law or whether such a law is enacted by Parliament or state legislature.

- g. Inter-State Council: India is a union of states wherein the centre plays a prominent role but at the same time is dependent on the states for the execution of its policies. The Constitution has provided for devices to bring about inter-governmental co-operation, effective consultations

between the centre and states so that all important national policies are arrived at through dialogue, discussion and consensus. One such device is the setting up of the Inter-State Council. The President is given the powers under Article 263 of the Constitution to define the nature of the duties of the Council. The Council is to inquire into and advise upon disputes which may have arisen between the states. In addition, it may investigate and discuss subjects of common interest between the union and the states or between two or more states in order to facilitate co-ordination of policy and action.

Three such councils have been set up - (i) Central Council of Health; (ii) Central Council of Local Self-Government; and (iii) Transport Development Council. Based on the Sarkaria Commission's recommendations, a permanent Inter-State Council has been created on 1 April 1990, consisting of six Union Cabinet Ministers and the Chief Ministers of all the States and those Union Territories with a Legislative Assembly with Prime Minister as the Chairman. The Sarkaria Commission recommended that in order to differentiate the Inter-State Council from other bodies set up under the Article it must be called Inter-Governmental Council.

- h. Inter-State Water Disputes: In India there are many inter-state rivers and their regulation and development has been a source of inter-state function. These relate to the use, control and distribution of waters of inter-state rivers for irrigation and power generation. In the Indian

Constitution, water-related matters within a state are included in the state list, while the matters related to inter-state river waters are in the union list. Keeping in view this problem of unending river water disputes, the Constitution framers vested the power to deal with it, exclusively in Parliament. The Parliament hence, may by law provide for the adjudication of any dispute or complaint, with regard to use, distribution or control of the waters. The Inter-State Water Disputes Act was enacted by the Parliament in 1956 according to which tribunals are set up for adjudication of water disputes referred to them.

The Union government has so far, set up four Inter State Tribunals for Narmada, Krishna, Godavari and Cauvery. Parliament may constitute an : authority like the Inter- State Commerce Commission in the USA to enforce the provisions of the Constitution relating to freedom of trade, commerce and intercourse throughout the territory of India. Such an authority has however not yet been set up.

- i. Federal government involves dual government. It is therefore necessary to provide for the acceptance of public acts of both governments to avoid inter-governmental conflict. In the functioning of federation, a state refusing to recognise acts and records of another state may give rise to confusion and inconvenience. To eliminate such a possibility, the Constitution of India provides the 'full faith and credit clause'. Article 261 (i) of the Constitution stipulates that full credit and faith shall be

given throughout India to public acts, records, and judicial proceedings of the union and all the states. The term 'public acts' relates to not only statutes but to all other legislative and executive acts of the union and the states. This clause serves a very important purpose of eliminating any possible hindrance to the normal transaction of administrative activities in the Indian federation.

Centre state financial relations

The provisions relating to the financial relations between the union and the states are derived from the Government of India Act, 1935. The areas of taxation have been clearly demarcated between the centre and states. The states have little powers in taxation and are heavily dependent on the centre, for financial resources. The chief source of finance of the states is the grants-in-aid from the centre.

The seventh schedule of the Constitution provides for specific entries reserved for the union and the states for imposing taxes. The union can levy taxes on the 12 items of Union List (82 to 92 A). Similarly, the state list contains 19 items on which states are empowered to collect taxes. The residuary powers in taxation vests with Parliament.

There is a four-fold classification of tax revenues between the union and the states.

These are:

- a. Taxes levied by the union but collected and wholly appropriated by the state (Article 270). These are stamp duties and duties of excise on medicinal and toilet

preparations.

- b. Taxes levied and collected by the centre, but wholly assigned to the states (Article 269). These include duties on succession to property other than agricultural land, estate duty on property other than agricultural land, terminal taxes on goods and passengers (railway, sea or air), taxes on railway fares and freights etc.
- c. Taxes levied and collected by the union and distributed between the union and the states (Article 270). This includes taxes on income other than agricultural income.
- d. Taxes levied and collected by the union but may be shared with the states. This includes the customs and excise duties if parliament by law so provides.

Grants-in-aid and Loans

Besides the devolution of revenues, from different taxes, the centre provides grants-in-aid to the states as per Article 275 to the States for the purpose of promoting the welfare of the Scheduled Tribes and raising the level of administration of the scheduled Areas. Also every year grants are made to the states, as elected by the parliament on the recommendations of the Finance Commission.

Borrowing Powers -

The Constitution also provides for the borrowing of money by the union and state governments under certain provisions. As per Article 292, the union government has powers to borrow money on the security of the Consolidated Fund of India either within or outside the country, subject to

limitations imposed by parliament. Recently the state governments are also empowered to borrow money on the same basis from outside India.

Finance commission

Besides, provisions relating to demarcate of taxes and distribution between the union and the states, Article 280 provides for the constitution of the Finance Commission. The President of India constitutes it every five years. It is to consist of a chairman and four members.

The Finance Commission is entrusted with the tasks to recommend to the President about the (1) distribution of the proceeds of tax between the union and the states and the allocation between the states of the respective shares of such proceeds; (ii) principles that should govern the grants-in-aid out of the Consolidated Fund of India; (iii) measures needed to augment the consolidated Fund of a state to supplement the resources of the panchayats in the states and municipalities; and (iv) any other matter referred to by the President in the interest of sound finance. Till now twelve Finance Commission have been set up. The Thirteenth Finance Commission has recently been constituted with C. Rangarajan as the Chairman.

Financial Relations during Emergency

The financial relations between the union and the states undergoes changes during proclamation of emergency. In case of financial emergency imposed by the President under Article 360, it shall be competent for the union to:

- a. give directions to the state to observe such canons of

financial propriety as may be specified in the communication; I ii) instruct state governments that the salaries and allowances of all public servants including judges be reduced in the specified manner; and

- b. Reserve for the consideration of the President all money bills and financial bills after they are passed by the Legislatures for the state.

MODULE II

CENTRAL ADMINISTRATION

2.1. Introduction

The Constitution of India is a remarkable document. It occupies an important place not only among the newly emerged States but also in the constitutional history of the world. The Constitution of India deals, in an elaborate manner with the problem of relations between Union and the States, problems relating to public services, special classes like Anglo-Indians, scheduled castes and scheduled tribes. The Constitution embodies an elaborate list of Fundamental Rights and also the Directive Principles of the State Policy. The Preamble of the Constitution declares India to be a sovereign socialist secular democratic republic. A study of its features reveals that it is a unique document in size, form and content. In this Unit, we shall study the important features of our Constitution, role of council of ministers, constitutional authorities, constitutional commissions and the powers of the central government.

Indian Constitution is a written constitution. It is the most lengthy and detailed constitutional document in the world. It has borrowed most of its provisions from all the known constitutions in such a way that they suit the existing conditions and needs of the country. The constitution makers framed the chapter on Fundamental Rights upon the model of American constitution. Parliamentary system of government

has been adopted from the U.K. Idea of the Directive Principles of State Policy was taken from the Constitution of Eire Republic of Ireland. Provisions regarding emergencies were added in the light of the Constitution of German Reich and the Government of India Act, 1935.

Another important feature of our Constitution is the establishment of a parliamentary system of government both at the centre and in the states. In a parliamentary system of government the executive is responsible to the Parliament and not to the President. It creates a strong centre and vests the constituent and residual powers of legislation in central legislature called Parliament. The reasons behind adoption of a parliamentary democracy are two: Firstly, our past experience is working with parliamentary system during the British rule and secondly, the parliamentary system of government harmonises with the demand for 'a strong centre which the Presidential system with divided authority does not. In the Parliamentary system of government, the executive and legislature are not independent of each other, instead the executive is a part of the legislature and therefore, unlike in a presidential system, conflicts are less likely to arise between them.

2.2. Federalism

The political structure of the Indian Constitution is based on the twin principles of parliamentary system of government and federalism though the term 'Federation' has not been used in the Constitution. A survey of our Constitution indicates that it possesses all the essential features of a federal

system. While in a unitary state, there is only one government, namely the national government, in a federal state, there are two governments - the national or federal government and the governments of the component states.

A federal state is a fusion of several states into a single state in regard to matters affecting common interests, while each state enjoys Autonomy in regard to other matters. The states are not agents of federal government but both the federal government and the state governments draw their authority from the Constitution. The states do not have a right to secede from the federation.

A federal state derives its existence from the Constitution. Every power - executive, legislative or judicial, whether it belongs to the federation or to the component states, is subordinate to and controlled by the Constitution. Courts have the final power to interpret the Constitution and nullify any action on the part of the federal and state governments or their different organs which violate the provisions of the Constitution. Another important feature of a federal state is that there is a division of powers between the federal government and the governments of the components states.

All these features are present in the Indian political system. The Constitution of India can be both federal and unitary according to requirements and circumstances. It is framed to work as a federal system during normal times. But in times of war, insurrection or the breakdown of constitutional machinery in the states, it works more like a unitary system. A proclamation of emergency in the country automatically

transforms a federal state into a unitary state.

The distribution of legislative powers between the Centre and the States has been provided for in the Constitution according to three lists of subjects, these are Union, State and concurrent. The union list gives the Centre exclusive authority to act in matters of national importance and includes among its ninety seven items like defence, foreign affairs, currency, communication, banking, income taxation and custom duties.

The State list has sixty one entries like law and order, local government, public health, education and agriculture.

There are fifty two entries in the Concurrent list. These include the legal system, trade and industry and economic and social planning. In respect of Concurrent items the laws passed by Central Parliament prevail over those passed by State legislatures.

The residual powers lie with the Union and in conflict between Union and State, the Union law prevails.

Thus, the Constitution gives vast powers to the Central Government as compared to the State governments. During emergency, the Parliament can make laws for the whole or any part of the territory of India with respect to any of the matters, enumerated in the State list. The President, if advised by the Governor, or on his own, feels that the government of the State cannot be carried on in accordance 'with the provisions of the Constitution may proclaim a state of emergency and assume all executive functions to himself and declare the powers of State Assembly to be under the authority of the Parliament.

Even, the RajyaSabha by a two third majority can ask the Parliament to make laws on the items in/State list for a temporary period.

2.3. The Council of Ministers

At the head of the Union executive stands the President of India and the States, it is the Governor who is the executive head. Though the executive power of the Union is vested in the president, he in practice is aided and advised by the Council of Ministers headed by the Prime Minister. The Union legislature is called Parliament. It consists of the President and the two Houses. The Lower HOW; is called the House of People or 'LokSabha'. Entire responsibility of enactment of laws rests with the Prime Minister who heads the Council of Ministers. The Constitution provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in exercise of his functions, act in accordance with the advice rendered after such reconsideration (Article 74). While the Prime Minister is selected by the President, the other Ministers are appointed by the President on the advice of the Prime Minister (Article 75(1)).

The number of members of the Council of Ministers is now specified in the Constitution. As per the constitution (Ninety-first Amendment) Act, 2003 the total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen percent of the total number of members of the House of the People (LokSabha). All the Ministers do not belong to the same rank. They are classified

under three ranks; Cabinet Ministers, Ministers of State and Deputy Ministers.

Thus, the Council of Ministers is a composite body, consisting of different categories. The rank of the different ministers is determined by the Prime Minister. . He also allocates portfolios among them. Ministers may be chosen from members of either house and a minister who is a member of one house has a right to speak and take part in the proceedings of the other House, though he has no right to vote in the House of which he is not a member. Under the Constitution, there is no bar to the appointment of a person from outside the legislature as minister. But he cannot continue as minister for more than six months unless he secures a seat in either house of Parliament. Though theoretically the function of the Council of Ministers is to only aid and advice the President, practically the vast power provided to the President by the Constitution is actually exercised by Council of Ministers with the Prime Minister as their head.

The Constitution is based on the concept of collective responsibility. The Council of Ministers is collectively responsible to the lower house of the Parliament. The essence of collective responsibility is that once a decision is taken by the government, it is binding on all the ministers. Ministry as a body, is under a constitutional obligation to resign as soon as it loses the majority in the lower House (House of People) of the legislature.

2.4. The Central Secretariat

The Central Secretariat stands for the complex of departments or ministries whose administrative heads are

designated as Secretaries and whose political heads are ministers. In this Unit, we shall briefly trace the evolution of the Secretariat, and describe its structure and functions. The tenure system, and the staffing of the Secretariat will also be discussed. Under the Secretariat there is a network of agencies which are responsible for the execution of the government policies. The relation between these agencies and the Secretariat will also be explained in this Unit.

2.4.1. Origin of the Central Secretariat

The Secretariat in India referred to the office of the Governor General in British India. However, the size of the Central Secretariat and the scope of its activities have undergone considerable change over the last two hundred years of its evolution in keeping with the changes in the aims, objectives and nature of the central government in India. At the end of the eighteenth century the central government consisted of a Governor General and three Councillors, and the Secretariat of four departments.

Each of them was under a Secretary, and there was a Chief Secretary heading them all. A hundred years later, on the eve of the Mont-ford Reforms in 1919, the Government of India consisted of a Governor General and seven members and there were nine secretarial departments. This number remained the same till the outbreak of the Second World War in 1939. Prior to 1919, the Central Government, while administering certain subjects directly like the army, posts and telegraphs and railways, had by and large left the task of implementation of other subjects to the local provincial

governments.

A major change came in the above position with the inauguration of the reforms of 1919 which for the first time, made a division of functions between the Central and provincial governments. Both the Central and provincial governments became responsible for both policy and administration. As a result, the role of the secretariat began to change from a merely policy-formulating, supervising and coordinating agency to that of an executive agency as well. The inauguration of provincial autonomy in 1937 and the outbreak of the Second World War accelerated the above process. In consequence, there was a four-fold increase of the Central Secretariat and its total strength rose to about two hundred.

The Government of India was still struggling with the post-war problems of demobilisation and reconstruction, when Independence came, accompanied by the partition of the country. At its very inception, therefore, the new government found itself faced with tremendous problems like rehabilitation of refugees from Pakistan, external aggression in Jammu and Kashmir, integration of princely states into the Indian Union, internal security, shortage of essential articles, at a time when there occurred serious shortage of personnel due to the British Officers returning home and many Muslim officers opting for Pakistan. Soon after, the adoption of the goal of a welfare state made unprecedented demands on the already overburdened administrative machinery. At the same time, the Industrial Policy Resolution of 1948 started the process of a vast

expansion of the public sector. The inevitable consequence of such a vast expansion, in the functions and responsibilities of the government was a marked increase in the number of departments, and personnel. Thus, the number of departments in the secretariat, which stood at four in 1858. (9 in 1919, 10 in 1939, 18 in 1947) had risen to 74 by 1994.

2.4.2. Role and functions of Central Secretariat

The Central Secretariat occupies a key position in Indian administration. The Secretariat refers to the conglomeration of various ministries/departments of the central government. The Secretariat works as a single unit with collective responsibility as in the case of the Council of Ministers. Under existing rules, each secretariat department is required to consult any other department that may be interested or concerned before disposing of a case. Secretaries, thus, are secretaries to the Government as a whole and not to any particular minister.

The Secretariat assists the ministers in the formulation of governmental policies. Ministers finalise policies on the basis of adequate data, precedents and other relevant information. The Secretariat makes these available to the minister, thus, enabling him to formulate policies. The Secretariat assists the ministers in their legislative work too. The Secretariat prepares legislative drafts to be introduced in the legislature. It engages in the collection of relevant information for answering parliamentary questions and also, for various parliamentary committees. It carries out a detailed scrutiny of a problem bringing an overall comprehensive

viewpoint on it., getting approval, if required, of other lateral agencies like the Ministry of Lab and the Ministry of Finance; and also, consulting other organisations concerned with a particular matter. The secretariat is the clearing house preliminary to governmental decisions. It functions as the main channel of communication between the government and other concerned agencies like the Planning Commission, Finance Commission, etc. And lastly, the Secretariat also ensures that field offices execute, with efficiency and economy, the policies and decisions of the Government.

The Central Secretariat system in India is based on two principles:

1. The task of policy formulation needs to be separated from policy implementation.
2. Maintaining Cadre of Officers operating on the tenure system is a prerequisite to the working of the Secretariat system.

The Central Secretariat is a policy making body of the government and is not, to undertake work of execution, unless necessitated by the lack of official agencies to perform certain tasks. The Central Secretariat normally performs the following functions:

- a. Assisting the minister in the discharge of his policy making and parliamentary functions.
- b. Framing legislation, rules and principles of procedure.
- c. Sectorial planning and programme formulation.

1. Budgeting and control of expenditure in respect of activities of the ministry/ department.
2. Securing administrative and financial approval to operational programme and their subsequent modifications.
3. Supervision and control over the execution of policies and programmes by the executive departments or semi-autonomous field agencies.
4. Initiating steps to develop greater personnel and organisational competence both in the ministry/department and its executive agencies.
5. Assisting in increasing coordination at the Central level.

2.4.3. Structure of Central Secretariat

The Central Secretariat is a collection of various ministries and department.

A ministry is responsible for the formulation of the policy of government within its sphere of responsibility as well as for the execution and review of that policy. A ministry, for the purpose of internal organisation, is divided into the following sub- groups with an officer in charge of each of them.

Department – Secretary/Additional/Special Secretary

Wing – Additional/Joint Secretary

Division - Deputy Secretary

Branch - Under Secretary

Section - Section Officer

The lowest of these units is the section in charge of a Section Officer and consists of a number of assistants, clerks, typists and peons. It deals with the work relating to the subject allotted to it. It is also referred to as the office. Two sections constitute the branch which is under the charge of an undersecretary, also known as the branch officer. Two branches ordinarily form a division which is normally headed by a deputy secretary. When the volume of work in a ministry exceeds the manageable charge of a secretary, one or more wings are established with a joint secretary in charge of each wing. At the top of the hierarchy comes the department which is headed by the secretary himself or in some cases by an additional special secretary. In some cases, a department may be as autonomous as a ministry and equivalent to it in rank.

2.4.4. Ministry and Department

The distinction between 'department' and 'ministry' may be explained by referring to 'ministry' as the minister's charge and 'department' as the secretary's charge. Although a ministry stands for the minister's charge, its administrative divisions are not uniform. A ministry may not have a department: or may have one or more than one department in which it is formally divided.

While a department may be referred to as the secretary's charge, all secretaries, although they get the same salary, are not necessarily of equal 'rank'. A Ministry may have

two or more secretaries, each in charge of a specified segment of the Ministry's work, or of a department in it, but there is, in addition, one secretary who is head of, and represents, the entire ministry. Although all of them are secretaries, the former are subordinate to the latter who, in addition to his own work, coordinates the work of these secretaries of departments/segments of work within the ministry.

2.4.5. Cabinet Secretariat

On the attainment of Independence in 1947 a popular cabinet headed by the Prime Minister replaced the Executive Council of Viceroy. The Executive Council Secretariat formally became the Cabinet Secretariat. Consequently the Secretary of the Executive Council of the Viceroy was renamed as the Cabinet Secretary.

The Cabinet Secretariat is a staff body, which has an important coordinating role in the process of decision-making at the highest level and operates under the direction of the Prime Minister. The Cabinet Secretary is the administrative head of the Cabinet Secretariat.

2.4.6. Evolution of Cabinet Secretariat in India

In 1948, the cabinet decided to start the Economic and Statistical Coordination Unit as a part of the Cabinet Secretariat. Its work was to secure all available information from existing statistical cells of the various ministries /departments and to present this information periodically to the cabinet. It was also required to coordinate the activities of various ministers and to give them advice about future work.

The Unit also took over the work relating to development schemes from the Secretariat of the Development Board pending the constitution of the Planning Commission. In this capacity, its function was to examine various development schemes of the Centre and the States and report to the cabinet about them. After the setting up of the Planning Commission in March 1950, this work was transferred to the Commission.

In 1949, the cabinet approved the Central Statistical Office to be attached to the secretariat and to establish a Central Statistical Unit which was set up in 1950. This Unit was to function in an advisory capacity. Later in February 1951, the work relating to statistical coordination and statistical publication of a general nature, which was previously being handled by the Economic Adviser to the government of India in the then Ministry of Commerce was transferred to the Cabinet Secretariat. In May 1961, a Central Statistical Organisation was set up which together with the Statistical Unit was attached to the Cabinet Secretariat.

Following the report on the reorganisation of the machinery, of the Government (1949) the Cabinet decided that the Economic Committee of the Secretariat which was previously located in the Ministry of Finance should be treated as a part of the Cabinet Secretariat and called it Economic Wing. The Economic Wing was intended to develop eventually into a Central Economic Office. However, the proposal did not materialise, and it was decided that the work done by the Economic Wing should be transferred to the

Finance Ministry which had already set up a Central Economic Office. Early in the same year the work relating to the Joint Communication - Electronics Committee, which was a sub-committee of the Chiefs of Staff Committee was transferred from the Ministry of Defence to the Cabinet Secretariat and attached to its Military Wing.

Organisation and Method Division (O&M) of the Government of India started functioning in March 1954, continued to remain as a separate wing of the Cabinet Secretariat till 25 March 1964, when a new department called Administrative Reforms was set up in the Ministry of Home Affairs and the O&M Division was transferred to this new department. It was decided on 15 February, 1961 that the Central Statistical Organisation, an attached office of the Cabinet Secretariat, should be given the authority and status of a department of the government. Accordingly, the Department of Statistics was created in April 1961 as a part of the Cabinet Secretariat with adequate authority to consider statistical methods; to advise on and issue general directions regarding the setting up of standards, norms and methods of data collection to 811 central and state agencies; and to deal with Evolution of Cabinet Secretariat in India.

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October 7 that a Unit called the Directorate-General of Resettlement, should be set up in its Secretariat for the formulation and implementation of schemes of relief and rehabilitation in the areas affected. This Unit functioned under the overall guidance of the Committee of Secretaries headed by the Cabinet Secretary. This Unit was later abolished and residuary work transferred to the Department of Rehabilitation

on 1 July 1966. In January 1966 the Bureau of Public Enterprises was shifted from the Ministry of Finance to the Cabinet Secretariat but was soon re-transferred to the ministry.

Perhaps the most important change made, as a result of the recommendations of the Administrative Reforms Commission, was the creation of a Central Personnel Agency in the Cabinet Secretariat in August 1970 and the transfer of the Department of Administrative Reforms from the Home Ministry to the Cabinet Secretariat in February 1973.

The issue of the location of the Central Administrative Reforms Agency, however, proved to be controversial. When the Government of India decided to set up an Organisation and Method Agency, there was a controversy as to its location. Both Home and Finance Ministries put forward their claims, but it was ultimately decided to locate it in the Cabinet Secretariat. But the Home Ministry ultimately succeeded after an interval of ten years to get the Organisation and Method Agency shifted from the Cabinet Secretariat to the Home Ministry with the elevated status of a department. However, again after nearly a decade the Department of Administrative Reforms was once again located in the Cabinet Secretariat in 1973. But, during the Janata Government period the Department of Personnel and Administrative Reforms was again transferred back to the Ministry of Home Affairs in 1977. But presently it is located in the Ministry of Personnel and Public Grievances.

2.4.7. Organisation and functions of Cabinet Secretariat

The organisation of the Cabinet Secretariat and its role

has been constantly shifting with the reorganisation of the executive functions of the union government.

The Cabinet Secretariat is organised in three wings - the Civil Wing, the Military Wing and the Intelligence Wing. The main Civil Wing provides secretarial machinery for the cabinet. It provides secretarial services for the various standing committees and ad hoc committees of the cabinet and also to a number of committees of secretaries which function under the Chairmanship of the Cabinet Secretary. It also deals with the framing of the Rules of Business of the Union government. The Military Wing is responsible for all secretarial work connected with the 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. In addition to the three wings there is a Joint Communication Electronics Committee located in the Cabinet Secretariat. The head of the Cabinet Secretariat is the Cabinet Secretary.

The efficiency of the Cabinet depends to a large extent on the Cabinet Secretariat whose duty is to prepare in a meaningful way the agenda of the Cabinet meeting, to provide information and material necessary for its deliberations, and of drawing up records of the discussions and decisions both of the Cabinet and its committees. It also oversees the implementation of the necessary decisions by the ministries concerned. This last function involves the calling of information from various ministries and departments. It keeps

the President, the Vice President and all the ministries informed of the major activities of the Government conducted in several ministries by circulating monthly summaries and brief notes on important matters. It serves the Committees of Secretaries which meet periodically under the Chairmanship of the Cabinet Secretary to consider and advise on problems requiring inter- ministerial consultation and coordination. It finalises the Rules of Business and allocates the business of the Government of India to the ministries and departments under the direction of the Prime Minister and with the approval of the President. In addition, the Cabinet Secretariat supplies secretarial assistance to Cabinet Committees.

2.4.8. Cabinet Secretary

The office of the Cabinet Secretary and its functions has evolved over a period of time. The Administrative Reforms Commission 1969 recommended that Chief Secretary should appointed for the period of three years. This term of three years was recommended to enable the functionary to provide effective leadership to the Civil Service. Recently, N.D.A. Government accepted the recommendations of the Administrative Reforms Commission that Cabinet Secretary should be appointed for the fix term of two years. The first two benefits was

T.R. Prasad. He is a member of the civil service and presides over the committees of secretaries. These committees examine inter-ministry matters, and issues that concern the Government as a whole. The Cabinet refers certain matters to them as well. The committees, however, recommend a

decision to the concerned Ministry; they do not decide.

The Cabinet Secretary directly handles all senior appointments in the Government. From the early 1950s, the practice followed is that the Cabinet Secretary usually does not prepare papers for the Cabinet or its committees, nor does he take upon himself the responsibility for a comprehensive scrutiny of the agenda papers for the Cabinet. All that he does is to ensure that the notes are self-contained and that appropriate details for discussion are provided, occasionally seeking clarification or raising points for Modification with the ministry concerned.

The Cabinet Secretary is present in all meetings of the Cabinet and its committees. He is responsible for preparing the agenda, priorities of items and allocation of subjects to Cabinet committees. The Prime Minister approves these. In these matters the Cabinet Secretary has to exercise his judgement taking into account the national priorities and what is considered important by the ministries. The Cabinet minutes are prepared by the Cabinet Secretary, and decisions communicated to the ministries by him.

The Cabinet Secretary has to play varied roles. He must keep track of urgent problems in socio-economic and political aspects, on bottlenecks in the implementation of Government programmes, on issues that the Prime Minister should know urgently and matters requiring his decisions. The Cabinet Secretary must use his discretion in all these matters and keep himself up-to-date with relevant data. As there are no fixed sources for such data, and, indeed there could not be, the interpersonal skills of the incumbent and the confidence he

evokes are two important requirements of the job.

2.4.9. Cabinet Committees

The Cabinet makes use of the committee system to facilitate decision-making in specific areas. The Business Rules provide for the constitution of standing committees of the Cabinet to ensure speedy decisions on vital questions of political and economic significance and other matters of importance as also to ensure coordination in well-defined fields of administration. These committees change according to the requirements of the situation and occasionally ad hoc committees are appointed.

The number of such committees has been changing from time to time and no outsider could tell exactly what the existing committees are at a given time.

However, the membership of the Cabinet Committees normally varies from three to eight. The Chairmanship of them is shared between the Prime Minister and Home Minister. The committees which function on a more or less permanent basis are the Political Affairs Committee, Economic Affairs Committee, Committee on Parliamentary Affairs, Appointments Committee, Committee on Accommodation, Committee on Industry and Trade, and the Committee on Food and Agriculture etc. Of these the most powerful is the Political Affairs Committee. Consisting as it does of the senior most ministers, it functions as a super Cabinet in providing direction to the government.

The Cabinet Committees are instruments to organise

coordination in clearly defined fields of administration and relieve the Cabinet of their burden of work. The flexibility in membership of these committees enable interested Ministers to exchange views, and arrive at agreed solutions without involving the Cabinet, thus, reducing pressure of work upon the latter. Lastly, there is considerable sharing of work, with the result that many matters which could otherwise travel up to the Cabinet for decision-making are settled at the level of Cabinet Committees. This ensures continuous coordination on vital economic and political issues, and speedy decision making when required.

Any matter which calls for a Cabinet decision may come directly to the appropriate committee before the Cabinet takes a decision. The Cabinet may often rarely accept the decision already taken by the Cabinet Committees. However, despite the fact that some Cabinet Committees have often exercised real authority, these committees have not been uniformly or consistently effective. Firstly, they do not cover all important areas of governmental functioning. Secondly, they can take up a matter only when it is referred to by the Minister concerned or by the Cabinet. Lastly, they do not meet regularly, which is absolutely necessary if sustained attention is to be given to complex problems and the progress in implementation of important policies and programmes is to be kept under constant review.

2.4.10. All India Services

A unique feature of the Indian Administration system, is the creation of certain services common to both - the Centre

and the States, namely, the All India Services. These are composed of officers who are in the exclusive employment of neither Centre nor the States, and may at any time be at the disposal of either. The officers of these Services are recruited on an all-India basis with common qualifications and uniform scales of pay, and notwithstanding their division among the States, each of them forms a single service with a common status and a common standard of rights and remuneration.

Like other federal polities the Centre and the constituent states, under the Indian Constitution, have their separate public services to administer their respective affairs. Thus, there are Central or Union Services to administer Union subjects, like defence, income tax, customs, posts and telegraphs, railways, etc. The officers of these Services are exclusively in the employment of the Union Government. Similarly, the states have their own separate and independent services. Ever since the creation of the Indian Civil Service in the days of the East India Company there has always existed in India an all India cadre of service. All India cadres were introduced almost in all departments of the Central Government. These services were, however, not under the control of the Governor-general; they were directly under the Secretary of State for India and his Council. No. All-India service officer could be dismissed from his service by any other authority than the Secretary of State-in-Council. An officer had a right of appeal to that body, if he was adversely dealt with in important disciplinary matters. His salary, pension, etc. were not subject to the vote of any Indian

legislature.

These elitist Services, unresponsive and unaccountable to public opinion, found it difficult to adjust themselves to the reform-era introducing every limited responsible government under the Government of India Act of 1919. The Lee Commission in 1924 recommended the abolition of certain all India Services, particularly those dealing with departments that had been 'transferred' to Indian hands under the Act of 1919 namely the Indian Educational Service, Indian Agricultural Service, Indian Veterinary Service and the Roads and Building Branch of the Indian Service of Engineers. It, however, recommended the retention of the Indian Civil Service, Indian Police, Indian Forest Service, Indian Medical Service and the Irrigation Branch of the Indian Service of Engineers. It also recommended the increasing Indianisation of these Services. The Commission further recommended that any British officer should be free to retire on a proportionate pension if at any time the department in which they were employed should be transferred to the control of responsible Indian ministers. These recommendations were implemented in practice.

Further changes were made in the position of these Services by the Government of India Act of 1935. Indians had always been demanding the abolition of All India Services. It was argued before the Joint Select Committee of the British Parliament considering the draft of the Act of 1935, and emphasised by the British India delegation in their Joint Memorandum. It stated that further recruitment by the Secretary of State of Officers serving under the Provincial

Governments which were to be handed over to popular control was undesirable, and that Services in future be recruited and controlled by the authorities in India. The Joint Committee, however, only partly accepted such demands, and recommended the continuance of ICS, IP and IMS (Civil). This recommendation 'was embodied in Section 224 of the Act of 1935. Thus, at the time of transfer of power in 1947 recruitment was open only to two all India services, namely the ICS and the IP, the recruitment to the IMS had been suspended. The most important and the highest ranking of all such services was the Indian Civil Service commonly known as the ICS which owing to its very high remuneration and enormous authority and prestige, constituted the 'steel frame' of the British Government of India. When the British were leaving India, there were ten all India services and twenty-two Central Services. While guaranteeing the rights of the old Services, the new Indian Government had foreseen the need for replacing them with Services controlled and manned by Indians. In fact, as early as October, 1946, Sardar Patel, the then Home Member in the Governor General's Executive Council, had secured the agreement of the Provincial Governments to the formation of the two new all India services, namely the Indian Administrative Service (IAS) and the Indian Police Service (IPS), which were to replace the old ICS and IP.

2.4.11. Constitution of All India Services

The Constitution also provides for the all India cadre of Civil Services. It adopts specifically the IAS and the IPS

cadres which had already been created earlier (Article 312-2). It empowers the Union Parliament to create more of such all India services whenever it is deemed necessary or expedient in the national interest, provided the Council of States (the Upper House) passes a resolution to the effect supported by not less than two-thirds of the members present and voting (Article 312-1). Since the Council of States is composed of the representatives of different States, its support will ensure the consent of the States to the creation of new Services. The Constitution also authorises the Parliament to regulate by law the recruitment and the conditions of services of persons appointed to these Services. Accordingly, the All India Service Act was passed by the Parliament in October 1951. Since the inauguration of the Constitution only one, namely, the Indian Forest Service, has been setup.

In 1951 All India Services Act was passed. By virtue of powers conferred by sub- section (1) of section (3) of this Act the Central Government framed new sets of rules and regulations pertaining to the All India Services. It became necessary because the old rules at certain places had become redundant. The rules that were in force before commencement of the Act were also allowed to continue. Thus, there came into existence two sets of rules regulating the conditions of All India Services. The old rules made by the Secretary of State, or the Governor General in Council, which regulated the conditions of service of ICS and IP officers, and the new rules made under the 1951 Act were applicable to the officers of the Indian Administrative and Police Services.

2.5. Indian Administrative Services

The Indian Administrative Service (IAS) is the direct descendant of the old Indian Civil Service. As an all India service, it is under the ultimate control of the Union Government, but is divided into State cadres, each under the immediate control of a State Government. The salary and the pension of these officers are met by the States. But the disciplinary control and imposition of penalties rest with the Central Government which is guided, in this respect, by the advice of the Union Public Service Commission. On appointment, the officers are posted to different State cadres. The strength of each State cadre, however, is so fixed as to include a reserve of officers who can be deputed for service under the Union Government for one or more 'tenures' of three, four or five years before they return to the State cadre. This ensures that the Union Government has at its disposal the services of officers with first-hand knowledge and experience of conditions in the States, while the State Governments have the advantage of their officers being familiar with the policies and programmes of the Union Government. Such an arrangement works for the mutual benefit of both governments. The majority of individual officers have an opportunity of serving at least one spell of duty under the Union Government; many have more than one such spell. The practice of rotating senior officers in and out of the Secretariat position is known in official parlance as the tenure system.

Another distinctive feature of this Service is its multi-purpose character. It is composed of 'generalist administrators'

who are expected, from time to time, to hold posts involving a wide variety of duties and functions; for example, maintenance of law and order, collection of revenue, regulation of trade, commerce and industry, welfare activities development and extension work, etc. In brief, the IAS is intended to serve all the purposes formerly served by the ICS except providing officers for the judiciary. Thus, this Service is a kind of generalist service, and its officers are liable for posting in almost any branch, of the administration.

2.5.1. Importance of Indian Administrative Service

We will now discuss the distinct role of the Indian Administrative Service. The Indian arrangement creating a common pool of officers, who are in the exclusive employ of neither the centre nor the states and fill the top posts in both Union and State administrations, comes nearest to the ideal of joint action, co-operation and co-ordination, between the two levels of government as envisaged in a federal polity. On the one hand, a single integrated federal service common to both the Centre and the States would be a negation of State autonomy. On the other hand, if the federal government is denied its own services, one of the two results may follow - either the State services will be reduced to the status of being mere agents of the Central Government, or the Central Government may find itself helpless in case of non-cooperative attitude on the part of the State services. The Indian experiment avoids both by providing separate and independent Union and State services and yet facilities coordination and cooperation, and, if necessary, joint action

between the two levels of government by creating a common cadre of officers at the top level. It also avoids the possibility of the best brains preferring Federal service to State service, leaving the latter to be manned by the second or the third best. As it is, the all-India services, being recruited by the Union Government on an all-India basis, talent to States. No better way of strengthening the State services can possibly be suggested. Again, constant transfers of such officers from the States to the Centre and back makes them aware of and conversant with the administrative problems at both levels of the Government. Such officers, therefore, can be the best agents for carrying out administrative coordination between the federal and State administration.

2.5.2. Indian Police Service

The Indian Police Service is an original all India Service (it had pre-independence origins) which differs from its compeer - the IAS in two ways: (i) most of the officers in this service work only in the state since there are only a few police posts at the Centre and (ii) its pay scale and status are lower than those of the IAS. The officers of the IPS are recruited from the same unified All India Civil Service examination which recruits all members of the IAS, IFS and other Central Civil Services. Recruits to the IPS are first given a five months foundational training and later special training at the Sardar Patel National Police Academy, Hyderabad. The subjects of study and the training is drill, handling of weapons, etc., which have a direct bearing on the normal work of a police officer. The syllabus of training includes studies of

crime psychology, scientific aids in detection of crime, methods of combating corruption and emergency relief. After completing a year's training, the probationer passes an examination conducted by the UPSC. He is, then appointed as an Assistant Superintendent of Police. But, before this appointment he has to undergo a year's programme of training; he is given practical training which requires him to do the work of various subordinate officers. It is only after this that he is appointed an Assistant Superintendent of Police.

As an all India Service it is under the ultimate control of the Union Government, but is divided into state cadres, each under the immediate control of a state government. The Indian Police Service is managed by the Ministry of Home Affairs, though the general policies relating to its personnel are determined by the Department of Personnel and Administrative Reforms

2.6. Recruitment of All Indian Services

The recruitment is made by the Central Government on the basis of a competitive examination annually conducted by the Union Public Service Commission (UPSC). The examination is a combined one - for a number of services like the IFS, IAS, IPS and the Central Services Class I and II. To appear at the examination, a candidate must be between the age of 21 and 30. Only a University graduate (one holding B.A. or B.Sc. or an equivalent degree) can appear at the examination. The examination combines a written test of a high standard with a 'personality test' by the Union Public Service Commission in the form of a personal interview. The former

aims at judging the level of intelligence and academic learning and the latter attempts to make a measure of the qualities of personality and character. The examination system is modelled on the British 'general' type rather than the American 'specialised' type.

There is a provision for relaxation of age up to a maximum of five years for SCIST candidates and three years for candidates belonging to OBC category. The number of permissible attempts to appear in the examination has been restricted to four, with relaxation for OBC candidates (seven attempts) and SCIST candidates (no limit).

Prior to 1979 a single competitive examination used to be held. There were three compulsory papers: Essay, General knowledge and General English - each carrying 150 marks. But of a number of optional papers three papers of 200 marks each, and two additional subjects (for IAS and IFS only) out of another list of subjects each carrying 200 marks were to be offered. The candidates who qualified in the, written examination were called for interview, which carried 300 marks. The candidates who failed to secure a minimum of 33% of qualifying marks in the interview were declared unsuccessful, and it was abolished in 1958. The interview marks were added to the marks obtained in the written papers. After this, the Commission recommended the list of selected candidates in order of merit to the government.

The above system of recruitment in the All India Services was criticized from a number of view points, and the UPSC decided to review the system thoroughly. For this

purpose a Committee on Recruitment and Selection Methods under the Chairmanship of Prof D.S:Kothari was appointed by the UPS Committee submitted its report in 1976 and made the following recommendations.

- a. To hold a Preliminary examination to screen the candidates for the Main examination;
- b. To hold the Main examination to select candidates for entry to the LBS National Academy for a foundation course of about nine months;
- c. To hold a post-training test of 400 marks to be conducted by the UPSC on completion of the foundation course, the purpose being to assess personal qualities and attributes relevant to the civil services;
- d. To assign candidates to a particular service on the basis of the total marks obtained in the Main examination and the Post-Training Text at LBS Academy, taking into account the candidate's for the services;
- e. To allow the candidates to answer all papers, except the language paper, in any language listed in the Eighth Schedule of the Constitution, or in English.

The Kothari Committee's recommendations regarding the examination scheme (preliminary and main) was accepted by the government, and it was implemented by the UPSC in 1979.

2.6.1. Satish Chandra Committee

The UPSC set up another Committee in 1988 under the

Chairmanship of the former UGC Chairman Satish Chandra to review and evaluate the system of selection to the higher Civil Services and to make suggestions for further improvement. The Committee submitted its Report in 1993 and the government is gradually implementing some of the recommendations with effect from the Civil Service Examination of 1993.

The main recommendations as accepted by the government are:

1. The practice of holding a common examination should continue;
2. An essay paper should be introduced from 1993 examination, and the candidates should be allowed to answer this paper in any one of the languages included in the Eighth Schedule or in English;
3. The marks for the personality test should be raised from 250 marks to 300;
4. From the list of optional subjects certain languages like French, German, Arabic, Palishould be excluded;
5. For both Preliminary and Main Examinations Medial Science should be included as anoptional subject;
6. Allotment of services should be on the basis of the candidate's rank and preferences;
7. LBS Academy of Administration should be developed into a high level professional institution;
8. Adequate infrastructural facilities and proper faculty

support should be provided to the training institutions;

9. The UGC may review the scheme of conducting coaching classes for students belonging to the minority communities to enable them to compete in various competitive examinations.

2.7. Present Pattern of Civil Services Examination

The pattern of Civil services examination has been designed to test the academic expertise of a candidate and that candidate's ability to present himself/herself in a systematic and coherent manner. The examination pattern intends to assess the overall intellectual traits and understanding level of the candidates. The competitive examination comprises three successive stages: (a) Civil Services (Preliminary) examination, (b) Civil Services (Main) Examination, and (c) Interview.

The preliminary Examination consists of two papers of objective type (multiple choice questions) and carry a maximum of 400 marks: one paper on general studies having 200 marks, and another paper of 200 marks on one subject to be selected from a list of optional subjects.

The question papers are set in English and Hindi. There are nine papers of which first two papers; one for Indian languages and the other for English with a maximum mark of 300 each having qualifying nature. The remaining papers (seven) are having merit ranking nature and each paper has a maximum mark of 250. Interview will be given a maximum mark of 275 and grant total is 2025 marks.

Qualifying Papers (Non-Ranking)		
Paper A	One of the Indian Language to be selected by the candidate from 13 the languages included in the Eight Schedule to the Constitution.	300 Marks
Paper B	English	300 Marks
Papers to be Counted for Merit (Ranking)		
Paper I	Essay	250 Marks
Paper II	General Studies I (Indian Heritage and Culture, History and Geography of the World and Society)	250 Marks
Paper III	General Studies II (Governance, Constitution, Polity, Social Justice and International relations)	250 Marks
Paper IV	General Studies III (Technology, Economic Development, Bio-diversity, Environment, Security and Disaster Management)	250 Marks
Paper V	General Studies IV (Ethics, Integrity and Aptitude)	250 Marks
Paper VI	Optional Subject- Paper 13	250 Marks
Paper VII	Optional Subject- Paper 2	250 Marks
	<i>For the optional papers in the Main Examination, UPSC has a list of about twenty-six subjects out of which any one subject has to be selected by the candidate.</i>	
Subtotal (Written Test)		1750 Marks
Personality Test (Interview)		275 Marks
Grand Total		2025 Marks

2.7.1. Training of All India Services

Recruits to All India and Central Services are given a five months' foundational course and then special training in the training institutions for their respective services. The idea underlying the (foundational) course is that the higher services should acquire an understanding of the constitutional, economic and social framework within which they have to function as these largely determine the policies and programmes towards the framing and execution of which they will have to make their contribution. They should, further, acquaint themselves with the machinery of Government and the broad principles of Public Administration. The foundational course is also intended to cover such matters as aims and obligation of the Civil Service, and the ethics of the profession. Foundational course also develops among recruits to different services a feeling of belongingness to common public service and a broad common outlook. After completing this five months' foundational course the probationers of the services other than the IAS, leave for their respective training institutions for institutional training, but the IAS probationers stay at the Academy to undergo a further course of institutional training.

From 1969, the Government has introduced a new pattern of training called the sandwich course, for the Indian Administrative Service. The new entrants to IAS undergo two spells of training at the Academy with an interval of about a year - which is utilised for foundational course. After completion of the foundational course and spell of institutional

training at the Academy, the probationer, as he is called, is sent to the State (to which he has been allotted) for practical training. At the end of this training, he again comes to the Academy for a second spell of a training where emphasis is placed on the discussion of administrative problems the probationer has either encountered or observed in the course of practical training in the State. This part of the training is, thus, more problem-oriented. At the end of the second spell of training at the Academy, the IAS probationer has to sit for a UPSC examination before being given the charge of a sub-division in a district.

MODULE-III

STATE ADMINISTRATION

3.1. Introduction

The very first Article of our Constitution says, "India, that is 'Bharat', shall be a Union of states." The word 'Union' has been used to mean 'Federation' in the US Constitution. In our Constitution, however, the Union is not a Federation of the type set up by the US Constitution. The Indian Constitution has several features of a Federation like the dual government; distribution of powers between federal and state governments, supremacy of the Constitution and final authority of courts to interpret the Constitution. On the other hand, there are several unitary features like a unified judicial system; integrated machinery for election, accounts and audit; power of superintendence of union government over state government in emergencies and to some extent even in normal times; single citizenship, etc. Due to these features, our Constitution lays down a quasi-federal polity. Granville Austin has on the other hand called our Federation a 'Cooperative Federalism' due to the need for close cooperation between the Union government, and the state governments. The purpose here is not to discuss in detail the nature of Indian Federation, but to put the study of state administration in proper context. It is, therefore, enough for us to know that our Constitution envisages a two-tier structure of governance - one at the Union or Central level and the other at the state level. The powers and

functions of the Central or Union government and the state governments are specified in the Constitution. The Union and the state governments function independently in their own spheres. Of course, there is an area of overlapping responsibility and there are certain powers of superintendence.

The Constitution has adopted a three-fold distribution of legislative powers between the Union and the states (Article 246). Schedule VII of the Constitution enumerates the subjects into three lists. List I or the Union List consists of the subjects over which the Union has exclusive power of legislation. Similarly, List II or the State List comprises subjects over which the state has exclusive powers of legislation. There is yet another List (List III) known as the Concurrent List that comprises subjects over which both the Union and states have powers to legislate. The residual powers are vested in the Union.

3.2. State List

The State List comprises 61 items over which states have exclusive jurisdiction. Some of the important ones are - Public Order and Police, Agriculture, Forests, Fisheries, Public Health, Local Government, etc. These are subjects of maximum concern to the people which can be better dealt with at the state level. The subjects are generally under the exclusive jurisdiction of the states, but under the following circumstances, the Parliament can legislate on these matters.

- a. In national interest, Council of States by a resolution of 2/3rd of its members present and voting may authorise the

Parliament to legislate on a state subject. Such authorisation may be for one year at a time, but can be renewed by a fresh resolution;

- b. Under a proclamation of emergency, the Parliament may legislate on a state subject;
- c. With the consent of two or more states, the Parliament may legislate on a state subject with respect to the consenting states;
- d. Parliament has powers to legislate with reference to any subject (including a state subject) for the purpose of implementing treaties or international agreements and conventions; and
- e. When a proclamation is issued by the President on the failure of Constitutional machinery in any state, he may declare that the powers of the state legislature shall be exercised by or under the authority of Parliament.

3.3. Concurrent List

The Concurrent List comprises 47 items over which the Union and state legislatures have concurrent jurisdiction. The important ones are: Criminal Law and Procedure, Marriage, Trusts, Civil Procedure, Insurance, Social and Economic planning, etc.

While the Union and states can legislate on any of the subjects in the Concurrent List, predominance is given to the Union Legislature. It means that in case of repugnancy between the Union and a state law relating to the same subject, the former prevails. If, however, the state law was

reserved for the assent of the President and has received such assent, the state law may prevail notwithstanding such repugnancy, but it would still be competent for the Parliament to override such state law by subsequent legislation.

Any dispute about the interpretation of the entries in the three lists is to be decided by the Courts. Following principles have been followed in such interpretation:

- a. In case of overlapping of a subject between the three lists, predominance is to be given to the Union Legislature;
- b. Each entry is given the widest importance that its words are capable of,
- c. In order to determine whether a particular enactment falls under one entry or another, its 'pith and substance' is considered.

3.4. Distribution of Executive Power

In general, the distribution of executive powers follows the distribution of the legislative powers. It means that the state government has executive powers in respect of subjects in the State List.

However, the executive power in respect of subjects in the Concurrent List ordinarily remains with the state governments except in the following cases:

- a. Where a law of Parliament relating to such subjects vests some executive functions in the Union, e.g., in Industrial Disputes Act, 1947.
- b. Where provisions of Constitution itself vest some

executive functions upon the Union, e.g., implementation of an international treaty or obligation.

Moreover, the Union has the power to give directions to the state governments in the exercise of their executive powers in the following cases:

In Normal Times, the State Governments have to ensure:

- i. Compliance with Union laws
- ii. Exercise of executive power of the state does not interfere with the exercise of the executive power of the Union
- iii. Construction and maintenance of the means of communication of national or military importance by the state
- iv. Protection of railways in the' state
- v. Implementation of schemes for the welfare of Scheduled Castes and Scheduled Tribes
- vi. The administration of a state is carried on in accordance with the provisions of the Constitution.

In Emergencies

- The state government functions under the complete control of the Union Government
- The President may assume to himself all or any executive powers of the state on proclamation of failure of Constitutional machinery in a state.

During a Financial Emergency

- The President can give directions to the state government

to observe canons of financial propriety

- The President may reduce salaries and allowances of employees
- Money bills and other financial bills could to be reserved for consideration of the President.

3.5. Role of Governor

Our Constitution provides for the Parliamentary form of government at the Union as well as the state levels. The Governor is the Constitutional head of the state and acts on the advice of the Council of Ministers headed by the Chief Minister. He is appointed by the President for a term of five years and holds office during his pleasure. He can be reappointed after his tenure as Governor of the same state or of another state.

According to the Constitution, the Governor has many executive, legislative, judicial and emergency powers. For example, the Governor appoints the Chief Minister and on his advice the Council of Ministers. He makes many other appointments like those of members of the State Public Service Commission, Advocate General, Senior Civil Servant, etc. In fact, the entire executive work of the state is carried on in his name.

The Governor is a part of the State Legislature. He has a right of addressing and sending messages to and of summoning, proroguing the State Legislature and dissolving the Lower House. All the bills passed by the Legislature have to be assented to by him before becoming the law. He

can withhold his assent to the Bill passed by the Legislature and send it back for reconsideration. If it is again passed with or without modification, the Governor has to give his assent. He may also reserve any Bill passed by the State Legislature for the assent of the President. The Governor may also issue an Ordinance when the legislature is not in session. The Governor even has the power to grant pardon, reprieve, respite, and remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law related to a matter to which the executive power of the state extends.

As far as the emergency powers of the Governor are concerned, whenever the Governor is satisfied that a situation has arisen in his state whereby the administration of the state cannot be carried on in accordance with the provisions of the Constitution, he can report the fact to the President. On receipt of such a report, the President may assume to himself the powers of the state government and may reserve for the Parliament the powers of the State Legislature (Article 356).

3.5.1. Exercise of Discretion by the Governor

It has already been pointed out that the Governor has to exercise his powers on the advice of the Council of Ministers. He does not, therefore, have much discretion in the exercise of his powers as long as a stable Ministry enjoying the confidence of the Assembly is in office.

However, this is not always the case. The Governor may then be called upon to exercise his discretion. It is this

exercise of discretion that has made the Governor's office the most controversial Constitutional office of the country.

3.5.2. Appointment of Chief Ministers:

The Governor appoints the Chief Minister and on his advice the Council of Ministers. When a party with absolute majority elects a leader. The Governor has no choice but to appoint him the Chief Minister and invite him to form the government. Problems arise when no political party has an absolute majority in the legislature. Here the discretion of the Governor comes into play.

3.5.3. Dismissal of a Ministry

A Chief Minister and his Ministry hold office during the pleasure of the Governor, which is not subject to any scrutiny. However, the Governor has to exercise his discretion judiciously. There is a general feeling that the Governors have not done so.

Dissolution of the Assembly: The governor can dissolve the assembly on the recommendation of the council of ministers headed by the chief minister.

3.5.4. Emergency and role of Governor

It has also been alleged that the Governors have not used their discretion judiciously in advising the President for using his emergency powers under Article 356 of the Constitution. In 1959 itself, the Governor of Kerala reported to the President that due to failure of law and order, the government of the state could not be carried on according to the provisions of the Constitution. The first non-Congress state

government of the country was thrown out by the President on the basis of this report, which was severely criticised by all sections of the Opposition. In 1984, the Governors of J&K and Andhra Pradesh verified the numerical support of the ruling (non-Congress) parties in the Assembly and hurriedly advised the dismissal of the state governments on the ground that in the absence of stable majorities, the governments of these states could not be carried on according to the Constitution. In either case, the majority of the government was not tested on the floor of the Assembly. Moreover, in case of Andhra Pradesh even the arithmetic of numbers proved to be incorrect. In these cases, there were open allegations also that the Governors had tried to reduce the state governments to a minority.

3.6. The State Council of Ministers

The executive power of the state is exercised in the name of the Governor, who is the Constitutional head of the state. But, the Governor has to have a Council of Ministers with the Chief Minister as its head to aid and advise him. But for a few discretionary functions, the Governor has to act on the advice of the Council of Ministers. It means that the real executive power is exercised by the Council of Ministers.

The Council of Ministers are appointed by the Governor on the advice of the Chief Minister and hold Office during his pleasure. It means that a minister can also be dismissed by the Governor on the advice of the chief minister.

On the pattern of the Union government, ministers in the state governments are of the following categories:

1. Cabinet Ministers
2. Ministers of State
3. Deputy Ministers
4. Parliamentary Secretaries

As per the Ninety First Constitutional Amendment Act 2003, the total number of Ministers including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of the State, provided that number of Ministers, including the Chief Minister in a State shall not be less than twelve. This is the first time that such an Amendment providing for the total strength of Ministers has been enacted.

3.7.1. Powers and Functions of the Council of Ministers

The Council of Ministers is the highest policy-making body of the state government. It lays down policy in respect to all matters within the legislative and administrative competence of the state government. The Council also reviews the implementation of the policy laid down by it and can revise any policy in view of the feedback received during implementation. Since the Governor has to exercise his executive powers on the advice of the Council of Ministers and all the executive power is exercised in the name of the Governor, there is no limitation on the powers of the Council except the following:

- a. The limits imposed by the Constitution and the laws passed by the Union and State Legislature.
- b. Self-imposed limits to exclude consideration of less

important matters.

3.8. Division of Work into Departments at the State Level

According to the doctrine of Ministerial Responsibility, the Council of Ministers is collectively responsible to, the State Assembly. It is, however, impossible for the Council to take all the decisions collectively. During the early British period, the administration of the state was carried on by the Governor-in-Council. At that time, most of the decisions were taken collectively, because the number of decisions to be taken was not very large. With the passage of time, the scope of governmental activity increased and the matters that came up for the decision of the Council also proliferated. This led to the development of 'portfolio system' in which the Councillors were placed in charge of certain specified subjects leaving only a few important matters to be placed before the whole Council. The same system has continued after Independence. Under our Constitution, the Governor has to make rules for the efficient conduct of business [Article 166(3)]. The state governments have framed 'Allocation of Business Rules', according to which the work is divided among different ministers. This division of work can be done on the basis of functions, or on the basis of clientele, or on geographical basis or on the basis of the combination of these factors. Very often, the division of work is decided on personal considerations rather than rational criteria. Most of the work in respect of subjects allotted to a minister is disposed of by the minister. However, according to the rules of business, some matters have to be reserved by the minister for:

3.8.1. Consideration of the Chief Minister

These are called coordination cases. In these cases, the minister in charge of a portfolio, records his recommendations and submits the file to the Chief Minister for his orders. Rules of business give a list of such cases. The Chief Minister may also reserve some cases or classes of cases for his orders.

3.8.2. Presentation before the Cabinet

These are important policy matters, which have wide repercussions. Important cases of disagreement between two or more ministers are also brought before the Cabinet for its decision. A list of such cases is given in the rules of business. In addition, the Chief Minister may require any particular case of any department to be placed before the Cabinet. A few of the typical Cabinet cases are given below:

- i) Annual Financial Statement to be laid before the Legislature and demands for supplementary grants
- ii) Proposals affecting state finance not approved by the Finance Minister
- iii) Exemption of important matters from the purview of State Public Service Commission
- iv) Proposals for imposition of new taxes, etc.

3.9. The Chief Minister

The Chief Minister performs the same functions in respect of the state government as the Prime Minister does in respect of the Union Government. Although the real i

executive power of the state government vests in the Council of Ministers, the Chief Minister has acquired a very special role in the exercise of this executive power. He is not the first among equals, but is the prime mover of the executive government of the state. The Chief Minister is appointed by the Governor and holds Office during his pleasure. However, when a single political party has an absolute majority in the Assembly, the Governor has only a ceremonial role in these matters. He has to invite the leader of the majority party to form the government and cannot dismiss him so long as he enjoys the confidence of the Assembly. The only exception probably may occur when the majority party changes its leader in the Assembly. Of course, the Governor does have some discretion in these matters during periods of instability when no single party can claim an absolute majority in the Assembly.

3.9.1. Powers of the Chief Minister in Relation to the Council of Ministers

The Chief Minister is the leader of the Council of Ministers. With the passage of time, the position of Chief Minister has strengthened vis-his his Council of Ministers. He has to assign portfolios among his ministers and can change such portfolios when he likes. He plays a coordinating role in the functioning of his Council of Ministers. He has to see that the decisions of the various departments are coherent. He has to lead and defend his Council of Ministers in the Assembly. In short, he has to ensure the collective responsibility of the Council of Ministers to the State Assembly. The Chief

Minister sets the agenda for the Cabinet and greatly influences its decisions. He takes decisions on important matters of coordination even though these are allotted to individual ministers. Moreover, the Governor appoints the Council of Ministers on the advice of the Chief Minister and the ministers hold Office during the pleasure of the Governor. As a result of these provisions, the Minister, in fact, holds Office during the pleasure of the Chief Minister. This power of dismissing the ministers at will and the power to change their portfolios has greatly strengthened the power of the Chief Minister in relation to his ministers and ultimately the Council of Ministers.

It must also be realised that the power of the Chief Minister in relation to his Council of Ministers also depends on political conditions prevailing in the state. If a cohesive party has an absolute majority in the Assembly, the Chief Minister becomes very powerful and the ministers are afraid of him. His power is further enhanced in case of a state-wide regional party for, in that case he is not subject to the discipline of the national leadership. The position of a Chief Minister gets weakened if he heads a coalition government or a faction-ridden party. In either case, he or she has to effect compromises to keep a balance among the coalition partners or various factions within the party.

3.9.2. Powers of the Chief Minister in Relation to the Governor

The powers of Chief Minister in relation to the Governor have not been mentioned anywhere in the Constitution. A convention was sought to be established

whereby the Chief Minister could be consulted regarding the appointment of the Governor in his state. Even this has not been followed by the Union government in many cases. The only other power, which can be indirectly inferred from the Constitution is the power to exercise executive power of the state in the appointment of the Governor. All the public appearances of the Governor and the speeches delivered by him on such occasions have to be in accordance with policy laid down by the Council of Ministers headed by the Chief Minister. Similarly, the speeches of the Governor on ceremonial occasions and the annual speech before the Assembly have to be approved by the Cabinet.

3.9.3. Powers of the Chief Minister in Relation to the Legislature

The Chief Minister is also the leader of the House. Apart from this formal position, the Chief Minister provides real legislative leadership to the House in the sense that -he sets the legislative agenda. The legislative measures are brought before the Assembly after the approval of the Council of Ministers headed by the Chief Minister. It is true that private members may also bring a Bill before the Assembly. But, that has a limited chance of success. Apart from the fact that it has no backing of the majority party, the private members do not have the wealth of information that is available to the government. Apart from setting up the legislative agenda, the Chief Minister has to keep the Assembly informed about the various activities of the government by answering questions, making statements,

intervening in the debates, etc.

3.9.4. Powers of the Chief Minister in Relation to the Executive

By virtue of being the head of the political executive, the Chief Minister controls the entire bureaucracy of the state. In this function, he is assisted by the Secretariat headed by the Chief Secretary. He approves all senior appointments like those of Secretaries, Additional/ Joint/Deputy Secretaries. Heads of the Departments, Chairpersons and Managing Directors of Public Sector Undertakings, etc. Through his Cabinet, he controls their service conditions and disciplinary matters. He provides them leadership to ensure good performance and goodmorale. At the same time, he has to keep a watch on their performance through administrative channels as well as through his own sources like party workers, complaints from aggrieved persons and actual observation during tours etc.

3.10. State Secretariat

No Ministry can run smoothly without the support of a Secretariat at the Union as well as state levels. The Secretariat helps the government in policy making and execution of legislative functions. This Unit discusses the organisation and functions, of the State secretariat. It explains the pattern of for its decision. A list of such cases is given in the rules of business. In addition, the Chief Minister may require any particular case of any department to be placed before the Cabinet. A few of the typical Cabinet cases are given below:

departmentalisation in the Secretariat and brings out the distinction between the secretariat department and executive department.

The three components of government at the state level are: (i) the minister; (ii) the secretary, and (iii) the executive head. (The last one in most cases is called the director, although other nomenclatures are also used to refer to the executive head). The minister and the secretary together constitute the Secretariat, whereas the office of the executive head is designated as the Directorate. Literally, the term 'Secretariat' means the secretary's office. It originated at a time when what we had in India was really a government run by the secretaries. After independence power was transferred to the elected representatives. The Ministry became the seat of authority. In the changed political situation, the term Secretariat has become a synonym for the minister's office. But because the secretary is the principal adviser to the minister, he needs to be in the physical vicinity of the minister. In effect, therefore, Secretariat refers to the complex of buildings that houses the office of ministers and secretaries.

The Administrative Reform Commission states the State Secretariat, as the top layer of the state administration, is primarily meant to assist the state government in policy making and in discharging its legislative functions. It also acts "as a memory and a clearing house, preparatory to certain types of decisions and as a general supervisor of executive action".

The main functions of the State Secretariat are broadly as follows:

1. Assisting the ministers in policy making, in modifying policies from time to time and in discharging their legislative responsibilities
2. Framing draft legislation, and rules and regulations
3. Coordinating policies and programmes, supervising and controlling their execution, and reviewing of the results
4. Budgeting and control of expenditure
5. Maintaining contact with the Government of India and other state governments; and
6. Overseeing the smooth and efficient running of the administrative machinery and- initiating measures to develop greater personnel and organisational competence.

The administrative philosophy to which the secretariat system owes its existence is that policy making must be kept separate from policy execution. Several advantages are claimed in favour of such an arrangement:

1. Freedom from operational involvement makes the policy making the state apparatus forward looking and allows it to think in terms of overall goals of government rather than narrow, sectional interests of individual departments.
2. Policy making receives the time and attention it deserves. This is because, policy making, is a serious exercise in drawing up what would be a future course of action.
3. Secretariat serves as a disinterested adviser to the minister. It is important to remember that the secretary is

the secretary to the government and not to the minister concerned.

4. Policy making must be separated from current administration and day-to-day implementation should be left to a different agency with executive freedom, which ensures delegation of authority.

The foremost function of the secretariat is to assist policy making. It has many allied functions and dimensions. First, the secretary supplies to the minister all the data and information needed for policy formulation. Second, the secretaries sometimes provide the programmes, with content by working out their details, on whose strength ministers are voted to power. Third, the Secretariat assists ministers in their legislative work. Drafts of legislations to be introduced in the legislature by ministers are prepared by the secretaries. Besides, to answer questions in the Legislature, the minister needs relevant information; the secretary supplies this information to the minister. Secretary also collects information required with respect to the legislative committees. Fourth, the Secretariat functions as an institutionalised memory. This means that the emerging problems require an examination in the light of precedents. Records and files maintained in the Secretariat serve as an institutional memory and ensure continuity and consistency in the disposal of cases. Fifth, the Secretariat is a channel of communication between one government and another, and between the government and such agencies as the Planning Commission and Finance Commission. Finally, the Secretariat evaluates and keeps track

of execution of policies by the field agencies.

3.10.1. Structure of the State Secretariat

Conventionally, the officers' hierarchy has had three levels. Under this, a typical administrative department is headed by a secretary who will have a complement of deputy secretaries and under assistant secretaries. But with growth in the functions of various secretariat departments, the number of levels in the officers' hierarchy has been on the increase. As a result, between the secretary and the deputy secretary, in some states, positions of additional and/or joint secretaries have also been created. A unique feature of the Secretariat System in India has been the distinction between its two component parts - "the transitory cadre of a few superior officers" and "the permanent office".

The officers in each department, because they hold tenure posts, come and go. It is the office, which is manned by permanent functionaries, which provides the much needed element of continuity to the secretariat department. Unlike officers, the office constitutes the permanent element in the secretariat system. The office component is comprised of superintendents (or section officers), assistants, upper and lower division clerks, steno-typists and typists. Office performs the spadework on the basis of which the officers consider cases and make decisions. Office supplies officers with materials, which constitute the basis for decision-making.

3.11. The structure of a typical department comprises:

Department - Secretary

Wing - Additional Joint Secretary

Division - Deputy Secretary Director

Branch - Under Secretary

Section - Section Officer

The section is the lowest organisational unit and it is under the charge of a section officer. Other functionaries in a section are assistants, upper and lower division clerks, stenotypists, typists, etc. A section is referred to as the office. Two sections constitute the branch, which is under the charge of an under-secretary. Two branches ordinarily form a division, which is headed by a deputy secretary. When the volume of work of a department is more than a secretary can manage, one or more wings are established with a joint secretary in charge of each wing. At the top of the organisational hierarchy is the secretary who is in charge of the department

3.12. Pattern of Departmentalisation in State Secretariat

Each secretary is normally in charge of more than one department. The number of secretariat departments would therefore be larger than the number of secretaries. The number of secretariat departments, quite naturally, varies from state to state. Their number broadly ranges between 10 and 40 in different states. The number of departments in a particular state is not necessarily related to its size in terms of population. For instance, a small state like Mizoram had as many as 36 secretariat departments in 1987, the corresponding figure for Andhra Pradesh (which is a much larger state), was 19 in 1982.

Following is a typical example of the pattern of departmentalisation at the Secretariat Level:

- General Administration Department
- Home Department
- Revenue Department
- Food and Agriculture Department
- Finance and Planning Department (Planning Wing)
- Finance and Planning Department (Finance Wing)
- Law Department irrigation and Power Department
- Medical and Health Department
- Education Department
- Industries Department
- legislature Department
- Panchayati Raj Department
- Command Area Development Department
- Transport, Roads and Buildings Department
- Housing and Municipal Administration and Urban Development Department
- Labour, Employment and Technical Education Department
- Social Welfare Department
- Rural Development Department
- Forest Department
- Environment Department
- Women and Child Welfare Department

There is a lot of criticism about the work allocation existing in the secretariat departments, which is: First, work

allocation is lop-sided in that some departments are burdened with more work than others. Second, allocation is far from rational even in terms of homogeneity of work. Not only are the subjects handled by a particular department too numerous and therefore unmanageable but these are also too heterogeneous, causing problems of coordination. These are rather aggravated when charges of particular departments are incomplete in scope.

MODULE-IV

LOCAL ADMINISTRATION

4.1. District Administration

District as a basic unit of field administration has been in existence through the ages. It is surprising to know that it has not changed substantially since the times of Manu in his description of a district in Manusmriti where 1000 villages were grouped together to form a district and placed under the charge of an officer. However, the territorial structure of administration of India can be traced to the Mauryan era where revenue villages were called 'gramas', a group of revenue villages called 'stana' (visaya or taluk), several 'stanas' called 'aharas' or the District, a group of Districts called 'Pradesh' or the region/state and several 'pradeshas' called the 'Janapada' or a province/country.

The head of the District Administration had both revenue as well as police functions and is comparable to the present day District Collector. The District Collector's office succeeded the office of Kirori/Faujdar in the Mughal period. Under the British rule and their experiments with the field of administration, in 1781 the district again became the unit of administration under the District Collector as the District head. Thus, the present day District Administration has historical roots. However, this was non transparent and was laid out for loyalty to the British rule and establish its hegemony through the length and breadth of the country through a strong,

disciplined and supervised office of the District Collector for regular collection of revenue.

The District in India is the cutting edge of administration. The District administration is headed by the District Collector/Deputy Commissioner, drawn from IAS and he is responsible among others for the general control and direction of the police which is headed by the Superintendent of Police. The District is split up into a number of sub divisions called 'Talukas' for the purpose of Administrative convenience. And to have a better supervision of the many Taluks, there has been a grouping of the taluks, each group of taluks under a Division which is headed by an official called 'Tehsildar'. These Tehsildars are state level officers and are called sub divisional or revenue divisional officers. Right at the bottom of District>Divisions>Taluks there are the basic units which are the villages. In some states the Blocks and Taluks are coterminous in District Administration. The District Collector through the Zila Parishads, Blocks (Panchayat Samithis) / Taluks and Gram Panchayat administer development programmes and supervises them. However, massive non-transparency due to illiteracy among people these officials are often found involved in wrong doings and erratic behaviour as well as functioning as agents of the ruling state party or Union/centre's leading to revolts and outbursts from time to time. District Collector (DC) is also known as the Deputy Commissioner in states like Karnataka and Punjab.

Ever since the creation of this office in 1772, the District Collector's office continues to be the administrative

head of District Administration. Basically, the DC has three major functions namely revenue, magisterial and developmental. Apart from these major functions, a large number of miscellaneous functions are also entrusted to him by state and Central governments like conduct of elections, dealing with calamities, supervising local govt. institutions, etc.. Collector was mainly entrusted with revenue administration, however, since Independence with the considerable change in the nature of the state from police rule to development and welfare his role to have shown a shift in the direction of development as he implements all the development programmes. The collector has overall control of the police administration of a state and this he is assisted by the Superintendent of the Police who is in charge of the whole district police force. The Collector advises the government on various aspects of law and order. Since he is a Generalist, he coordinates the activities of overall departments under Specialists like Engineers, doctors, etc. by holding meetings among them at periodic intervals. He is also to be the Friend, Philosopher and Guide of the Panchayati Raj Institutions.

4.2. Evolution of the office of the District Collector

The office of the District Collector in India has a long history. Its origin is related to the concept of a territorial unit of administration. During the Mauryan period the kingdom was divided into convenient territorial units and each unit was placed under the charge of an imperial authority. The authority who was important to the District Collector during that period was known as 'Raja'. Though they were essentially revenue

officers, they exercised judicial functions also. Rajukas, collected land revenue, maintained roads, promoted trade and industry and carried out public works like irrigation. During the Gupta period they were called 'visayapathis', who were Heads of 'visayas', which were equivalent to the modern districts. The visayapathi was responsible for the general administration including collection of taxes and other revenues. They also commanded military force to maintain law and order in the visaya. The Mughal rulers followed the system of administration of Hindu Kings. Under the Mughal system the 'circular', which is comparable to the modern district had three officers viz. Amalguzar, Amir Zuazi and Faujdar. The Amalguzar was a principal revenue functionary of the circular and was responsible for the collection of revenue and proper utilisation of land. He also exercised certain administrative functions like punishing the robbers and some quasi-judicial functions like settlement of disputed claims on land. However, he was basically responsible of the collection and management of land revenue. Though, during, Mughal period Faujdar enjoyed a dominant position in the district administration, Amalguzar performed all revenue functions. Thus, before the advent of the British, there were territorial divisions and officers of these divisions were responsible for realisation of land revenue. These revenue officials were generally invested with several power and functions. It was, no doubt, considered a feudal form of territorial organisation. The territorial gradation of administrative areas more or less remained the same notwithstanding the changes that were brought about in the system by the British.

The British built on the oriental system and established the present system of field administration. The creation of a district as unit of administration and the appointment of the District Collector as Head of District Administration laid the foundation for stable administration in India. Granting of 'diwani' (civil administration) in Bengal, Bihar and Orissa to the East India Company in 1765 marks the beginning of British revenue administration in India. In 1769 the Company launched a scheme of English supervision over the local revenue collecting institutions. East India Company appointed covenanted servants as supervisors during 1769-70 in the districts of the diwani provinces. The supervisors were expected to report on the production and capacity of the lands; amount of revenues and other taxes levied; and manner of collection etc. They were expected not only to be concerned with revenue collection but also to have an overall knowledge of all the factors that affected the district. But the system failed and the company decided in 1772 to take over the entire executive management of public revenues. Accordingly, Warren Hastings issued a proclamation. On May 14th 1772 the supervisors were appointed as Collectors. Thus, the institution of Collector was created for the first time in 1772 during the period of Warren Hastings. From then onwards collection of revenue became the most important duty of the company's civil servants. The office of the District Collector became an important institution of the British local administration. They were entrusted with the executive power of management and collection of revenue and other duties of enquiry and investigation. From then onwards the Collector's role has gone

through several changes that is period of strength, neglect etc. By the time India gained independence the District Collector had become an important functionary heading the District Administration.

4.2.1. Functions of the Collector

The office of the Collector is an important institution transmitted by the British rulers to the Indian administrative system. He performs traditional revenue function as well as development functions. Throughout the country, the power and functions of the Collector, more or less, remain the same. Broadly, the Collector performs the following functions:

- Head of Revenue Administration;
- Head of Police Administration,
- Head of District Administration, and
- An agent of the Government

The Collector started as a revenue functionary and he continues to be the principal Revenue Officer and Head of the Revenue Administration in the district. After independence, the importance of revenue administration has become secondary. The emphasis has shifted to Development Administration, though the revenue functions still remain with the District Collector. Besides collection of revenue, the Collectors, are responsible for the collection of all other duties like takkavi loans and dues belonging to other Departments. Maintenance of land records and collection of statistics at the village level are some other functions of the Collector. He exercises appellate jurisdiction in revenue cases.

The recovery of arrears of land revenue in I respect of all Departments is the responsibility of the Collector. In the discharge of I his revenue functions, many officers like the Revenue Divisional Officers, Tahsildars, Revenue Inspectors and Village Officers assist the Collector.

Tahsildars, Revenue Inspectors and Village Officers assist the Collector. As the Head of the Revenue Administration, he is the kingpin of relief operations in i the district. In emergency situation like floods and famines the Collector plays a very crucial role in relief operations. The Government takes decision regarding the quantum of relief and the manner of distribution mostly on the basis of assessment made by the Collector.

4.2.2. Law and Order

District Collector also functions as District Magistrate and is responsible for the maintenance of law and order in the district. After the separation of judiciary from the executive, the Collector is concerned with the preventive sections of the criminal procedure code. As District Magistrate, he is Head of the Police Administration of the district. In this function, Superintendent of Police who is the Head of police force in the district helps the Collector in discharge of his police functions. In all important matters, the Superintendent of Police takes orders from the Collector. There have been many instances of strained relations between the Collector and the Superintendent of Police. In certain situations, lack of understanding between the two affect the entire District Administration.

4.2.3. Head of District Administration

The Collector continues to be the Head of the District Administration. As District Magistrate, he is responsible for the maintenance of law and order. As chief revenue officer, he is responsible for the collection of revenues. He is also closely associated with several other Departments like Education, Industries, Cooperatives, Public Works, etc. In respect of Panchayati Raj, in several States, he has a very important relationship with the Panchayati Raj bodies. As a Head of the district administration, he plays a coordinating role between different Departments like Revenue, Police and other Departments. The Collector supervises the working of municipalities. He has power to suspend the resolutions of local bodies, if they constitute a threat to public peace. He also Heads a number of official and non-official bodies in the district like the Road Transport Authority, District Employment Committee, Welfare Committees, Red Cross Society, etc. The amount of time he spends on these activities depends on his personal interest.

4.2.4. An Agent of the Government

He is looked upon as an agent of the Government at the district level. He hoists the national flag on Independence and Republic days. He has several protocol functions like meeting the Ministers and other important dignitaries. In emergencies like floods and famines, he can call upon any branch of the District Administration to undertake any specific work to provide assistance to Census operations and conduct of elections to various democratic bodies from the Parliament to

the Gram Panchayat is another important function. The Collector is also an agent of the Governor in respect of scheduled tribes' areas in some of the districts. There are other functions also with which the Collector is intimately associated like social security, pensions, excise, grant of licenses for arms, etc. The scarcity and rising prices due to public distribution system has become an important part of district administration. He is directly responsible for the distribution and control of all essential commodities and goods. He issues licenses for trading in food grains and other commodities. As Head of the distribution system, he is expected to ensure timely and equitable distribution of scarce commodities. The collector presides over a large number of meetings like meetings of Coordination Committee, Development Committee, Irrigation Committee etc. These are excellent forums for the Collector to know the way policies are translated into action and to come into contact with the local people and understand their problems.

After independence, the Collector has become responsible for the implementation of the development programmes in the district. As an administrator, he is expected to coordinate all the development programmes being implemented in the district. The Collector's role in development administration is more visible in case of Panchayati Raj Institutions. He is closely associated with these institutions either from within or outside. The advent of Panchayati Raj Institutions in India has brought about several changes in the set up of the district administration. This is

particularly so in case of the role and functions of the District Collector. Balwantrai Mehta Committee recommended that the Collector should be the Chairman of Zilla Parishad. At the time of establishment of Panchayati Raj, critics argued that Collectors should not Head the democratic bodies, this would not be in consonance with the spirit of decentralisation. It would curb the democratic spirit. In practice, different types of linkages were established between the Collector and the Panchayati Raj Institutions in different States. In Rajasthan, for example, the Collector was made an associate member of Zilla Parishad without the right to vote. In Andhra Pradesh, he was made a full member of Zilla Parishad and chairman of all the standing committees. Later, however in Andhra Pradesh, the Collector was disassociated from Zilla Parishad. In Maharashtra, the Collector was kept out of Zilla Parishad. But, generally it is felt that the Collectors should have a large share of responsibility in facilitating the success of Panchayati Raj Institutions. Over the years, four patterns of the role of Collector, vis-a-vis Zilla Parishad have emerged. First of all the collector is the chairman of the Zilla Parishad.

Secondly, the Collector has been kept out of Zilla Parishad completely because of a feeling that it would burden the Collector, who is already overburdened. In some States, the Collector is made Chairman of the standing committees vested with power and decision- making. Finally, in some States, the Collector is a member of Zilla Parishad without right to vote.

The relationship between Collector and Panchayati Raj

Institutions can be studied under different heads namely control over staff, power to suspend resolutions, power to remove officers, and power to suspend and dissolve Panchayati Raj Institutions. In these areas, the role of Collector varies from state to state. Some aspects of this would be discussed later in the Unit on Panchayati Raj. The Collector has power to write confidential report and has authority to inflict various punishments, such power vary from state to state. Similarly, the Collector can suspend the resolutions of Panchayats. An association with these bodies will bring the Collector in intimate relationship with the people's representatives. This provides him an opportunity to understand the dynamics of Development Administration at the district level.

In practice, the role assigned to him varies from state to state as mentioned below:

In Tamil Nadu he is the Chairman of District Development Council.

In the States of Uttar Pradesh and Bihar he is entitled to attend the meetings of the PanchayatSamiti and its standing committees but without a right to vote. In Maharashtra and West Bengal he is kept out of the ZillaParishad. In Andhra Pradesh, he is not only the member of the ZillaParishad but also the Chairman of all the standing committees in whom executive authority is vested.

In the States of Assam, Punjab and Rajasthan, the Collector is a non-voting member of the ZillaParishad and he is associated in a purely advisory capacity. It shows that there

is an unconcealed reluctance to have his involvement in the decision-making processes of rural democracy.

After 73rd Constitutional Amendment, the relationship of District Collector with Panchayati Raj Institutions (PRIs) has changed immensely. The Constitutional amendment and the enactment of Panchayati Raj laws by various States in 1993 has reduced the burden of the District Collector on development activities. This Act has given scope to the State Government to set forth the yardstick of the relationship of the PRIs and the Collector. In this context, some States have created the post of Chief Executive Officer and some States have opted for District Development Officer or Deputy District Commissioner. In the States like Rajasthan, the Collector is a nominated member of the District Planning Committee (DPC). Whereas, in some other States like Madhya Pradesh the Collector is the Member and Secretary of the DPC. Before these changes, District Collector in Madhya Pradesh had access to Rs.10 lakh for development works, which has now been hiked to Rs. 1 crore, making him more powerful.

However, in Andhra Pradesh the Collector as the Head of the District Administration. Continues to co-ordinate the development activities. In the capacity of an ex-officio member, he attends the meetings of ZillaParidshad and its standing committees, and participate in their discussions. He participates and attends the meetings but without the right to vote on the resolutions. The District Collector has the authority to suspend or cancel any resolution passed by these bodies; initiate action in the event of default; suspend the Chairman

(ZP), the President (MP) and the Sarpanch (GP) and dissolve the ZillaParishad / MandalParishad 1 Gram Panchayat and any of the Standing Committees. It has been observed from the study on Maharashtra that District Collector has limited role to play in the PFUs. He has an important role in elections or reporting regarding resolutions, such as no confidence against officebearers.

The Administrative Reforms Commission recommended that all the development functions should be entrusted to the ZillaParishad. The Collector should only be responsible for regulatory functions. In the context of transfer of development functions, the Committee felt, it would enable the Collector to devote more time and attention to his regulatory functions. This will help to improve the general administrative climate in the district. The Committee on Panchayati Raj Headed by Asoka Mehta also recommended the separation of development functions and entrusting them to the Chief Executive Officer. Thus, even after implementation of 73rd Constitutional Amendment Act, there is no uniform pattern with regard to the position of the District Collector in relation to the Panchayati Raj Institutions.

4.3. Urban Administration - 74th Constitutional Amendment and its impact

This Act has added Part IX-A to the Constitution of India. It is entitled as “The Municipalities’ and consists of provisions from articles 243-P to 243-ZG. In addition, the Act has also added Twelfth Schedule to the Constitution. It contains 18 functional items of municipalities and deals with

Article 243-W. The Act gave constitutional status to the municipalities. It has brought them under the purview of justiciable part of the constitution. In other words, state governments are under constitutional obligation to adopt the new system of municipalities in accordance with the provisions of the Act.

The Act aims at revitalizing and strengthening the urban governments so that they function effectively as units of local government. The salient features of the Act are:

4.3.1. Three Types of Municipalities:

The Act provides for the constitution of the following three types of municipalities in every state.

- Nagar Panchayat (by whatever name called) for a transitional area, that is, an area in transition from a rural area to an urban area.
- Municipality for a smaller urban area.
- Municipal Corporation for a larger urban area
- A transitional area, a smaller urban area or a larger urban area means such area as the Governor may specify by public notification for this purpose with regard to the following factors.

Population of the area

Density of population

Revenue generated for local administration

Percentage of employment in non-agricultural activities

Economic importance or such other factors as the Governor may deem fit.

4.3.2. Composition

All the members of a municipality shall be elected directly by the people of the municipal area. For this purpose, each municipal area shall be divided in territorial constituencies to be known as wards.

The state legislature may provide the manner of election of the chairperson of a municipality. It may also provide for the representation of the following persons in a municipality.

- I. Persons having special knowledge or experience in municipal administration without the right to vote in the meetings of municipality.
- II. The members of the Lok Sabha and the state legislative Assembly representing constituencies which comprise wholly or partly the municipal area.
- III. The members of the Rajya Sabha and the state legislative council registered as electors with the municipal area.
- IV. The chairpersons of committees (other than wards committees).

4.3.3. Ward Committees

There shall be constituted a wards committee, consisting of one or more wards, within the territorial area of a municipality having population of three lakhs or more.

The state legislature may make provision with respect to the composition and the territorial area of a wards committee and the manner in which the seats in a wards

committee shall be filled. It may also make any provision for the constitution of committees in addition to the wards committees.

4.3.4. Reservation of Seats

The Act provides for the reservation of seats for the scheduled castes and the scheduled tribes in every municipality in proportion of their population to the total population in the municipal area. Further, it provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for women belonging to the SCs and the STs). The state legislature may provide for the manner of reservation of offices of chairpersons in the municipalities for the SCs, the STs and the women.

It may also make any provision for the reservation of seats in any municipality or offices of chairpersons in municipalities in favour of backward classes.

4.3.5. Duration of Municipalities

The Act provides for a five-year term of office for every municipality. However, it can be dissolved before the completion of its term.

Further, the fresh election to constitute a municipality shall be completed (i) before the expiry of its duration, of five years; or (ii) in case of dissolution, before the expiry of a period of six months from the date of its dissolution.

4.4. Disqualification

A person shall be disqualified for being chosen as or

for being a member of a municipality if he is so disqualified

(i) under any law for the time being in force for the purposes of elections to the legislature of the state concerned; or (ii) under any law made by the state legislature.

However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years. Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.

4.5. State Election Commission

The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections of the municipalities shall be vested in the State Election Commission.

4.5.1. Powers and functions

The state legislature may endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self- government.

Such a scheme may contain provisions for the devolution of powers and responsibilities upon municipalities at the appropriate level with respect to (i) the preparation of plans for economic development and social justice; (ii) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the 18 matters listed in the Twelfth Schedule.

4.6. Finance

The state legislature may (i) authorize a municipality to

levy, collect and appropriate taxes, duties, tolls and fees; (ii) assign to a municipality taxes, duties, tolls and fees levied and collected by state government; (iii) provide for making grants-in-aid to the municipalities from the Consolidated Fund of the state; and (iv) provide for constitution of funds for crediting all moneys of the municipalities.

4.6.1. Finance Commission

The Finance commission (which is constituted for the Panchayats) shall also, for every five years, review the financial position of municipalities and make recommendation to the Governor as to:

- (i) The principles which should govern:
 - (a) The distribution between the state and the municipalities, the net proceeds of the taxes, duties, tolls and fee levied by the state.
 - (b) The determination of the taxes, duties, tolls and fees which may be assigned to themunicipalities.
 - (c) The grants-in-aid to municipalities from the Consolidated Fund of the state.
- (ii) The measures needed to improve the financial position of the municipalities.
- (iii) Any other matter referred to the Finance Commission by the Governor in the interests of sound finance of municipalities.

The Governor shall place the recommendations of the Commission along with the action taken report before the state

legislature.

The Central Finance Commission shall also suggest the measures needed to augment the Consolidated Fund of a state to supplement the resources of the municipalities in the state (on the basis of the recommendations made by the Finance Commission of the state).

4.7. Audit of Accounts

The state legislature may make provisions with respect to the maintenance of accounts by municipalities and the auditing of such accounts.

4.8. Application of Union Territories

The President of India may direct that the provisions of this Act shall apply to any union territory subject to such exceptions and modifications as he may specify.

4.9. Areas Kept Out

The Act does not apply to the scheduled areas and tribal areas referred in Article 244 of the Indian Constitution. It shall also not affect the functions and powers of the Darjeeling Gorkha Hill Council of the West Bengal.

4.10. District Planning Committee

Every state shall constitute at the district level, a District Planning Committee to consolidate the plans prepared by Panchayats and municipalities in the district, and to prepare a draft development plan for the district as a whole. The state legislature may make provision with respect to the following points.

- (i) The composition of such committees;
- (ii) The manner of election of members of such committees;
- (iii) The functions of such committees in relation to district planning; and
- (iv) The manner of the election of the chairpersons of such committees.

The Act lies down that four-fifths of the members of a District Planning Committee should be elected by the elected members of the district panchayat and municipalities in the district from amongst themselves.

The representation of these members in the committee should be in proportion to the ratio between the rural and urban populations in the district.

The chairpersons of such committees shall forward the development plan to the state government.

4.11. Metropolitan Committee

Every metropolitan area shall have a Metropolitan Planning Committee to prepare a draft development plan. Metropolitan area means an area having a population of 10 lakhs or more, comprised in one or more districts and consisting of two or more municipalities or Panchayats or other contiguous areas. The state legislature may make provisions with respect to:

- (i) The composition of such committees;
- (ii) The manner of election of members to such committees;
- (iii) The representation in such committees of the Central

- Government, stategovernment and other organisations;
- (iv) The functions of such committees in relation to planning and coordination for the metropolitan area;
 - (v) The manner of election of chair persons of such committees.

The Act lies down that two-thirds of the members of a Metropolitan Planning Committee should be elected by the elected members of the municipalities and chairpersons of the panchayats in the metropolitan area from amongst themselves.

The representation of these members in the committee should be in proportion to the ratio between the population of the municipalities and the panchayats in that metropolitan area. The chairpersons of such committees shall forward the development plan to the state government.

4.12. Nature of Existing laws

All the state laws relating to municipalities shall continue to be in force until the expiry of one year from the commencement of this Act.

In other words, the states have to adopt the new system of municipalities based on this Act within the maximum period of one year from 1st June 1993, which is the date of commencement of this Act.

However, all municipalities existing immediately before the commencement of this Act shall continue till the expiry of their term, unless dissolved by the state legislature sooner.

There are eight types of urban local governments currently existing in India:

1. Municipal Corporations.
2. Municipality.
3. Notified area committee.
4. Town area committee.
5. Cantonment board.
6. Township.
7. Port trust.
8. Special purpose agency.

4.11. Rural administration - Local Self Government Institutions

The **Article 40** among the Directive Principles of State Policy says that:

“The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

Later, the conceptualisation of the system of local self-government in India took place through the formation and effort of four important committees from the year 1957 to 1986. It will be helpful if we take a look at the committee and the important recommendations put forward by them.

4.11.1. Balwant Raj Mehta Committee (1957)

Originally appointed by the Government of India to

examine the working of two of its earlier programs, the committee submitted its report in November 1957, in which the term ‘democratic decentralization’ first appears.

The important recommendations are:

- Establishment of a three-tier Panchayati Raj system – gram panchayat at village level (direct election), panchayat Samiti at the block level and ZilaParishad at the district level (indirect election).
- District Collector to be the chairman of ZilaParishad.
- Transfer of resources and power to these bodies to be ensured.

The existent National Development Council accepted the recommendations. However, it did not insist on a single, definite pattern to be followed in the establishment of these institutions. Rather, it allowed the states to devise their own patterns, while the broad fundamentals were to be the same throughout the country.

Rajasthan (1959) adopted the system first, followed by Andhra Pradesh in the same year. Some states even went ahead to create four-tier systems and Nyaypanchayats, which served as judicial bodies.

4.11.2. Ashok Mehta Committee (1977-1978)

The committee was constituted by the Janata government of the time to study Panchayati Raj institutions. Out of a total of 132 recommendations made by it, the most important ones are:

- Three-tier system to be replaced by a two-tier system.
- Political parties should participate at all levels in the elections.
- Compulsory powers of taxation to be given to these institutions.
- ZilaParishad to be made responsible for planning at the state level.
- A minister for Panchayati Raj to be appointed by the state council of ministers.
- Constitutional recognition to be given to Panchayati Raj institutions.

Unfortunately, the Janata government collapsed before action could be taken on these recommendations.

4.11.3. GVK Rao Committee (1985)

1. Appointed by the Planning Commission, the committee concluded that the developmental procedures were gradually being taken away from the local self- government institutions, resulting in a system comparable to ‘grass without roots’.

- ZilaParishad to be given prime importance and all developmental programs at that level to be handed to it.
- Post of DDC (District Development Commissioner) to be created acting as the chief executive officer of the ZilaParishad.
- Regular elections to be held

4.11.4. L.M. Sanghi Committee (1986)

Constituted by the Rajiv Gandhi government on 'Revitalisation of Panchayati Raj institutions for Democracy and Development', its important recommendations are:

- Constitutional recognition for PRI institutions.
- NyayaPanchayats to be established for clusters of villages

Though the 64th Constitutional Amendment bill was introduced in the Lok Sabha in 1989 itself, Rajya Sabha opposed it. It was only during the Narasimha Rao government's term that the idea finally became a reality in the form of the **73rd and 74th Constitutional Amendment acts, 1992.**

4.12. Panchayati Raj System under 73rd and 74th Constitutional Amendment Acts 1992

The revitalization of Panchayati Raj manifested through the 73rd Constitutional Amendment owes its origin to the dynamic leadership of Rajiv Gandhi. In his address to the 5th Workshop on 'Responsive Administration' held at Coimbatore in June, 1988, he said that "If our district administration is not sufficiently responsive, the basic reason is that it is not only sufficiently representative. With the decay of Panchayati Raj Institutions, the administration has got isolated from the people thus dulling its sensitivity to the needs of the people". With events moving at a faster pace, Panchayati Raj emerged as a major institutional channel of such administration.

4.12.1. Initiatives towards constitutional status to local governance

As is known, both the amendment bills (64th and 65th) could not sail through the Parliament because of opposition from the Rajya Sabha. Allegedly and arguably, they put local governance under direct control of the Centre, which was resented by the states. However, these two bills provided enough opportunity for a national debate as to whether the PRIs should be given constitutional status. The bills also helped the members of the Parliament to go into the details, as and when opportunity came, through more suitable amendments. By the time the mid-term Lok Sabha assembled, the consensus emerged that PRIs be given Constitutional status and suitable provisions be made so as to enable these institutions to function as an agent of change and development at the local level. After coming to power in 1991, the Congress Government gave top priority to the PRIs and brought out the Constitutional 72nd Amendment Bill, 1991. The Bill was passed by the Parliament on Dec 22, 1992 and is now known as the Constitution 73rd Amendment Act, 1992.

The institutionalisation of democratic decentralisation in the form of statutory PRIs thus opened a new chapter in the history in India and gave a new turn to the evolution of rural local self-government institutions. The term institutions of self-government have been interpreted in two ways; firstly, the constitution says that the Panchayats are institutions of self-governance, implying that they must have autonomy and the

power to govern in an exclusive area of jurisdiction. In its essential element, the 73rd Constitutional Amendment gives Panchayat this distinct status. Therefore, it is the de facto third tier of governance. Secondly, it strengthens ‘administrative federalism’. Professor S. Guhan argues that the provisions of 73rd Amendment strengthen administrative federalism in order to facilitate and encourage delegation of administrative and financial powers from the states to the local bodies. Their administrative powers and to discharge their responsibilities, are entirely derived from legislation that will have to be passed by the states.

4.12.2. Features of 73rd Constitutional Amendment

The Constitution 73rd Amendment Act, 1992 came into effect from 24th April 1993. No one disputes that it is a historic legislation. The basic question arises as to what was the basic spirit behind this legislation? Was it limited to the passing of conformity acts and endowing panchayats with some administrative and financial powers or to make them genuine institutions for participatory self-government? The emphasis has been so far on the former, which has made panchayats mere implementing agencies of central and state schemes, passed on to them, with funds. The basic objective of the democratic decentralization through reactivation of the Panchayati Raj system was to realize Gandhiji’s concept of “Swarajya”

1. Part IX has been inserted immediately after ‘Part VIII’ of the Constitution and after the ‘Tenth Schedule’ of the Constitution, ‘Eleventh Schedule’ has been added (Article

243G) which gives the detail list of functions to be performed by PRIs. Panchayats shall be constituted in every state at the village, intermediate and district levels, thus bringing about uniformity in the PR structure. However, the states having a population not exceeding 20 lakh have been given the option of not having any Panchayat at the intermediate level.

2. While the elections in respect of all the members to Panchayats at the level will be direct, the election in respect of the post of the Chairman at the intermediate and district level will be indirect. (In some states direct election is made; for instance Kerala) The mode of election of Chairman to the village level has been left to the State Government to decide. All members including the chairperson shall have the right to vote.
3. Reservation of seats for SC/STs has been provided in proportion to their population at each level. Not less than one-third of the total membership has been reserved for women (in both reserved and general category) and these seats may be allotted by rotation to different constituencies in a Panchayat. Similar reservations have been made in respect of the office of the chairperson also.
4. A uniform term of five years has been provided for the PRIs and in the event of dissolution or super session, election to constitute the body should be completed before the expiry of six months from the date of dissolution. If the remainder period is less than six months, fresh elections may not be necessary. Panchayat constituted

upon dissolution may continue for the remainder of the period.

5. With a view to ensuring continuity, it has been provided in the Act that all the Panchayats existing immediately before the commencement of this Amendment Act will continue till the expiry of their duration unless dissolved by a resolution to that effect passed by the State Legislatures concerned or any law relating to the panchayats which before the amendment came into force, not inconsistent with its provisions shall continue, unless amended or repealed.
6. There shall be an Election Commission for the conduct of all elections to the panchayats consisting of a State Election Commissioner to be appointed by the State Government. It shall also be in charge of superintendence, direction and control of the preparation of electoral rolls.
7. The State Legislature have been given the power to authorise the Panchayats to levy, collect and appropriate suitable local taxes and also provide for making grants-in-aid to the Panchayats from the consolidated fund of the concerned state.
8. A State Finance Commission has to be constituted once in every five years to review the financial position of the Panchayat and to make suitable recommendations to the Governor as to the principles which should govern the distribution between the state and the panchayats of revenue, whether net proceeds of the taxes, duties, tolls,

and fees leviable by the state or grants in aid and recommend measures to strengthen the financial position of the panchayat bodies and deliberate on any other matter referred to it by the Governor. The Constitution 73rd amendment act adds a sub clause (bb) to Article 280 of the Constitution. According to this sub clause, the Central Finance Commission, in addition to other stipulated duties, shall also make recommendations to the President regarding the measures needed to augment the then Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State.

9. The State Legislatures should bring in necessary amendments to their Panchayat Acts within a maximum period of one year from the Commencement of this Amendment Act so as to conform to the provision contained in the Constitution

4.13. Observations on the 73rd Amendment

The 73rd Amendment Act, 1992, has only provided the general guidance for the effective and efficient working of panchayat raj institutions (PRIs) in India. It has granted the PRIs Constitutional status and some sort of uniformity by making three-tier system a permanent feature; regularity, by making election an imperative after the termination of the PRIs after every five years and provision of the State Election Commission to conduct and supervise the election; and more financial autonomy with the constitution of the State Finance

commission, to outline its major contributions.

Firstly, the most debated problem till recently was giving constitutional recognition to the PRIs. It was often observed by the scholars that the founding fathers of the Constitution gave only lip service to democratic decentralisation by mentioning it in Article 40 of the Constitution in (Part IV) the Directive Principles of State Policy. But after the 73rd Constitutional Amendment Act, the PRIs have got constitutional legitimacy. Indian federalism has moved a step further in that up till now there had been two tiers of governance; henceforth, there would be three acknowledged tiers of governance. However, there is a strong body of opinion that in order to give an air of finality to the scheme, a separate list, namely the panchayat list could have been included in the seventh schedule, which lists subjects for legislation into the Union, the State List and the Concurrent List.

Secondly, the present amendment does address the issue of uniformity of structure across the country but leaves certain important matters, such as size of a panchayat at a level, to the discretion of the state governments.

Thirdly, PRIs by and large, had failed because of irregular elections and frequent suppression and suspension. The chronic problem was rightly been taken care of by the recent amendment. However not all states have been dutiful in complying with the provisions. Court intervention has been necessary, as for example, in the case of Orissa and Uttar Pradesh to secure compliance (Chaudhrai, 2003). Courts also

had to intervene to ensure compliance with the reservation clause in Punjab and Uttar Pradesh.

Fourthly, the Gram Sabha is an institution, which provides an opportunity to participate meaningfully in governance, to all the people willing and capable of participating in the development process. The 73rd Constitutional Amendment makes the establishment of Gram Sabha mandatory. It however, leaves it to the State Governments to spell out its jurisdictions and powers. Most state legislation assign to Gram Sabha a ceremonial, tokenistic role, e.g., endorsing proposals, making recommendations, considering annual accounts, reviewing development plans, scrutinising completed works. Other functions entrusted to Gram Sabha include those like promoting harmony and unity in the village, mobilising voluntary labour and contributions in cash or kind, rendering assistance in implementation of development schemes, and promoting programmes for adult education and family welfare (Sharma, 2004). Moreover scepticism has been expressed regarding direct election for the village panchayat, as arguably it would make him a ‘first among equals’ relegation other participants to a less significant position. Besides, the presence of MPs and MLAs in local bodies might overwhelm local leaders.

Fifthly, yet another problem relating to the functioning of the local bodies has been the love-hate relationship between the local level bureaucracies and the elected representatives of PRIs. Due to the lack of defined roles for the two, both have had a contentious working relationship rather than displaying

the required harmony. This has been one of the practical and the more important reasons for the failure of PRIs. The cooperation of the bureaucracy would be vital in working out the details of devolution of powers and functions, as stipulated by the act, in each case, for instance. If such cooperation were not forthcoming, implementation of programmes and policies would run into roadblocks, making the ideal of local self-governance more a chimera. If the bureaucracy continues to be unenthusiastic about local self-governance, as it has been in the past, for rationales of its own, most initiative for empowerment of local self-governance and the ideal of participatory democracy itself would be lost. Hence the chief but unrecognised player in the venture is the bureaucracy. Much would depend on the way it perceives this change and vouches or otherwise for it. It would help to inquire in to the “rationales” for which local government has been considered unfit to shoulder the responsibility for development on the part of the responsible administrators and redeeming the same. Cooperation and commitment the part of the bureaucracy would be crucial in bringing about the desired state of affairs with respect to local governance and administration. Significantly, devolution is an executive process, which means that the statutory provisions need detailing in terms of administrative rules and procedures-procurement rules, reporting structures, compensation schemes, accounting systems etc. without which the statutory provision is a mere skeletal framework without much substance to it.

And finally, other problems related to PRIs, during the last three decades have been the status of Panchayat Samitis and Zilla Parishads, the inadequacy of finances and lack of involvement of PRIs in rural development planning. The amendment has tried to take care of all of these problems by bringing them into the statute book. However, certain problems have persisted. There has been a general reluctance to concede political space to the underprivileged in panchayats. As aforesaid, Punjab and Uttar Pradesh reportedly have not been dutiful in implanting the reservation provision of the act. Hence, could it be claimed with any degree of confidence that the backward sections would be articulate and effective or rather, and more realistically, they would get overwhelmed, as is feared, by the power elite? Would the state bureaucracy, affect a change in stance and work in cooperation with the local government? Or would a stint with a panchayat, harm the individual career prospects of bureaucrats? Would devolution of powers and functions, in fact, take place in practice as it is stipulated on paper? Would increase in private and foreign stake in urban development skew the balance against the urban poor in plan priorities? These and others would be some of the pertinent questions that would need to be continually monitored by means of empirical research and rectified by policy in this regard, on course.

As per Palanithurai and Raghupathi, democratic decentralisation follows the new public management principle in that the intent is to improve service delivery by invoking demand through institutions like the District Planning

Committee and the Gram Sabha and adjusting/modifying supply accordingly. There is a paradigm shift from macro to micro concerns in planning. Development paradigm suffered hitherto due to an overemphasis on macro concerns. Democratic decentralisation would counter this tendency by encouraging interest articulation on the part of the underprivileged, and the 'unequally placed' at the local level. Also, in view of the expansion of the market and shrinking of the state sector, democratic decentralisation is the counterfoil, the state has attempted by enlarging the arena of 'choice' available to the people by providing for multiple service delivery and self help options as against the monopoly of the state which had created a climate of corruption and inefficiency. In this way the state has attempted to discharge its constitutional obligations in the changed dispensation, towards the people of the country, given the imperatives/constraints of globalisation, liberalisation and privatisation. By institutionalising peoples' participation in administration, the state has created an alternate service delivery mechanism to the bureaucracy, which is set to further shrink in the coming days as liberalisation gathers momentum. As per Chaudharai (2003), the timing of 1991 trade and industrial policy reforms coincides roughly with the initiative for democratic decentralisation. Trade and industrial policy reforms were initiated due to the economic crisis owing primarily to fiscal management; endemic inefficiency, corruption and waste on the part of the State bureaucracy that had brought things to such a state, that nothing short of a paradigm shift was called for to redeem the situation; nothing short of a system

overhaul. In 1991, consequently in the wake of a serious balance of payments crisis, the government initiated a broad package of economic reforms, which is being followed and furthered even today, irrespective of the party in power, involving dismantling of the infamous industrial licensing regime, deregulation of domestic industry, trade liberalisation measures, opening up of the economy to foreign direct investment and financial sector reforms. Aim of all these measures put together is to cut on the non- performing state apparatus and instead, yield functional space to the private and the civil society, typified by the non- government sector in active cooperation with the state agency, who in turn would henceforth, function more as facilitators and catalysts, rather than ‘monopolists’. This would give the broad framework of “reinventing government” for the sake of good governance (Osborne and Gaebler, 1991). Though the idea of local governance reform was conceptualised sometime later, consensus emerged soon, as the failure of the Indian developmental state in terms of human development and poverty alleviation was ubiquitous. “The aim”, therefore, “was to reconfigure the structure of government”(Chaudhari, 2003). Though inertia in the old order giving way to the new is expected, reform efforts would need to be continued to remove roadblocks, whether structural or attitudinal, as and when, any, is/are encountered. One indication all ready is the discretionary provisions; the effort obviously has to be not to irk power centres at the sub- national level and secure consensus for democratic decentralisation within the ‘givens’, which give to us the “ environment of constraints” in Simonian terms.

There are a few glaring limitations in the framework. The 29 subjects mentioned in the 11th schedule do not give power to legislate to the local bodies, only to take decisions. The State Finance commissions' recommendations are not mandatory in nature. It is completely up to the State Governments to devolve/not to devolve, functions, functionaries and resources on the local bodies as per the constitutional scheme. The 29 items are handled by different ministries and are not in the hands of the Minister of Panchayati Raj and Rural Development. Coordination and cooperation from these different ministries would be needed to secure needed devolution, which could be brought about only by the Chief Minister. He has to feel committed enough to the cause of Panchayati Raj. Rules need to be evolved to guide Panchayat Raj administration that should be compiled in a handbook and circulated in the regional language for the knowledge of everybody concerned. Devolution of functions need to follow a set process. Activities need to be mapped, requisite skills identified and developed at the local level, with the cooperation of the bureaucracy; communications have to flow uninterrupted from the state officials to the local functionaries. Leaving things to the sweet will of the State Government would not help matters (Ministry of Rural Development Occasional paper 5 cited in Palanithurai and Raghupathi's). Unfortunately however, indications from various states in this regard, except a few states, which have zealously followed the ideal of local self-governance, like West Bengal, Karnataka and Gujarat and Maharashtra, have not been encouraging.

MODULE-V

ANALYSIS OF INDIAN ADMINISTRATION

5.1. Delegated Legislation

The issue of delegated legislation has been one of the most debated issues in the domain of legal theory because of its various implications. Scholars have consistently presented differing and even contradicting views about delegation of power to legislate and have thus taken different stands on the issue. While Delegated Legislation has been a widespread practice in modern times and is almost an accepted norm, there have been contrary views. For instance Cooley has expressed a staunchly critical view of the power to delegate. He has stated that "One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust." Further he has also observed that "No legislative body can

delegate to another department of the government, or to any other authority, the power, either generally or specially, to enact laws. The reason is found in the very existence of its own powers. This high prerogative has been entrusted to its own wisdom, judgment, and patriotism, and not to those of other persons, and it will act ultra vires if it undertakes to delegate the trust, instead of executing it." While such positions do raise the questions about the propriety of delegating the power to legislate by higher legislative bodies to the lower ones, the fact remains that this has been a general practice followed in all modern democratic countries. Hence it is important to understand what is firstly meant by delegated legislation and then analyse its various aspects.

5.2. Meaning of Delegated Legislation

Delegated legislation (also referred to as secondary legislation or subordinate legislation or subsidiary legislation) is law made by an executive authority under powers given to them by primary legislation in order to implement and administer the requirements of that primary legislation. It is law made by a person or body other than the legislature but with the legislature's authority. Often, a legislature passes statutes that set out broad outlines and principles, and delegates authority to an executive branch official to issue delegated legislation that flesh out the details (substantive regulations) and provide procedures for implementing the substantive provisions of the statute and substantive regulations (procedural regulations).

Delegated legislation can also be changed faster than

primary legislation so legislatures can delegate issues that may need to be fine-tuned through experience. Legislation by the executive branch or a statutory authority or local or other body under the authority of the competent legislature is called Delegated legislation. It permits the bodies beneath parliament to pass their own legislation. It is legislation made by a person or body other than Parliament. Parliament, through an Act of Parliament, can permit another person or body to make legislation. An Act of Parliament creates the framework of a particular law and tends only to contain an outline of the purpose of the Act.

By Parliament giving authority for legislation to be delegated it enables other persons or bodies to provide more detail to an Act of Parliament. Parliament thereby, through primary legislation (i.e. an Act of Parliament), permit others to make law and rules through delegated legislation. The legislation created by delegated legislation must be made in accordance with the purposes laid down in the Act. The function of delegated legislation is it allows the Government to amend a law without having to wait for a new Act of Parliament to be passed. Further, delegated legislation can be used to make technical changes to the law, such as altering sanctions under a given statute. Also, by way of an example, a Local Authority have power given to them under certain statutes to allow them to make delegated legislation and to make law which suits their area.

Delegated legislation provides a very important role in the making of law as there is more delegated legislation

enacted each year than there are Acts of Parliament. In addition, delegated legislation has the same legal standing as the Act of Parliament from which it was created. There are several reasons why delegated legislation is important.

- a. It avoids overloading the limited Parliamentary timetable as delegated legislation can be amended and/or made without having to pass an Act through Parliament, which can be time consuming. Changes can therefore be made to the law without the need to have a new Act of Parliament and it further avoids Parliament having to spend a lot of their time on technical matters, such as the clarification of a specific part of the legislation.
- b. Delegated legislation allows law to be made by those who have the relevant expert knowledge. By way of illustration, a local authority can make law in accordance with what their locality needs as opposed to having one law across the board which may not suit their particular area. A particular Local Authority can make a law to suit local needs and that Local Authority will have the knowledge of what is best for the locality rather than Parliament.
- c. Delegated legislation can deal with an emergency situation as it arises without having to wait for an Act to be passed through Parliament to resolve the particular situation.
- d. Delegated legislation can be used to cover a situation that Parliament had not anticipated at the time it enacted the piece of legislation, which makes it flexible and very useful to law-making. Delegated legislation is therefore

able to meet the changing needs of society and also situations which Parliament had not anticipated when they enacted the Act of Parliament.

A portion of law-making power of the legislative is conferred or bestowed upon a subordinate authority. Rules & regulations which are to be framed by the latter constitutes an integral portion of the statute itself. It is within power of parliament when legislating within its legislative few, to confer suborbital administrative & legislative powers upon some other authority. Subordinate legislation, is the legislation made by an authority subordinate to the sovereign authority, namely, the legislature. According to Sir John Salmond, "Subordinate legislation is that which proceeds from any authority other than the sovereign power and is, therefore, dependent for its continued existence and validity on some superior or supreme authority." Most of the enactments provide for the powers for making rules, regulations, by-laws or other statutory instruments which are exercised by specified subordinate authorities. Such legislation is to be made within the framework of the powers so delegated by the legislature and is, therefore, known as delegated legislation. Thus all law making which takes place outside the legislature expressed as rules, regulations, bye laws, orders, schemes, directions or notifications etc. is termed as delegated legislation.

5.3. History of Delegated legislation in India

The Privy Council was the highest Court for appeal from India in constitutional matters till 1949. The question of constitutionality came before the Privy Council in the famous

case of *R.Vs. Birah* (1878) 3 AC 889. An Act was passed in 1869 by the Indian Legislature to remove Goro Hills from the civil and criminal jurisdiction of Bengal and vested the powers of civil and criminal administration in an officer appointed by the Legislative Governor of Bengal. The Legislative Governor was further authorized by section 9 of the Act to extend any provision of this Act with incidental changes to Khasi and Jaintia Hills. By a notification the Legislative Governor extended all the provisions of the Act to the districts of Khasi and Jaintia Hills. One Burah was tried for murder by the commissioner of Khasi and Jaintia Hills and was sentenced to death. The Calcutta High Court declared section 9 as unconstitutional delegation of legislative power by the Indian legislature. The ground was that the Indian Legislature is a delegate of British Parliament, therefore, a delegate cannot further delegate. The Privy Council on appeal reversed the decision of the Calcutta High Court and upheld the constitutionality of section 9 on the ground that it is merely a conditional legislation. The decision of the Privy Council was interpreted in two different ways. (i) Indian legislature was not delegate of British Parliament; there is no limit on the delegation of legislative functions. (ii) Since Privy Council has validated only conditional legislation. Therefore, delegation of legislative power is not permissible. So, it did not become clear whether full-fledged delegated legislation was allowed or only conditional legislation was allowed.

5.3.1. Federal Court

The question of constitutionality of delegation of

legislative powers came before the Federal Court in *Jatindra Nath Gupta Vs. Province of Bihar*, AIR 1949 FC 175. On this case section 1(3) of Bihar Maintenance of public order Act, 1948 was challenged on the ground that it authorized the provincial government to extend the life of the Act for one year with modification as it may deem fit. The Federal Court held that the power of extension with modification is unconstitutional delegation of legislative power because it is an essential legislative Act. In this manner for the first time it was held that in India legislative powers cannot be delegated. However, Fazal Ali J. in his dissenting opinion held that the delegation of the power of extension of the Act is unconstitutional because according to him it merely amounted to a continuation of the Act. Later on, it is submitted that the minor view was correct and the Supreme Court upheld similar provision in another cases.

5.3.2. Supreme Court

The decision in *Jatindra Nath Case* created doubts about the limits of delegation of legislative powers. Therefore, in order to clarify the position of law for the future guidance of the legislature in matters of delegation of legislative function, the President of India sought the opinion of the Court under Article 143 of the Constitution on the constitutionality of three Acts which conferred extension of area and modification power to the executive.

The *Delhi Laws Act case*, AIR 1951 SC 332, among them, is said to be the Bible of delegated legislation. Seven judges heard the case and produced separate judgments. The

case was argued from two extreme points.

Argument-1: Power of legislation carries with it the power to delegate. If the legislative don't abdicate itself, there can be no limitation on delegation of legislative powers.

Argument-2: As there is in the Constitution the separation of powers and delegatus nonpotestdelegare, so there is an implied prohibition against delegation of legislative powers.

The Supreme Court took the moderate view and held-

- Doctrine of separation of powers is not a part of the constitution.
- Indian Parliament is never considered an agent of anybody and therefore doctrine of delegatus non protestdelegare has no application.
- Parliament cannot abdicate or efface itself by creating a legislative body.
- Power of delegation is ancillary to the power of legislation.
- The limitation upon delegation of power is that the legislature cannot part with its essential legislative power that has been expressly vested in it by the constitution. Essential legislative power means laying down the policy of the law and enacting that policy into a rule of conduct.

So, the delegation was held to be valid except with repealing and modification of legislative power.

5.4. Delegated Legislation: Position under Constitution of India

The Legislature is quite competent to delegate to other authorities. To frame the rules to carry out the law made by it. In *D. S. Gerewal v. The State of Punjab*, K.N. Wanchoo, the then justice of the Hon'ble Supreme Court dealt in detail the powers of delegated legislation under the Article 312 of Indian Constitution. He observed: "There is nothing in the words of Article 312 which takes away the usual power of delegation, which ordinarily resides in the legislature. The words "Parliament may by law provide" in Article 312 should not be read to mean that there is no scope for delegation in law made under Article 312...." In the England, the parliament being supreme can delegated any amount of powers because there is no restriction. On the other hand in America, like India, the Congress does not possess uncontrolled and unlimited powers of delegation. In *Panama Refining Co. v. Rayans*, the supreme court of the United States had held that the Congress can delegate legislative power to the Executive subject to the condition that it lays down the policies and establishes standards while leaving to the administrative authorities the making of subordinate rules within the prescribed limits. Art. 13 (3) Defines law and it Includes ordinance, order, byelaw, rule, regulation & notification having the force of law. In *Sikkim v. Surendra Sharma* (1994) 5 SCC282- it is held that 'All Laws in force' in sub clause (k) of Art. 371 F includes subordinate legislation. Salmond defines law as that which proceeds from any authority other than the

Sovereign power & is therefore, dependent for its continued existence & validity on some superior or supreme authority.

Reasons for Growth of Delegated

Legislation Growth of Administrative Process bulk of law comes from the administrators.

Law making or ever widening modern welfare and service state is not possible. For the nature and quality of work required 365 days – may not be sufficient and if overburdened the parliament can't give quality legislation. Also it is occupied with important policy matters and rarely finds time to discuss matters of details.

Filling in Details of legislation- The executive in consultation with the experts or with its own experience of local conditions can better improvise. Also legislation has become highly technical because of the complexities of a modern govt.

Need for flexibility:- Ordinary legislative process suffers from the limitation of lack of experiment. A law can be repeated by parliament itself, if it required adjustment administrative rule making is the only answer between two sessions.

Meeting Emergency Situations – it is a cushion against crisis because what if crisis legislation is needed.

When Govt. action required discretion – rule making power of administrative agencies is needed when the government needs to have discretion to carry out the policy objectives.

Direct participation of those who are governed is mere possible in delegated legislation.

5.5. Types of Delegated legislation: -

- a. Power to bring an Act into operation eq: on rule date on the Govt. by notification in the Gazette. Example: on such date as the government by notification in the gazette because govt. has better knowledge of the practical exigencies of bringing the law into force. The Court cannot ask the Govt. to bring the law into force. It was held in *A.K. Roy. Vs. UOI AIR 1982 SC 710* where the constitution of the Advisory Board was in question and the term qualified to be a High Court judge changed to actual or had been a High Courtjudge. National Security Act. 1980 did not have this provision it was held by the that the court cannot ask the Govt. to implement.
- b. Conditional Legislation: - The legislation make the law but leaves it to the executive to bring the act into operation when conditions demanding such operation are obtained.
 - i. To bring an act into operation.
 - ii. To extend the application of any act in force in one territory.
 - iii. To extend or to except from the operation of an Act certain categories of subjects or territories.

5.6. Legislative Control on delegated legislation

While in the context of increasing complexity of law-making, subordinate legislation has become an important

constituent element of legislation, it is equally important to see how this process of legislation by the executive under delegated powers, can be reconciled with the democratic principles or parliamentary control. Legislation is an inherent and inalienable right of Parliament and it has to be seen that this power is not usurped nor transgressed under the guise of what is called subordinate legislation. It can control the following:

1. Normal Delegation: -
 - a. Positive : - where the limits of delegation are clearly defined in the enabling Act
 - b. Negative: - does not include power to do certain thing (these not allowed)
2. Exceptional Delegation: -
 - a. Power to legislate on matters of principle (policy)
 - b. Power to amend Act of parliament (In re Delhi laws Acts)

W.B. State Electricity Board v. DeshBandhu Gosh (1958) 3 SCC 116 it was held that Regulation 34 of the West Bengal State Electricity Regulation which had authorized the Board to terminate the Service of any permanent employer on three months notice or pay in lieu thereof. This hire & fire rules of regulation 34 is parallel to Henry VIII clause.

Similar position was held by the court in the case of Central Inland Water Transport Corporation Limited v. BrojoNathGanguly AIR1986SC1571 wherein rule 9 of the service rules of the CIWTC conferred power to terminate on

similar lines as in the case of *DeshBandhu Ghosh* the court went on to say that No apter description of Rule 9(i) can be given than to call it "the Henry VIII clause". It confers absolute and arbitrary power upon the Corporation and therefore invalid.

5.7. Judicial Control over Delegated Legislation

Judicial control over delegated legislature is exercised at the following two levels:-

1. Delegation may be challenged as unconstitutional; or
2. That the Statutory power has been improperly exercised.

The delegation can be challenged in the courts of law as being unconstitutional, excessive or arbitrary. The scope of permissible delegation is fairly wide. Within the wide limits, delegation is sustained it does not otherwise; infringe the provisions of the Constitution. The limitations imposed by the application of the rule of *ultra vires* are quite clear. If the Act of the Legislature under which power is delegated, is *ultra vires*, the power of the legislature in the delegation can never be good.

No delegated legislation can be inconsistent with the provisions of the Fundamental Rights. If the Act violates any Fundamental Rights the rules, regulations and bye-laws framed there under cannot be better. Where the Act is good, still the rules and regulations may contravene any Fundamental Right and have to be struck down. Besides the constitutional attack, the delegated legislation may also be challenged as being *ultra vires* the powers of the administrative body framing the rules

and regulations.

The validity of the rules may be assailed at the stage in two ways:—

- a. That they run counter to the provisions of the Act; and
- b. That they have been made in excess of the authority delegated by the Legislature.

The method under these sub-heads for the application of the rule of ultra vires is described as the method of substantive ultra vires. Here the substance of rules and regulations is gone into and not the procedural requirements of the rule making that may be prescribed in the statute. The latter is looked into under the procedural ultra vires rule. When the Court applies the method of substantive ultra vires rule, it examines the contents of the rules and regulations without probing into the policy and wisdom of the subject matter. It merely sees if the rules and regulations in their pith and substance are within the import of the language and policy of the statute.

The rules obviously cannot go against the intent of statute and cannot be inconsistent with the provisions of the Act. They are framed for giving effect to the provisions of this Act and not for nullifying their effect and they should not be in excess of the authority delegated to the rulemaking body. Delegated legislation should not be characterised with an excessive exercise of discretion by the authority. The rules cannot be attacked to the general plea of unreasonableness like the bye-laws framed by a local body. Reasonableness of

the rules can be examined only when it is necessary to do so for purpose of Articles 14 and 19 of the Constitution.

The rule of procedural ultra vires provides with a very limited method of judicial control of delegated legislation often there are specific saving clauses barring the jurisdiction of the courts to question the validity of rules and orders. For example, Section 16 of the Defence of India Act, 1939 lay down as follows:

“16 saving as to orders- (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court. (2) Where an order purports to have been made and signed by any power conferred by or under this Act, a Court shall, within the meaning of Indian Evidence Act, 1872, presume that such order was so made by that authority.”

Such provisions can only be justified—

- a. On the basis of special circumstances of emergency legislation, and
- b. On the plea of State necessity.

5.8. Control over administration

5.8.1. Legislative control

The legislature exercises general power of ‘ direction, supervision and control of Public administration ‘ as per Willoughby. Through budgetary review and other devices of investigation it keeps a check on them. The bureaucrat is shielded for his actions by the minister through the policy of ministerial responsibility to the legislature.

Tools for legislative control:

a) Control on delegated legislation:

Normally the legislature is entrusted with the job of making laws but in complex and stressful conditions of the modern society, the State is caught up with many things at one time and is not able to concentrate and study a particular issue properly leads to a situation of delegated legislation or delegation (giving) of some of its law making powers to the administrative authorities. However, the administrative authorities are strictly subordinate or under the terms of the statute of the delegation and is subject to judicial review if it violated the terms of conditions of the agreement and its validity can be measured as well.

Delegated legislation has become a necessary evil as nowadays matters brought before the legislature to make laws are highly technical and usually the legislators do not possess such specialist knowledge and so lay down the general principles (basic ideas/rules) and leave the technical details to be sorted out to the administration to make the rules through the process of delegated legislation. It brings in flexibility and is immensely helpful in times of emergencies. The legislature should clearly spell out the limit of the power delegated so that there is control maintained. The delegation should function under the rules and regulations of the agreement made between the legislature and them. It should be transparent and public should be allowed to participate. Judicial review is a must for the smooth and legal functioning of the delegated legislation.

b) President's speech:

Addressing both the Houses of Parliament before starting every new session of the parliament and also on other occasions aims to broadly and clearly read out the policies and activities of the executive in the time immediately ahead. General discussion is then held regarding the president's speech and this gives an opportunity to the parliamentarians to appreciate or criticise the administration for doing or not doing their duties. President's speech is a means to bring in the public's voice in the parliament and not to coerce the parliamentarians as they follow the party guidelines.

c) Financial control:

Parliament exercises control over the finance and funds given to administration for their various activities. Such as:

- i. **Budget discussion:** Before the financial year begins there is an 'annual financial statement' called the 'Budget' that is laid down before the houses of parliament. After that the general discussion takes place on it and all doubts are sought to be cleared. Then there is a voting done to pass it and then the funds are granted. So it is not an easy procedure to get funds.
- ii. **Audit Report:** The CAG, an independent agency, audits all the accounts of income and expenditure of the govt at centre as well as States and causes to lay down the same before the parliament as well as legislatures of different states through the president and governor of respective

states respectively to be reviewed and hold accountable the concerned people.

- iii. **Reports of the Estimates Committee and Public Accounts Committee of Parliament:** The parliament appoints these committees from amongst themselves through voting and consensus. The PAC scrutinises the CAG's report and also reviews the financial transactions of governmental departments. Then there is an audit report compiled by the PAC that is presented for discussion and questioning before the House. The Estimates committee makes recommendations for improving organisation, securing economy and providing guidance and alternative policies and examine whether the money is well laid out within the limits of the policy implied in the estimates in the presentation of their estimates.

i. **Other forms of Legislative Control:**

- a. **Question hour** – one hour, that is 11 a.m to 12 p.m. of every parliament day is reserved for questions where around 30-40 oral questions are asked normally and then there are supplementary questions along with the original question that helps cross examine the minister. It helps the public attention to focus on a particular issue and avoids ministerial and bureaucratic arrogance from creeping in.
- b. **Half an hour, short discussions, Calling attention motion** – The half an hour discussion is subsequent to the question hour when there is dissatisfaction regarding a

particular answer given by the concerned minister and so there is more time given to extract relevant information and ventilate public grievance, etc. Short discussions needs prior notice to the speaker and is of a matter of urgent public importance and the govt. has to reply. No voting takes place here and not more than two hours in a day can be devoted to this. The Calling Attention Motion is a tool used for drawing the govt's attention to a serious policy administration/implementation issue and the govt has to answer immediately once the motion is admitted by the speaker of the house or it may ask for time to prepare the answer if thorough detailing and understanding is required.

- c. **Zero hour discussion:** It happens after the question hour that is 12 p.m. and since 12 p.m. is also called zero hour therefore it is named 'Zero Hour'. Here upto five members are allowed by the Speaker to raise matters of public importance under rule 377(If in the opinion of the Speaker, any notice contains words, phrases or expressions which are argumentative, unparliamentary, ironical, irrelevant, verbose, or otherwise inappropriate, he may, in his discretion, amend such notice before it is circulated) of the rules of parliamentary procedure.
- d. **Adjournment debates:** On intimation of an urgent matter for debate, the normal business of the House is adjourned and the debate on the topic ensues.
- e. **No-Confidence Motion:** Also called censure motion. It is raised by a member or members when they express a lack

of confidence in the govt for any reason. If the motion is allowed by the Speaker then the debate is held and at the end of it a vote of confidence is sought by the govt. failing which the entire cabinet/govt. has to resign thus leading to formation of a new govt.

- f. **Debates on Legislation:** Normal business of legislation where new laws are enacted or amendments are sought to existing laws.
- I. **Parliamentary Committees:** Estimates and Parliament Accounts Committee we have already discussed so now we will discuss other relevant ones:
 - i. **Committee on Assurances** – It undertakes scrutiny of promises, assurances, undertakings, etc. given by the Ministers from time to time on the House floor and reports on: to the extent that they have been implemented and whether it has fulfilled the minimum conditions of its purpose. Thus making the Ministers wary of their promises and efficiently perform their duties through the administration.
 - ii. **Committee in Subordinate Legislation** – It controls and scrutinises the govt activities regarding administrative delegation of legislative powers.

1.9. Limitations to legislative control:

So as we can see that the legislature keeps a stronghold on the govt. as well as administration in every minute way.

Now, let's see how these are limited due to various

reasons mentioned below:

1. Lack of time, staff and expertise and technical knowledge to exert effective control in the most meaningful areas.
2. No sustained measure of control and surveillance.
3. Imperial or rigid mind-set of administrators and huge public illiteracy.
4. Business groups lobbying.
5. Seniority instead of merit given preference for promotion of bureaucrats thus not letting them do their work with vigour and new ideas.
6. Declaration of emergency cuts their hands off.
7. Govt. bills to become laws out shadow private member's bills which are mostly for the public cause.
8. Funds are not provided many a times as the legislature lacks technical knowledge and is not able to understand the need by the executive for excess grants.
9. Parliament cannot raise money or any tax unless executive demands it but can only increase or reduce those demands.

5.10. Executive Control over Administration

Every official is responsible to and under the control of his administrative superiors who are known as Ministers in a Parliamentary Government. The minister is responsible for all what goes within his department. The doctrine of ministerial responsibility is a cardinal principle of Parliamentary system. If a mistake is made by a civil servant in a Department, The

Minister in charge of the Department is held responsible even if he knew nothing about it or he was not consulted by the official concerned before taking the action. In India, ministers had to resign for the mistakes committed by the officials in their departments.

5.11. The minister or executive exercises control over administration through the following methods:

1. Political Direction:

The Minister has the power of direction, control and supervision. He has full authority to manage and direct his Department. His writ runs throughout the sections and branches of the Department. He lays down the policy and looks to its implementation. He issues directives to the departmental officials. No important decision can be taken without bringing the matter to his notice. He may concentrate the entire authority in his hands and reduce the Secretary to a cipher. He may call for any and every file and issue the direction that no action on particular kind of matters will be taken except by him. He may go round the Department in order to supervise its working. He may issue orders to eradicate red-tapism and increase efficiency.

He may transfer the officials from one branch to another and make changes in the allocation of work. In short, the officials work under his general direction, control and supervision. In other words, the departmental officials are directly and wholly responsible to him.

However, it may be noted that in actual practice civil

servants are not always dictated to by the ministers, but they also lead and dictate. Being experts the civil servants exercise substantial influence on the Ministers in the policy-formulation and its implementation.

It may also be noted that the extent of control of a minister over his department rests on his political position. If the minister enjoys the full confidence of the Prime Minister and has a strong base in the party, he can deal effectively with bureaucracy. But if he is politically non- assertive his control over administration may be weak.

A strong-willed Prime Minister may reduce a minister to mere a non-entity. Thus, a minister's control over administration depends not only on the legal or constitutional system of the country, but also upon his political strength.

2. Budgetary System:

The budgetary system which determines the total financial and personnel resources which no department may exceed gives the executive an effective means of control over administration. The civil servant has to work within the budgetary allocation.

He cannot spend a single penny without the proper sanction from the higher authorities. The money is to be spent according to the financial rules. Proper accounts are to be maintained which are subject to audit. Under an effective budgetary system, the administration is under the constant control of the executive.

3. Recruitment System:

Another important means of executive control over administration is recruitment system. Generally, recruitment to civil service is placed in the hands of Public Service Commission—an independent body. The general rules of recruitment are laid down by the Government. The qualifications, experience, age, etc., required for different posts are determined by the executive.

It has also the power to exclude certain posts from the purview of the Public Service Commission. To the higher posts of the civil service, the executive has a free hand. The ministers select their own secretaries and heads of departments. Thus through their appointees, they exercise full control over the administration of the department.

4. Executive Legislation:

The executive exercises power of legislation which is termed 'Delegated Legislation'. The Legislature passes an Act in a skeleton form and empowers the executive to fill in the details. The rules framed by the executive have the force of law.

The scope of administrative law making is very wide in the modern social welfare states. These administrative rules determine the authority of the different officials in the department.

The executive control on administration is constant and continuous. According to Prof Nigro, "Executive controls are most important for their positive development and enforcement

of standards and safeguards in the actual operation of substantive departments”. They give a positive and continuous guidance to the administration. They keep the administration always alert.

Executive controls are not negative or coercive but positive and corrective, Prof Nigro says, “The closest most influential form of control is in my judgment that of executive agencies of the auxiliary type. I must risk the heretical statement that a good budget staff and a good personnel office will do more to preserve the liberties of the people than a good court, because they will be in operation long before a potential wrong is done.”

5.12. Parliamentary Control over Public Administration:

In all systems, parliamentary or presidential, control of the administration by the legislature is important. In a parliamentary system, such as in India or Great Britain, it is of primary importance because all state activities emanate from the legislature. The cardinal principle of parliamentary system is the responsibility of the executive to the legislature. The executive therefore cannot afford to be irresponsible. It has to be responsible for each and every act of its civil servants. The responsibility of administration is thus indirect because it is enforced through the executive. The official cannot be called to the floor of the House to explain his act. It is the Minister who shoulders the responsibility for the administrative acts of his department. If he is unable to satisfy Parliament, he has to quit office. Sometimes, the entire ministry may have to quit the office because ministerial responsibility in a parliamentary

system is collective. Thus we find that the legislature's control on administration is indirect, i.e., through the executive.

5.11. Judicial Control over Administration

Public administration exercises a large volume of power to meet the citizens need in modern democratic welfare state. Today administration is not concerned with only pure administrative function but also involved with a large number of quasi-legislative and quasi-judicial functions. In this respect they have a number of chances to become arbitrary or master of the citizens. So it is very necessary to control them. By judicial control is meant the power of the courts to examine the Legality of the officials act and thereby to safeguard the fundamental and other essential rights of the citizens. The underlying object of judicial review is to ensure that the authority does not abuse its power and the individual receives just and fair treatment and not to ensure that the authority reaches a conclusion, which is correct in the eye of law. It comprises the power of a court to hold unconstitutional and unenforceable any law or order based upon such law or any other action by a public authority which is inconsistent or in conflict with the basic law of the land. The role of judiciary in protecting the citizens against the excesses of officials has become all the more important with the increase in the powers and discretion of the public officials in the modern welfare states. But the courts cannot interfere in the administrative activities of their own accord.

They can intervene only when they are invited to do so by any person who feels that his rights have been abrogated

or are likely to be abrogated as a result of some action of the public official. Secondly, the courts cannot interfere in each and every administrative act, as too much of Judicial action may make the official too much conscious and very little of it may make them negligent of the rights of citizens.

Generally judicial intervention in administrative activities is confined to the following cases:

a) Lack of Jurisdiction:

If any public official or administrative agency acts without or beyond his or her authority or jurisdiction the courts can declare such acts as ultra-virus. For instance, according to administrative rules and procedures, in all organizations, the competent authority is identified for taking decisions and actions. If any authority or person other than the competent authority takes action, the court's intervention can be sought under the provisions of lack of jurisdiction.

a. Error of Law:

This category of cases arises when the official misconstrues the law and imposes upon the citizen obligations, which are absent in law. This is called misfeasance in legal terminology. The courts are empowered to set right such cases.

b. Error of Fact:

This category of cases is a result of error in discovering cases and actions taken on basis of wrong assumptions. Any citizen adversely affected by error of judgment of public official can approach courts for redressal.

c. Error of Procedure:

“Due procedure” is the basis of governmental action in a democracy. Responsible government means a government by procedure. Procedure in administration ensures accountability, openness and justice. Public officials must act in accordance with the procedure laid down by law in the performance of the administrative activities. If the prescribed procedure is not followed the intervention of the courts can be sought and legality of administrative actions can be questioned.

d. Abuse of authority:

If a public official exercises his or her authority vindictively to harm a person or use authority for personal gain, court’s intervention can be sought. In legal terms, it is called malfeasance. The courts can intervene to correct the malfeasance of administrative acts.

5.12. Forms of Judicial control over public Administration
Judicial Review

The judicial review implies the power of the courts to examine the legality and constitutionality of administrative acts of officials and also the executive orders and the legislative enactments. This is very important method of judicial control. The statutes made by Parliament and State Assemblies itself provide that in a particular type of administrative action, the aggrieved party will have a right of appeal to the courts or to a higher administrative tribunal. Sometimes, legislative enactment itself may provide

for judicial intervention in certain matters. Statutory Appeals
The statutes made by Parliament and State Assemblies itself provide that in a particular type of administrative action the aggrieved party will have a right of appeal to the courts or to a higher administrative tribunal. Sometimes, legislative enactment itself may provide for judicial intervention in certain matters. The State is liable for the tortuous acts of its officials in respect of the non-sovereign functions only.

Criminal and Civil Suits against Public Officials

In India civil proceedings can be instituted against a public official for anything done in his official capacity after giving two months' notice. When criminal proceedings are to be instituted against an official for the acts done in his official capacity, previous sanctions of the Head of the State i.e., the President or the Governor is required. Some functionaries like the President and the Governor are immune from legal proceedings even in respect of their personal acts. Ministers, however, do not enjoy such immunity.

5.13. Extraordinary Remedies- the writs in indian constitution

Apart from the methods of judicial control already discussed, there are the extraordinary remedies in the nature of writs of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Waranto. These are called extraordinary remedies because the courts grant these writs except the writ of Habeas Corpus, in their discretion and as a matter of right and that too when no other adequate remedy is available. A writ is an order of the court enforcing compliance on the part of those against

whom the writ is issued. In India these writs are available under the provisions of the Constitution. While the Supreme Court is empowered to issue these writs or orders or directives only for the enforcement of Fundamental Rights, the High Courts are empowered to issue these writs not only for the enforcement of Fundamental Rights but also for other rights. We will discuss these writs now.

Habeas Corpus:

Habeas Corpus literally means to have the body of. This writ is an order issued by the court against a person who has detained another to produce the latter before the court and submit to its orders. If it is found that the person is unlawfully or illegally detained, he will be set free.

Mandamus:

Mandamus literally means command. If a public official fails to perform an act which is a part of his public duty and thereby violates the right of an individual, he /she will be commanded to perform the act through this writ.

Prohibition:

It is a judicial writ issued by a superior court to an inferior court, preventing it from usurping jurisdiction, which is not vested with it. While Mandamus commands activity, Prohibition commands inactivity. This writ can be issued only against judicial or quasijudicial authorities to prevent exercise of excess of jurisdiction by a subordinate court. As such, its significance as a method of judicial control over administration is limited.

Certiorari:

While Prohibition is preventive; Certiorari is both preventive and curative. It is a writ issued by a superior court for transferring the records of proceedings of a case from an inferior court or quasijudicial authority to the superior court for determining the legality of the proceedings.

Quo Waranto:

Literally, Quo Waranto means 'on what authority'. When any person acts in a 'public office' in which he/she is not entitled to act, the court by the issue of this writ, will enquire into the legality of the claim of the person to that office. If the said claim is not well founded, he or she will be ousted from that office. It is, thus, a powerful instrument against the usurpation of public offices'.

5.14. Limitations of judicial control over administration

The effectiveness of judicial control over administration is limited by many factors. Some of these limitations are:

1. Unmanageable volume of work: the judiciary is not able to cope up with the volume of work. In a year the courts are able to deal with only a fraction of cases brought before it. Thousands of cases have been pending in Supreme Court, High Courts and Lower Courts for years together for want of time. There is an increase in the cases of litigation without a commensurate expansion of judicial mechanism. This excessive delay in the delivery of justice discourages many to approach the court. The feeling of helplessness results in

denial of justice to many.

2. Post-mortem nature of judicial control: In most of the cases the judicial intervention comes only after enough damage is done by the administrative actions. Even if the courts set right the wrong done, there is no mechanism to redress the trouble the citizen has undergone in the process.

3. Prohibitive Costs: The judicial process is costly and only rich can afford it. There is some truth in the criticism of pro-rich bias of judicial system in India. As a result, only rich are able to seek the protection of courts from the administrative abuses. The poor are, in most cases, the helpless victims of the administrative arbitrariness and judicial inaction.

4. Cumbersome procedure: Many legal procedures are beyond the comprehension of common man. The procedural tyranny frightens many from approaching the courts. Even though the procedures have a positive dimension of ensuring fair play, too much of it negates the whole process.

5. Statutory limitations: the courts may be statutorily prevented from exercising jurisdiction in certain spheres. There are several administrative acts, which cannot be reviewed by courts.

6. Specialized nature of administrative actions: The highly technical nature of some administrative actions act as a further limitation on judicial control. The judges, who are only legal experts, may not be able to sufficiently appreciate the technical implications of administrative actions. As a result, their judgments may not be authentic.

7. Lack of awareness: In developing societies, most of the people who are poor and illiterate are not aware of judicial remedies and the role of the courts. As a result they may not even approach the court to redress their grievances. The courts which can intervene only when it is sought may be helpless in this situation. The general deprivation of people also results in deprivation of justice to them.

8. Erosion of autonomy of judiciary: There is executive interference in the working of judiciary. The quality of judiciary mostly depends on the quality of the judges. The Law Commission made many recommendations to ensure the judicial standards of the bench. The suggestion to create Judicial Commission with responsibility for judicial appointments deserves serious consideration. In recent years, there are many allegations of corruption against judges. This undermines the prestige and the effectiveness of the judiciary.

5.14. Administrative Tribunals in India

Administrative tribunals are particularly associated with the administration and their decision are administrative. But it is not significantly true but it is true to the extent of their concern with schemes in which the administration has an interest. Further, it is found in the majority of the cases that decisions of the administrative tribunals are more judicial in nature as there is a demand to apply rules impartially without leaning towards their executive polity. There is no specific definition for “Administrative Tribunals” in the Constitution of India. However, Articles 227 and 136 of the Constitution of India provide only the word “tribunal” and nothing more. As

there is no precise or scientific form of definition for tribunal, we should divest our concentration on the Supreme Court for its views regarding the tribunals by referring to certain case laws.

In *Durga Shankar Mehtha v/s RaghurajSingh*, the Supreme Court expressed that 'Tribunal' as used in Article 136 does not mean the same thing as 'court' but includes within its ambit, all adjudicating bodies provided they are constituted by the state and invested with judicial as distinguished from administrative or executive functions. In *Bharat Bank Ltd. v/s Employees*, the Supreme Court observed that though tribunals are clad in many of the trappings of court and though they exercise quasi-judicial functions, they are not full-fledged court. In *Associated cement companies Ltd. v/s P.N. Sharma*¹⁷, the Supreme concluded about the tribunal as that it is an adjudicating body which decides controversies between the parties and exercises judicial powers as distinguished from purely administrative functions and the possesses some of the trappings of a court, but not all.

However, there is basis test within Article 136 or 226 for tribunals that

- a. It is an adjudicating authority other than the court
- b. The power of adjudicating must be derived from a statute or a statutory rule.
- c. The power of adjudicating must not be derived from an agreement between the parties. Characteristics of Administrative Tribunals

The following are the characteristic of an administrative tribunal:

1. An Administrative tribunal has statutory origin as it is creature of statute;
2. It has the get –up of a court with having a some of the trapping of a court but not all;
3. It performs quasi-judicial functions as it is entrusted with judicial powers of the State which is distinguished from pure administrative or executive functions;
4. It is a self-styled entity within the ambit of the Act regarding rigid procedures. It means it is not bound by the strict rules which should be followed by the court i.e. rules of evidence;
5. In some aspects of procedural matters such as to summon witnesses, to administer oath, to compel production of documents etc. it has possessed power as of the court;
6. Tough the discretion is conferred on them, it is to be exercised objectively and judicially. It means that most of its decision is recorded the finding of facts objectively and apply the law without regard to executive policy;
7. It is confined exclusively to resolve the disputes/cases in which government is a party but often it moves to decide the disputes between two private parties for example Election tribunal, Rent Control Board;
8. It enjoys independent states free from any administrative interference in the discharge of their judicial or quasi-judicial functions;

9. The prerogative writs of certiorari and prohibition are available against the decisions of administrative tribunals.
10. Hence tribunal cannot dispose the matters as final arbitrator;
11. Once the issues settled by the High Court cannot be entertained by the administrative tribunal;
12. It is perpetual in nature and tribunal have been established specially to deal with a particular type of case or with a number of closely related types of cases.

Importance of Administrative Tribunal

The reasons why parliament increasingly confers powers of adjudication on special tribunals rather than on the ordinary courts may be stated positively as showing the greater suitability of such tribunals, or negatively as showing the inadequacy of the ordinary courts for the particular kind of work that has to be done . The growth of administrative decision making was the need to explore new public law standards based on moral and social principles away from the highly individualistic norms developed by the courts. Realizing their limitation, the Supreme Court once said that leaving such technical matters to the decision of the court is like giving surgery to a barber and medicine to an astrologer. An even more important practical reason for the growth of tribunals was the desire to provide a system of adjudication, which was informal, cheap and rapid. Litigation before a court of law is not only time consuming but is a luxury for the rich man.

The reasons why parliament increasingly creates tribunals may be the ordinary courts are already overburdened with work, their procedures is technical and costs are prohibitive and questions arising out of a social or industrial legislation are better decided by persons who have an intimate and specialized knowledge of the working of that Act. Hence for a government, this has taken on ambitious and massive plans of public health, education, planning, social security, transport, agriculture, industrialization, national assistance. It is impossible to carry out these programs and determine legal questions involved therein with the assistance of the law courts because of their highly individualistic and ritualistic approach.

No intensive form of government can function without a decision making system of its own. Therefore, administrative decision making through administrative tribunals is inevitable and essential. The Administrative Tribunal can adjudicate on the matters: levy, assessment, collection and enforcement of any tax; foreign exchange, import and export across customs frontiers; industrial and labour disputes; land reforms by way of acquisition by the State of any estate as defined in Article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way; ceiling on urban property; elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in Article 329 and Article 329A; production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the

President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods; any matter incidental to any of the above specified matter.

Objectives of the administrative tribunals

Administrative tribunals constituted with few objectives:

- To provide for a forum to deal exclusively with service matters which off loaded the burden of the cases of High Court from their jurisdiction;
- To provide inexpensive and speedy relief to government servants in service matters;
- To provide special powers to the tribunals to make their own special powers and procedures and not be guided by the Civil Procedure Code or the Law of Evidence but to work according to rules of natural justice.

As far as creation of tribunals is concerned constitution is silent. No express provision in the Constitution, as it stood originally, provides for the establishment of tribunals. However, Articles 262(2) and 263(1) are important in this regard. Article 262(2) provides for the creation of tribunal to adjudicate the disputes relating to water of interstate rivers or valleys. Article 263 provides for creation of council charged with the duty of inquiry into the disputes between states. Apart from these two Articles, the creation of tribunals is implied in the Articles 136, 226 and 227 of the Constitution as the term 'tribunal' is used in these Articles. However, forty second

Constitutional Amendment expressed the provision for the creation of tribunals. This Amendment opened the possibility for the proliferation of the tribunals system in the country. Article 323A empowers the parliament to establish service tribunals, which will deal with the service matters i.e., recruitment, conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State or any local or other authority in India or under the control or owned by the government and Article 323B empowers the appropriate legislature to provide the law, for adjudication or trial by tribunals of any disputes and offences with respect to several matters. Further the Article 323B is wide amplitude and it provides that tribunals may try certain criminal offences also.

In 1985, Parliament passed the Administrative Tribunals Act in pursuant of Article 323 A of the Constitution. And under Article 323B parliament and state legislatures are passing law from time to time which provided for the creation of tribunals.

The work assigned to the tribunal is very complex in nature. It requires qualified and experienced members to the adjudication of the subject matters. Hence the chairman must come from judiciary with an experience of adjudication to his credit. He must be legally qualified person because he only can apply statute law or case law to complex situations other members of the tribunal shall have the sound professional knowledge and practical experience of the service matters. So they are to be senior executive officers who are men of

character, integrity and having best ability.

Each tribunal shall consist of chairman, Vice chairman and judicial and administrative members in such number as the appropriate government may deem fit. The qualifications are fixed by the President of India after consulting Chief Justice of India and for their members' consultation with the Government of the concerned State i.e. in case of State Administrative Tribunal or joint Administrative Tribunal will be made. The chairman of tribunal has been given the exclusive power to constitute bench. He may transfer the vice chairman or other member from one bench to another. He can constitute a bench composed of more than two members and also single member bench. Tribunal is not a substitute for High Court. The tribunals empowered to adjudicate disputes and entertain complaints with respect to service matters. All other courts except Supreme Court are barred to entertain these cases. Therefore, tribunals do enjoy the same status or are at par with High Court. But a tribunal will not have power to issue writ as power is not given to them. The Supreme Court in S.P. Sampath Kumar's case declared that the tribunal is the substitute of High Court and is entitled to exercise the power thereof. The position emerges that the High Court and tribunals are not rival institutions. The tribunals are apart of the jurisdiction of High Court i.e., relating to service matters an appeal cannot lay within the High Court against the order or judgment and as a matter of right before the Supreme Court. But Supreme Court can entertain appeal in the exercise of its extra ordinary jurisdiction under Article 136. Hence, the

tribunal's decision is made appealable within the tribunal itself before a large bench as an ordinary employee cannot be accepted to afford the cost of litigation in the Supreme Court, which may sometimes result in the denial of his right to seek justice. But in *L. Chandrakumar v/s Union of India* case, the Supreme Court reversed its earlier judgment and ruled that power of judiciary vested in the Supreme Court and High courts is constituted part of the basic structure of the constitution and could not be taken away. Now the tribunals are allowed to function as courts of first instance subject to the jurisdiction of High Courts. This downgraded the role of tribunals from the substantial role to supplemental role. There is a condition to invoke tribunals to a civil servant that he should have availed to him under the service rules and he should have locus standi in the subject matter. The Government of India has framed rules for filing an application before Administrative Tribunal that it shall be presented in Form 1 by the applicant in person or by an agent or by a duly authorized advocate to the Registrar or another officer authorized by the Registrar to receive the applications or sent by registered post with acknowledgement only addressed to the Registrar. After the application has been filed, the Registrar or the officer authorized by Registrar shall endorse the date on which it is presented for deemed to have been presented and sign the endorsement. In the scrutiny, any irregularity is found in the application the Registrar may allow the parties to remove in presence. Otherwise he may refuse to register such application with reasons recorded in writing an appeal against the order of Registrar will be filed within fifteen days of such

order. Tribunal empowers to regulate its own procedure including fixing of places and times of its enquiry and deciding whether to sit in public or private place. The tribunal can admit evidence, in lieu of any originals document, a copy attested by a gazette of officer. It can avoid oral evidence and evidence on affidavits. No evidence will be taken in the absence of both the parties and hearing will commence when both the parties present.

The person who is aggrieved by an order of the government or its agencies can approach the tribunal within a period of one year from the date on which the delinquent official was penalized and this representation has to be disposed of within the period of six months. However, delay can be condoned by the tribunal if it is satisfied with sufficient cause. The tribunal shall follow the principles of natural justice. It is empowered to review its own decision and may reject the application of review if it is satisfied that there is no sufficient ground for it such rejected application of review is not appealable. It excludes the jurisdiction of other courts but subject to the writ jurisdiction of High Court and Jurisdiction of Supreme Court under Article 136. The grounds for Supreme Court to interfere with the findings are:

The tribunal has acted in excess of jurisdiction or has failed to exercise apparent jurisdiction.

- a. It has acted illegally
- b. There is an error of law
- c. The order of it is erroneous or has approached the

question in a manner liable to result in injustice.

- d. It has acted against the principles of natural justice.
- e. No civil servant is to be dismissed or removed without a departmental enquiry.

The tribunal has the power of judicial review for the validity of such disciplinary proceeding but power is limited as it cannot change the decision. However, the Supreme Court under equitable jurisdiction under Article 136 enjoys the power to change such decision or opinion of the disciplinary proceedings. For the proper implementation of welfare schemes the tribunals were found to be essential and inevitable. Thus, the tribunal system cannot be inconsistent with rule of law in fact they have become the agencies for ensuring rule of law.

Before excluding the power of the High Courts under Articles 226 and 227 over administrative tribunals, a direct access is in fact not provided under Article 136, because the Supreme Court will grant special leave only in special cases. The result is that of the closure of the doors of judiciary in certain matters.

The Administrative Tribunals system is surely effective and useful. But it is hardly a substitute for administrative reform, which continues to be pressing need of our developing country. Nor is the Administrative Tribunal intended to replace or supplant the regular governmental system of the country. The Union Public Service Commission must continue to do its work and the departmental promotion committees must

continue to meet. The Administrative Tribunal does not and is not intended to interfere, even in the slightest way, in the functioning of the executive. It is only when a complaint is filed that tribunal activates itself and begins moving.

MODULE-VI

CHALLENGES TO THE INDIAN ADMINISTRATION

6.1. Administrative culture in India

The seeds of the term “Administrative Culture” were sown in 1963 when Gabriel Almond and Sydney Verba published their path-breaking work, “The Civic Culture”. Culture refers to norms, attitudes, values, perceptions, interpretation and behaviour of an individual. Similarly, administrative culture comprises values, beliefs, attitudes, etc., concerning administrative action and behaviour. It connotes the mode and style of functioning of officials. Administration is culture-bound. It is shaped by the setting or the environment in which it operates. It develops specific features in different environments. A study of structures and functions of Public Administration in different countries reveals that there exists similarity in formal organizations but their informal and behavioural patterns possess considerable diversities. On account of these diversities, Fred W. Riggs classified social structures into three types viz., fused, prismatic and diffracted and outlined specific features of administration in each of these categories. In his analysis of prismatic society, the major focus is upon the impact of environment on administrative structures.

In India public service is generally viewed as a high and a noble calling. It is service in the cause of the nation and

there can be no service higher than that of the sovereign state. People who join it do not anticipate becoming rich and famous, but majority of them feel a basic commitment to the values of public service; others develop such a commitment after working in the government for some time. No administrator functions in a vacuum. As one is influenced heavily by the current cultural milieu: i.e. values, belief and attitude prevalent in society, as well as the culture unique to the organization. Culture basically represents a pattern of values and behaviour, where response pattern persists over a period of time and gets institutionalized. Due to these patterns there are different Agrarian, Industrial and Transient societies with salaried model bureaucracies.

The administrative culture of India, as well as of many other Third World nations, has drawn on two basic foundations: (a) the colonial heritage, and (b) the traditional influences. These two have greatly shaped the character of the prevailing administrative culture of these countries. The administrative culture is a product of three factors viz., the administrative personality, time and situation.

The administrative culture of a country is largely connected with the following factors.

6.2. Administration and Political Environment

Administration is most immediately influenced by the political system. The nature of political system determines the nature of administrative system. For example, during British regime, Indian political system was centralized, exploitative,

repressive and authoritarian. Therefore, administration too, was of that kind. But after independence political system became decentralized, democratic, developmental, people and welfare-oriented. Therefore, administration also became like that. Thus, political system impacts administrative system. Similarly, administration also impacts political system. It helps formulate governmental programmes and policies. The administrators provide different types of data, information, expertise, suggestions, feedback etc., to the ministers on the basis of which realistic programmes and policies are formulated by them. Thus, administration and political system impact each other.

6.3. Administration and Economic Environment

Administration is influenced by the economic set-up . For example, in a country with limited economic resources administrators are not in a position to implement governmental programmes and policies successfully. But administration of a developed country can successfully implement programmes and policies because of abundance of resources. Further, in a country with closed economy the scope of administration will be more whereas in an open economy administration will have less scope as here private parties are the key players. Thus, economic environment impacts administration.

Similarly, administration can also influence economy by contributing to the formulation of various economic programmes and policies. Further, if administration is efficient and effective, development and growth will take place and thus, overall economy will be impacted positively. Thus,

administration and economy affect each other.

6.4. Administration and Socio-Cultural Environment

Socio-cultural environment affects the administration. There exists casteism, nepotism, favouritism, corruption and other ills in the society. Hence, these ailments are also found in administrators. It is mainly because of the fact that the administrators have to operate in the society. Therefore, they get affected with all these social maladies. Similarly, administration can also influence social environment by contributing to the formulation of policies for mitigating social evils. Thus, administration and social environment impact each other. The preceding discussion makes it amply clear that the administration is influenced by the environment in which it operates and in turn, it also influences the environment. That is to say, there exists a two-way relationship between administration and its ecology. Administrative culture, thus, must be compatible with its environment. It is, therefore, unrealistic to endorse and perpetuate the administrative culture operative during the period of the British Rule in Independent India. In other words, administrative culture is not static. Just as culture itself is not unchanging, administrative culture too, keeps on changing. The object or target of administrative culture is public bureaucracy. Bureaucracy is a cohesive, well-organised and compact group with a network of continuing interactions. It is an instrument or weapon of the government to operationalize programmes and policies meant for all-round development of the country. In the wake of the process of decolonization, Third World Countries (TWCs) emerged on

political map of the world. These nascent countries including India were confronting a lot of socio-economic problems such as hunger, poverty, unemployment, illiteracy, inequalities, etc. The major responsibility for mitigating these problems rested on the shoulders of bureaucracy. Therefore, it amassed huge powers. But in course of exercise of comprehensive powers bureaucracy started disregarding people's interests.

It became omnipotent, omnipresent and omniscient. It became part of a system aptly termed as "New Despotism" by Justice Hewart. In short, it became a victim of various administrative ills some of which can be discussed as follows.

- a.** Unresponsiveness: Bureaucracy remains unresponsive to popular demands, desires and aspirations. It tends to regard itself as the self-appointed guardian and interpreter of public interests. Its members feel that they are doing a favour by providing a service to them, even though they are paid from public exchequer to do so. The experience over the years shows that it has behaved more as a ruling class than a serving one as it is clear from its very functioning in India which is, by and large, aristocratic, authoritarian, arrogant and oppressive.
- b.** Red Tapism: It refers to undue formalism. It puts too much emphasis on "Procedure through proper channel" and precedents. Left to itself, it tends to multiply the red tape till it almost smothers itself. Bureaucracy seems to forget that the community does not exist for the purpose of filling up forms or obeying regulations, but that forms and regulations exist for the service of the community.

- c. **Self-Perpetuating** : Bureaucracy has become a victim of Parkinson's Law or the Rising Pyramid of bureaucrats. Parkinson's Law refers to a situation wherein staff in an organization outnumbers the volume of work. In other words, bureaucracy is self-perpetuating in the sense that the civil servants have a tendency to increase day by day in number, irrespective of workload. The reason for this phenomenon, according to Parkinson, is that the "Officials make work for each other." Thus, bureaucracy has the tendency to multiply its work and create new jobs for itself.
- d. **Self-aggrandisement** : Bureaucrats are supposed to be the servants of the people in a democratic set-up. But in reality, they have become their masters. Instead of serving the community the average bureaucrats are engaged in fulfilling their own desires and aspirations. They disregard people's interests and opinions. They maintain distance from the masses. In the name of people and community they are involved in self-seeking, nepotism and favouritism.
- e. **Corruption** : Bureaucrats are alleged to have been indulged in corrupt practices. Corruption has become all-pervasive. It is the greatest hindrance to excellence in public service. It flows from top to bottom like water. Political corruption is considered fountainhead / gangotri of all types of corruption in India. Hence, political corruption needs to be curbed if administrative corruption has to be checked. Corruption today has become so much

pervasive that it seems that honesty is the lack of opportunity of corruption.

- f.** Lack of neutrality : The administrators are supposed to be politically neutral. They should not be committed to any party, leader or ideology. Their commitment must be towards Constitution, people and development. They have to be politically unbiased. Whichever party or leader comes to power, they have to serve with same zeal and enthusiasm. However, in actual practice, such things appear to be missing.
- g.** The concept of “Political Bureaucracy” has emerged in India. The bureaucrats have been greatly politicized. They don’t believe in political neutrality. Political neutrality seems to be withering away. The bureaucrats align themselves with political leaders in order to serve their vested interests. They extend only such suggestions to the ministers which are palatable to them. They want to please ministers at any cost so that they may remain in good books of ministers. They are always keen to adjust themselves according to the wishes of ministers.
- h.** Departmentalism / Empire-building : Bureaucracy encourages the evil of splitting up the work of government into a number of isolated and self-dependent sections, each pursuing its own needs without any adequate correlation with the rest. There develops a tendency on the part of these units to consider themselves as independent and isolated units. They tend to forget that they are but parts of a bigger whole and regard their own

little kingdoms as end in themselves.

- i. Status-quoism: Indian bureaucracy is largely status-quo oriented and is more devoted to the prevention of progress. It loves tradition and stands for conservatism. It resists reforms and innovations. One can hardly expect that such a bureaucracy could be responsive to the growing need, exceptions and aspirations of the people of the country.

6.5. Factors affecting Indian administrative culture

In India there are various factors affecting Indian Administrative Culture. Every administrative culture system is built upon the following factors which influences and affects it. Some of the factors are as follows :

1. Individual Value System: All administrators have a philosophy; that is, an individual value system which prioritizes basic convictions. A review of the literature concludes that an individual's value system is determined by cultural norms, education and experience that he or she has been exposed to. This individual value system, when combined with the unique history of an organization, determines an administrator's behaviour.

We all know that no administrator functions in a vacuum as one is influenced heavily by his surroundings i.e. cultural values, beliefs, attitude prevalent in society, as well as the culture unique to the organization. A fact often overlooked however, is that the present has been determined by the past. Beside it an individual is influenced by the education. Here education is the

understanding and interpretation of knowledge. After education comes the experience gained by working in any organization for a long period.

2. Family : We know family plays an important role in the society. Every administrator is a part of a family which in turn is a part of society. It is the family where a person learns his first lesson of life about what is bad and what is good; etc. The good qualities and behaviour which an administrator gets from his or her family helps them in work process also. Due to family impact Indians are more gods fearing than most other cultures, and we still have strong families and peer pressure to moderate our behaviour.
3. Socio-cultural dimension (Society) : Every administrator is a part of society. Indian society is a stratified one, both vertically and horizontally. The Hindus are divided into four major castes i.e. Brahmins, Vaishya, Kshatriya and Sudras and each caste has numerous subcastes. This has, in its turn, influenced the stratification process among Muslims and Christians too. In modern times although the caste system is gradually shedding its traditional purpose, under the impact of universal suffrage, it evokes new meaning and serves other purposes.
4. Education : Education is very essential for mankind. In fact education is the understanding and interpretation of knowledge. Education tries to mould and help in developing the aptitude of person and aim at increasing administrator's personnelskill. Formal and informal both

type of education is essential for public. These days the Indian Administrative Services are joined not only by man and woman having degree of arts, social science, commerce and science but technocrats with B. Tech.,

B.E. and M.B.B.S. degree. Thus after joining the service when decisions are taken by them they are influenced by the education which they have received.

5. Religion : Administrative culture of any country is influenced by its religion. Although India is a secular nation but majority of people is Hindus. The Hindu religion is rooted in a very powerful ideological system with unification of a divided society. In India there are religious foundations of administrative culture.
6. Political System : For the developing nations like India where speedy socioeconomic development has to be steadily pushed through, the nature, character and culture of civil services assume special significance. The first problem is how to declass the civil service that culturally belonged the colonial era and served the imperial interest. As the Indian experience shows, the colonial administrative system was allowed to continue even after independence and it was thought that the changed political leadership and institutional framework coupled with proper training and motivation would bring about desired 'cultural' changes in the Administrative Service. The result of all this was neutral, representative and politicized administrator a political.

7. **Mass Media :** We all know mass media like Radio, films; Television, Newspapers, books etc. play an important role in the administrative system. When Late Shree Rajiv Gandhi became Prime Minister in year 1984 promised, among other things, to revamp the public administration of the country. In 1985, a number of programmes began on the Indian Television under private initiative and these brought within their ambit the pathological problems of administration. Here mention many particularly be made of television serials like 'Panorama', 'Sach Ki Parchhayian' (In the shadow of Truth), 'Aaihna' (Mirror), 'Chaupal' (related to villagers and farmers), 'Rajni' (related to administrative problems faced by common man), 'Janvani' (the voice of people), 'Police Public', 'Ankhon Dekhi' (Eye Seen), etc. Mass Media always served a useful purpose, in the sense of instilling a sense of accountability in the administration and so improving its efficiency.

8. **Economic dimension :** Among economic factors poverty, hunger, unemployment, general scarcities are the chief features of the Indian economy. Some of these themselves being the direct outcome of the economic plans, policies and strategies of development followed over the decades. Beside all this the rapidly growing population has partly wiped out the economic gains achieved by the country through planning. Due to this there is disequilibrium between the public and administration. The problem of poverty and

unemployment in society results in intense pressures on government jobs and even overstaffing government offices. Shortages, compounded by government interference, breed pressures for supply and consequent corruption. The administrator, since he controls the distribution of essential commodities to the public, finds himself subjected to heavy pressures. Thus, the prevailing political atmosphere, the falling standards of public life and the loss of moral values among the politicians have bred a corresponding insensitivity, demoralize and unresponsiveness among administrators.

The public administration constitutes merely an aspect of the social system. As other aspects such as value system, economic, social, political, cultural and educational, constantly interact with the administrative system. Hence enhancement of the administrative capability requires changes in the social environment i.e. development of the society. So long as the majority of the public remain poor, uneducated and unaware of their rights and duties, they cannot properly participate in programs of development. Import of high technology can not deliver the goods in the situation of general economic and social backwardness. So if the data received from the field are defective, the processing of the data on a computer by highly trained specialist is of no use. Enhancement of administrative capability, therefore, requires development of the society generally, even as administrative development helps all round development.

The Indian administrative culture is noted for the

following ills at all levels of governance.

- Chronic and almost incurable delays at all levels;
- Equally chronic habit of evading decision making;
- Non-availability or inaccessibility of officials at all levels to individual citizen;
- Singular lack of courtesy, consideration and concern to the grievances of individual citizens or groups;
- Lack of a humane approach to the visitor in any government office;
- Failure and indifference of officials to bend their energies to issues affecting commonman;
- Time consuming meetings and discussions with ministers and high officials which are mostly unproductive and which eat into administrative time;
- Spectacular schemes from political leadership which are mostly populist and fail to touch the grassroots;
- Failure of system of inspection and controls which are time honoured tools of gauging the work and efficiency at all levels; and
- Consequently corruption in the form of ‘speed money’ for getting irregular things done.

6.6. Corruption in India

The Fobbes Asia conducted a survey recently showed that India as the Asia’s most corrupt country. The bane of corruption runs deep here, it's permeated into every institution,

every social program, and every element of our country's nervous system. It's not just me saying this either, there's cold, hard facts and statistics supporting each of those claims. Here's one for you right now - 54% of India's population has paid a bribe when accessing public services and institutions, that's more than 1 in 2 citizens.

In India, 38% of land deals involve some form of bribes, mostly because for the buyer, that's the only option left. The entire nexus of government officials, politicians, judicial officers, real estate developers and law enforcement officials control the property trade, wherein they acquire and sell land illegally. These groups also remain well protected and are highly connected for the most part, making it nigh impossible to renege on a deal.

62 % of law enforcement officers take bribes: The police actually collects the highest amount of bribes. Passport verifications make up 30% of the average bribe paid by a regular Indian in a year, while traffic violations make up 25%. The methods are numerous and the amounts far-reaching, ranging from botched breathe analyser tests charging Rs. 2500 to Rs. 500 for passport verification.

60% of road stops for truckers are for extorting money: According to Transparency International, truckers pay 222 crore in bribes every year. Authorities such as government regulators, police, forest and sales and excise force stoppages on roads, and 60% of these are for extorting money. These delays lead to an egregious loss in productivity.

60% of people who got their driving license from an agent haven't taken the driving exam.

The procedure to get a driving license in India is highly askew, with research showing that it is possible for people with little to no ability to get a license through the use of agents. The Fobbs' study showed that agents helping unqualified drivers obtain licenses and bypass the legally required driving examination was a widespread practise. Among those surveyed, around 60% of the license holders hadn't even taken the licensing exam and 54% of those license holders had failed an independent driving test.

31% of members of parliament have criminal cases against them

Political parties are - surprise - the most corrupt institutions in India. They have a corruption rate of 4.4 on a scale of 5 (1 being least corrupt rate and 5 being highest). In 2012, there were criminal cases pending against 31% of members of parliament and the legislative assembly. The dismal state of affairs has led to a lot of political candidates actually promoting their criminality as an indication of their ability to defend the interests of their communities, a fact that is as laughable as it is abysmal.

The monetary value of petty corruption in 11 basic services in government like education, healthcare and the judiciary amounts to about Rs. 3,19,72,50,00,000 annually. World Bank showed that only 40% of grain handed out to the poor reaches its target. This report says that aid programs in

India are beset by corruption, bad administration and under-payments.

6.7. Diversity and corruption in India

To understand the advent of corruption in India and to grasp its influence on society as a way of life, one must understand India's history. India is a young country. It gained its independence in 1947 after 200 years of British rule. The British came to India via the East India Company and over the decades they came to realise that India was neither a geopolitical entity nor culturally homogeneous. The combined influences of a shift in focus from trade to territory, and from commerce to political and military power – rife with the corruption of its private stockholders – further divided an already diverse region. The thousands of small kingdoms that made up the geography of Bharat (India) became weaker and more corrupt as the years went on, in a way embedding the virus of corruption in India. In 1947, finding itself reduced in power and ability after the Second World War, the British Empire left India. Governance came into the hands of the first prime minister of India, Jawaharlal Nehru. In an effort to completely eradicate Western influence, he made a strategic decision to adopt a socialist approach vis-à-vis the economy. What followed over the next five decades was painfully slow economic growth. Heightened government controls resulted in reduced economic opportunities. Increases in population, low per capita income, and slow GDP all combined to create near hyperinflation. Low salaries of government employees (such as bureaucrats and the police),

excessive regulations, complex tax and licensing systems, opaque bureaucracy, lack of opportunities, discretionary powers, government monopoly, and an antiquated legal system with a lack of transparent laws and processes only further exacerbated an already tainted and corrupt system. Since 2005, India has ranked around the middle (90th out of 180 countries) on *Transparency International's* table of *perception of corruption index*. Activities of corruption in India include the misuse of public property for private gain and have ranged from misappropriation of public money to abuse of power (including bribery)

Increased globalisation, greater access to global media and reporting and the work of organisations such as Transparency International continued to expose corruption. While India was slowly improving its standing – challenging and questionable practices endured in many sectors of the government, including hiring practices, measurement, and recording in civil supplies departments and property tax assessments. Studies by the Comptroller and Auditor General of India have repeatedly shown that the most severe levels of corruption could be found in customs, revenue collection, public works, and agencies in charge of licenses and permits. The Central Vigilance Commission was created in 1964 and put in charge of implementing the Prevention of Corruption Act, focusing on high officials. Although over the years the powers and mandate of the commission have been increased to make it more effective, its focus is still more on bureaucracy than politics. In 1992, India found itself nearly bankrupt and in

severe debt, and under pressure from the World Bank, the country was forced to liberalise its economy. What followed from there is the stuff of legend. Today, one might say that concept of India is 500 years old, and the nation itself is 70 years old, but its economy is only 25 years old. In this short period, India doubled its economy, carved out a niche for itself as a software provider to the world, and produced thousands of millionaires. The path of liberalisation and the accompanying riches unfortunately did not free India of corruption, but continued to fuel the fire. Truckers out on India's highways pay billions of rupees every year in bribes. Bureaucrats sitting in monopoly positions make it more difficult to do business in India by creating stringent and complex compliance requirements that are difficult or impossible to achieve. Tax authorities seek new ways to benefit from the increased wealth of taxpayers, who in turn invent creative ways to evade the tax. Corrupt politicians and industrialists joined forces, influencing public thinking and sentiments through media houses owned by them. What followed over the last two decades were such widely reported controversies as the Commonwealth Games and Agusta Westland scams, and numerous allegations and arrests involving politicians and representatives from the fodder, telecom, and coal industries.

First steps against corruption

As with many revolutions, one person or event is later regarded as the spark that illuminated the path to significant change. In 2011, social activist Kisan Baburao "Anna" Hazare began a hunger strike that ignited a nationwide anti-

corruption movement and led to the introduction of the Jan Lokpal Bill (Citizen's Ombudsman Bill). While perhaps not revolutionary in the traditional sense of the word, many would regard the 2014 election of Narendra Modi as prime minister as trigger to significant change. The defeat of the longest-serving political party of India – the Indian National Congress – in favour of a new name and voice from the Bharatiya Janata Party, and its securing of 282 seats in the general election, took many pundits by surprise. Analysts have suggested that that victory was attributed to both the popularity of Modi and the loss of support for the Congress due to the corruption scandals in its previous term, among other things, including the Hazare movement itself. The saying that power corrupts, and absolute power corrupts absolutely, however, the largest democracy in the world had elected a new face, a new name, and brought to power a new party, and with it hopes for a more transparent chapter. Modi came to power after a strong performance as a state chief minister and receiving credit for policies to promote economic growth and efforts to combat corruption in his home state of Gujarat. He focused his first attentions on the bureaucracy, and bureaucrats started reporting to work on time. In 2016, Modi did the unthinkable and took an action that amounted to using a brahmastra (weapon of annihilation in ancient Sanskrit writings). He demonetised the 1,000-rupee and the 500-rupee notes and replaced them with fresh currency. These denominations made up 90 percent of the currency in circulation in India, and citizens were given 40 days to deposit any cash they possessed into their banks. If the currency being

deposited was unaccounted for, they had to declare it and pay taxes and penalties amounting to 50 per cent of the money. In case there was no declaration, penalties as high as 90 per cent and other charges would apply. The pain of demonetization was immense, with people struggling for liquidity and adopting digital transactions very quickly. It is expected this will have a considerable impact on future government revenue collections and make it possible to write off deficits.

Corruption and poverty

There is no doubt that poverty and corruption are linked. In 2003, only 15 per cent of the government's anti-poverty funds reached the poor. Anti-corruption laws have existed since 1968, supported by agencies such as the Central Bureau of Investigation and the Central Vigilance Commission, but a lack of agency independence and a natural hesitancy to self-police or incriminate have resulted in many failures to enforce these laws effectively. Not only does corruption in India worsen poverty, but it also drags the whole country's development down through resource depletion. Nevertheless, India has been developing and growing at a rate higher than almost any other country in the world. If corruption were completely eradicated, the rate of India's economic growth could be in double-digit figures.

6.8. Lok Pal and Lok Ayuktha

India's effort to have an anti-graft ombudsman in the form of a Lokpal institution may have caught national attention only now. But parliament has made eight attempts since 1968

to pass a Lokpal bill, a different version each time, all in vain. The bill was first brought before the fourth Lok Sabha in 1968 and passed in 1969. However, the house was dissolved, resulting in the first death of the bill. The legislation was revived in 1971, 1977, 1985, 1989, 1996, 1998, and 2001, but never survived. In September 2004, Prime Minister Manmohan Singh said the Congress-led United Progressive Alliance (UPA) government would lose no time in enacting the bill. It finally took a mass mobilisation by Anna Hazare and his associates in April this year to get the government to work on the Lokpal bill and bring it to parliament. The issue has gathered momentum with his current fast, which Friday entered its 11th day.

The latest Lokpal bill introduced in the Lok Sabha Aug 4 is the ninth version of the legislation before parliament. It has been referred to a parliamentary standing committee and parliament will decide its fate. From 1968 to 2011, the bill has come before parliament under seven prime ministers beginning with Indira Gandhi. Of them, only V.P. Singh, H.D. Deve Gowda and Atal Bihari Vajpayee agreed to have prime ministers under the law's purview.

However, none of these eight bills had the judiciary under its purview. "The idea of an ombudsman first came up in parliament during a discussion on budget allocation for the law ministry in 1963. The first administrative reforms committee in 1966 recommended the setting up of two independent authorities at the central and state level to look into complaints against public functionaries, including MPs," according to PRS

Legislative Research.

The first time parliament heard about Lokpal was in May 1968 when Indira Gandhi was prime minister. The Lokpal and Lokayuktas Bill, 1968, did not have either the prime minister or MPs under its purview. The bill, passed in 1969, never became law, as it lapsed after the fourth Lok Sabha was dissolved. Indira Gandhi was still the prime minister in August 1971 when the bill was again introduced in parliament. The 1971 legislation was never referred to any committee and it lapsed after the fifth Lok Sabha was dissolved. The third attempt was made by the Janata Party under Morarji Desai. The bill presented to parliament in July 1977 did not include the prime minister but allowed for MPs to be brought under its purview. A joint select committee considered the bill and made recommendations, but the sixth Lok Sabha was dissolved soon after. Under Rajiv Gandhi, the Lok Sabha took up the bill once again in 1985 and it was referred to a joint select committee. Later, the bill was withdrawn by the government. The government under V.P. Singh was the next to bring a Lokpal Bill in the ninth Lok Sabha and it was sent to a parliamentary standing committee in 1989. But the bill lapsed due to dissolution of the Lok Sabha. Again, the Third Front government under Deve Gowda introduced the bill in 1996 and the parliamentary standing committee submitted its recommendations in 1997 suggesting amendments to it. The bill again lapsed after the Lok Sabha was dissolved. Vajpayee's National Democratic Alliance government introduced the bill twice, once during the 12th Lok

Sabha and again in the 13th Lok Sabha.

While the 12th Lok Sabha was dissolved before the government could take a view on the parliamentary standing committee recommendations, the 12th Lok Sabha too met the same fate before the bill could be passed. At last the bill was passed by the Lok Sabha on 18th December 2013 and Rajya Sabha passed the bill on 17 December 2013. The ‘Lokpal’ is the central governing body that has jurisdiction over all members of parliament and central government employees in case of corruption. Whereas, the ‘Lokayukta’ is similar to the Lokpal, but functions on a state level. Scope of the ‘Lokpal’ is based on a national governmentlevel basis and the scope of the ‘Lokayukta’ relied on a state level. The main function is to address complaints of corruption, to make inquiries, investigations, and to conduct trials for the case on respective state and central government with having responsibility to help in curbing the corruption in the central and state government.

Salient features of the Act

1. The Lokpal to consist of a Chairperson and a maximum of eight Members, of which fifty percent shall be judicial Members. Fifty per cent of members of Lokpal shall be from amongst SC, ST, OBCs, Minorities and Women.
2. The selection of Chairperson and Members of Lokpal shall be through a Selection Committee consisting of –
 - a) Prime Minister;
 - b) Speaker of Lok Sabha;
 - c) Leader of Opposition in the Lok Sabha;

- d) Chief Justice of India or a sitting Supreme Court Judge nominated by CJI;
 - e) An eminent jurist to be nominated by the President of India
3. A Search Committee will assist the Selection Committee in the process of selection. Fifty per cent of members of the Search Committee shall also be from amongst SC, ST, OBCs, Minorities and Women.
 4. Lokpal's jurisdiction will cover all categories of public servants including Group 'A', 'B', 'C' & 'D' officers and employees of Government. On complaints referred to Central Vigilance Commission by Lokpal, the CVC will send its report of Preliminary enquiry in respect of Group 'A' and 'B' officers back to Lok pal for further decision. With respect to Group 'C' and 'D' employees, CVC will proceed further in exercise of its own powers under the CVC Act subject to reporting and review by Lokpal.
 5. All entities receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs.10 lakhs per year are brought under the jurisdiction of Lokpal.
 6. Lokpal will have power of superintendence and direction over any investigation agency including CBI for cases referred to them by Lokpal.
 7. A high powered Committee chaired by the Prime Minister will recommend selection of the Director, CBI.
 8. Attachment and confiscation of property of public

servants acquired by corrupt means, even while prosecution is pending.

Enquiry procedure

The Lokpal's inquiry wing is required to inquire into complaints within 60 days of their reference. On considering an inquiry report the Lokpal shall-

1. order an investigation;
2. initiate departmental proceedings; or
3. close the case and proceed against the complainant for making a false and frivolous complaint. The investigation shall be completed within 6 months. The Lokpal may initiate prosecution through its Prosecution Wing before the Special Court set up to adjudicate cases. The trial shall be completed within a maximum of two years.

The recent amendment has amended Section 44.

Now the every public servant shall make declaration of their assets and liabilities in the form and manner as prescribed by government. It has abolished the previous 30 days timeline. Gives extension of the time given to public servants and trustees and board members of Non-Governmental Organisations (NGOs) to declare their assets and those of their spouses.

6.9. Citizen and Administration

The concept of citizen-centric administration has been evolved in the context of governance process in India. Despite of the role played by citizen as enjoying political right, the

executive branch of the government has been designed as per the rules and regulations and has given little access to the public. To ensure accountability of administration towards the people in general, there are a number of systemic interventions like social audit, citizen charter and right to information Act etc.

6.10. Social Audit Basis of social audit

Social audit as a term was used as far back as the 1950s. There has been a flurry of activity and interest in the last seven to eight years in India and neighboring countries. Voluntary development organizations are also actively concerned.

Social audit is based on the principle that democratic local governance should be carried out, as far as possible, with the consent and understanding of all concerned. It is thus a process and not an event.

What is a social audit?

A social audit is a way of measuring, understanding, reporting and ultimately improving an organization's social and ethical performance. A social audit helps to narrow gaps between vision/goal and reality, between efficiency and effectiveness. It is a technique to understand, measure, verify, report on and to improve the social performance of the organization.

Social auditing creates an impact upon governance. It values the voice of stakeholders, including marginalized/poor groups whose voices are rarely heard. Social auditing is taken

up for the purpose of enhancing local governance, particularly for strengthening accountability and transparency in local bodies.

The key difference between development and social audit is that a social audit focuses on the neglected issue of social impacts, while a development audit has a broader focus including environment and economic issues, such as the efficiency of a project or programme.

Objectives of social audit

1. Assessing the physical and financial gaps between needs and resources available for local development.
2. Creating awareness among beneficiaries and providers of local social and productive services.
3. Increasing efficacy and effectiveness of local development programmes.
4. Scrutiny of various policy decisions, keeping in view stakeholder interests and priorities, particularly of rural poor.
5. Estimation of the opportunity cost for stakeholders of not getting timely access to public services.

Advantages of social audit

- (a) Trains the community on participatory local planning.
- (b) Encourages local democracy.
- (c) Encourages community participation.
- (d) Benefits disadvantaged groups.

- (e) Promotes collective decision making and sharing responsibilities.
- (f) Develops human resources and social capital

To be effective, the social auditor must have the right to:

1. seek clarifications from the implementing agency about any decision-making, activity, scheme, income and expenditure incurred by the agency;
2. consider and scrutinize existing schemes and local activities of the agency; and
3. access registers and documents relating to all development activities undertaken by the implementing agency or by any other government department.

This requires transparency in the decision-making and activities of the implementing agencies. In a way, social audit includes measures for enhancing transparency by enforcing the right to information in the planning and implementation of local development activities.

Public documents for social audit

- a. All budget allocations, beneficiary lists, muster rolls, bills, vouchers, accounts, etc. must be available for public scrutiny.
- b. All applications for licenses/permits and certificates issued by local self-government institutions must have a serial number. Registers indicating date of application and date of clearance in each case should be available for

reference by any applicant. If possible, copies should be publicly displayed.

- c. Public assessment of tax, exemptions, grants, etc., to ensure there are no complaints of undue preferential treatment.

Several states have declared all *Gram Panchayat* plan documents related to beneficiary selection, budget cost estimates, etc. to be public documents. A daily notice to be posted at the site of all development works, lists names of workers, wages paid, cost and quantities of material, transport charges, etc.

The most appropriate institutional level for social audit is the *Gram Sabha*, which has been given ‘watchdog’ powers and responsibilities by the *Panchayati Raj* Acts in most States to supervise and monitor the functioning of *panchayat* elected representatives and government functionaries, and examine the annual statement of accounts and audit reports. These are implied powers indirectly empowering *Gram Sabhas* to carry out social audits in addition to other functions. Members of the *Gram Sabha* and the village *panchayat*, intermediate *panchayat* and district *panchayat* through their representatives, can raise issues of social concern and public interest and demand an explanation.

The *Gram Sabha* should have the mandate to: inspect all public documents related to budget allocations, list of beneficiaries, assistance under each scheme, muster rolls, bills, vouchers, accounts, etc., for scrutiny; examine annual

statements of accounts and audit reports; discuss the report on the local administration of the preceding year; review local development for the year or any new activity programme; establish accountability of functionaries found guilty of violating established norms/rules; suggest measures for promoting transparency in identifying, planning, implementing, monitoring and evaluating relevant local development programmes; and ensure opportunity for rural poor to voice their concerns while participating in social audit meetings.

Social audit committees

Social audit can also be used for auditing the performance of all three PRI tiers with a social audit committee at each level. These committees should not be permanent, but can be set up depending on the nature of programmes/schemes to be audited. Social audit committee members can be drawn from among programme stakeholders. It is advisable to use the services of retired functionaries of different organizations, teachers or persons of impeccable integrity living in the *Zilla Panchayat/Block Panchayat/Gram Panchayat* jurisdiction. Both facilitators and social audit committee members can be trained by social audit experts.

Steps in social audit in local bodies

1. Clarity of purpose and goal of the local elected body.
2. Identify stakeholders with a focus on their specific roles and duties. Social auditing aims to ensure a say for all stakeholders. It is particularly important that marginalized

social groups, which are normally excluded, have a say on local development issues and activities and have their views on the actual performance of local elected bodies.

3. Definition of performance indicators which must be understood and accepted by all. Indicator data must be collected by stakeholders on a regular basis.
4. Regular meetings to review and discuss data/information on performance indicators.
5. Follow-up of social audit meeting with the *panchayat* body reviewing stakeholders' actions, activities and viewpoints, making commitments on changes and agreeing on future action as recommended by the stakeholders.
6. Establishment of a group of trusted local people including elderly people, teachers and others who are committed and independent, to be involved in the verification and to judge if the decisions based upon social audit have been implemented.
7. The findings of the social audit should be shared with all local stakeholders. This encourages transparency and accountability. A report of the social audit meeting should be distributed for *Gram Panchayat* auditing. In addition, key decisions should be written on walls and boards and communicated orally.

Key factors for successful social audit

- Level of information shared with and involvement of stakeholders, particularly of the rural poor, women, and

other marginalized sections.

- Commitment, seriousness and clear responsibilities for follow-up actions by elected members of the *Gram Panchayat*.
- Involvement of key facilitators in the process.

How to enhance local capacities for social audit

- Organization of a mass campaign to increase public awareness about the meaning, scope, purpose and objectives of social audit.
- Establishment of a team of social audit experts in each district who are responsible for training social audit committee members (stakeholders).
- Implementation of training programmes on social auditing methods - conducting and preparing social audit reports, and presentation at *Gram Sabha* meetings.

Social development monitoring (SDM): a social audit process

SDM is a periodic observation activity by socially disadvantaged groups as local citizens who are project participants or target beneficiaries. It could also take the form of action intended to enhance participation, ensure inclusiveness, articulation of accountability, responsiveness and transparency by implementing agencies or local institutions, with a declared purpose of making an impact on their socio-economic status.

Conclusion

To sum up, the following proposals can be made to make social audit a regular and effective institution to promote the culture of transparency and accountability through the *Gram Sabha*.

1. States should enhance *Gram Sabha* powers to make them effective instruments of participatory decision-making and ensuring accountability of PRIs in local development planning.
2. An agency like the Ombudsman can be set up to look into complaints of local maladministration.
3. Development functionaries found guilty of violating established norms for local development planning should be punished.
4. It is important to ensure that rural poor are given due protection when they wish to stand up to speak against any misconduct.

6.11. Citizen charter

21st century good governance era has witnessed a large number of innovative ideas to introduce client focus orientation in bureaucratic behaviour in order to secure transparency and accountability in administration and to create alternate public delivery system. Citizen Charter is one of those initiatives.

A Citizen's Charter is basically a set of commitments made by an organization regarding the standards of service

which it delivers. It is an instrument which seeks to make an organization transparent, accountable and citizen friendly. It is based on the premise that the Citizen is “King” and government organizations exist not to rule but to serve the citizens. Citizen’s Charters are merely reflections of this principle. In order to ensure that both the service provider as well as citizens realize that public agencies are meant to provide service, each organization should spell out the services it has to perform and then specify the standards/norms for these services.

It was first launched in U.K. by John Major in 1991 through Citizen Charter Mark Award. Later on various countries adopted it through different names. Example : Australia (Service Charter, 1997), Belgium (Public Service Users’ Charter 1992), Canada (Service Standards Initiative, 1995), France (Service Charter, 1992), India (Citizens’ Charter, 1997), Jamaica (Citizens’ Charter 1994), Malaysia (Client Charter,1993), Portugal (The Quality Charter in Public Services, 1993), and Spain(The Quality Observatory, 1992) (OECD, 1996).

Characteristics of an ideal charter:

- Brief and clear description of services
- Standards in terms of time and quality of services.
- Procedure in getting the services
- Clear description of costs
- Specification of grievance redressal mechanism

- Provision of appellate body
- Participation of both citizens and employees in framing of charter
- Obligation of citizens
- Feedback mechanism
- And lastly, charter should be written in short, simple and de-jargonised language.

Themes on which citizen charter is based

- a. Standard : standard of performance
- b. Choice: services would be produced according to choice of citizens.
- c. Quality: quality should be satisfactory to people.
- d. Value: value to tax payer's money.

Principle to be adopted in citizen charter:

- Set standards of service;
- Be open and provide full information;
- Consult and involve;
- Encourage access and promote choice;
- Treat all fairly;
- Put things right when they go wrong;
- Use resources effectively;
- Innovate and improve; and
- Work with other providers.

Benefits of citizen charter

- Citizens come to know about organizational activities and procedures and performance, thereby facilitating transparency.
- Reduces corruption
- Promotes good governance
- Ensures accountability
- It leads to citizen friendliness and citizen convenience
- It is citizen friendly and convenient
- Increases morality in administration
- Raises efficiency and effectiveness in public delivery system.
- Reduces cost
- Increases participation
- Prevents delay and red tapism

Indian experiment with citizen charter

- In India, the idea was first mooted by the consumer organization called common cause in 1994. The next move came up in Conference of Chief Secretaries in 1996, to develop an Agenda for Effective and Responsive Administration. The conference recommended a phased introduction of citizen's charter.
- Chief Ministers' Conference in May 1997; one of the key decisions of the Conference was to formulate and operationalise Citizens' Charters at the Union and State

Government levels

- In 1997, Department of Administrative Reform & Public Grievances simultaneously formulated guidelines for structuring a model charter as well as a list of do's and don'ts to enable various government departments to bring out focused and effective charters.

Citizen Charter Key Issues

A survey done on Citizen Charter highlighted following shortcomings:

- In a majority of cases, the Charters were not formulated through a consultative process
- By and large, service providers were not familiar with the philosophy, goals and main features of the Charter
- Adequate publicity to the Charters had not been given in any of the Departments evaluated. In most Departments, the Charters are only in the initial or middle stage of implementation
- No funds have been specifically earmarked for awareness generation of Citizens' Charter or for orientation of the staff on various components of the Charter.
- Some important ministries have not adopted Citizen Charter on the ground that they are not public organisation like Ministry of Home Affairs, Ministry of Human Resource Development etc.
- Other Ministries have failed to implement Citizen Charter

despite having it like Ministry of Rural Development, Ministry of Panchayati Raj, Ministry of Women and Child Development

General weakness of citizen charter

- Poor design and weak content.
- No mention of citizen's responsibility.
- Absence of penal provisions in case of non-implementation of the spirit of charter.
- General attitude is that Citizen Charters are directed from top
- No training has been provided to staff
- Transfer of Staff at crucial stage of Charter formulation/implementation
- Standard of Service delivery marked in Charters are either too lax or too high
- Some charters are too detailed and some are too brief.
- Traditional culture of secrecy.
- Less budgetary support.
- Inadequate Groundwork by Government Agencies for making Citizen Charter. In most cases they had done just form filling exercise as observed by Public Accounts Committee.
- Charters are rarely updated according to changing needs and technology.
- Their resistance to change within Bureaucracy itself which was given the task for delivery of Services.

6.12. Right to information Act 2005

Until the 20th century, formal censorship not right to know was the common practice of most states. Autocrats frequently imprisoned critics, shutdown the process, forced author's into exile, or censored written and artistic works. The struggle against licensing requirements in Great Britain in the 17th century, the American Bill of Rights, and the French Declaration of the Rights of Man expanded standards of freedom in a way that inspired new realms of independent expression and thought not especially in Europe in the 19th and early 20th centuries but also in other parts of the world.

Freedom of speech and expression could be considered one of the most fundamental of all freedoms. While it is of dubious value to rate one freedom over another, freedom of expression is a basic foundation of democracy. It is a core freedom without which democracy could not exist. The term encompasses not only freedom of speech and media but also freedom of thought, culture and intellectual inquiring. Freedom of expression guarantees everyone's right to speak and write openly without state interference, including the right to criticize injustices, illegal activities and incompetence's. It guarantees the right to know and right to inform the public and to offer opinions of any kind, to advocate change, to give the minority the opportunity to be heard and became the majority and to challenge the rise of state tyranny by force of words.

Enactment of Right to Information Act, 2005, has ushered a new era leading us towards the development of the participatory democracy. It has led to a series of debates

among the public spirited persons, NGOs, intellectuals and has also stirred common masses. Right to Information implicitly forms part of fundamental rights guaranteed by the Constitution of India. Article 19 (1) (a) dealing with freedom of speech and expression is deemed to contain the basis of right to information. Democracy in real terms requires public to act as a sovereign force. Abraham Lincoln in his famous Gettysburg Address said that “democracy is government of the people, for the people and by the people”. In this regard Dr. Ambedkar told in Lok Sabha during Constitutional Assembly Debate that the people have fed up with the concept, of the people and for the people and they really want government by the people. This postulation can be materialized only by an informed citizenry. The conceptual roots of democracy lie in Articles 23 and 25 of the Universal Declaration of Human Rights, 1948 and in Part III and Part IV of the Constitution of India. In this regard, right to information is part of the constitutional framework enshrined as freedom of speech and expression. Explicit exercise of this right was not possible due to its derivative and implicit existence within the Constitution. This facilitated the need of a specific legislation enabling the citizens to enjoy the right available to them. Therefore there was an immediate need of a specific legislation to provide information to the citizens as a matter of right and to create a climate and culture for the right to information. The same message echoed in the juristic exposition by Justice Mathew in *Kesavananda Bharati v. State of Kerala* stated in these prominent words like: "Fundamental rights themselves have no fixed content; most of them are empty vessels into which each

generation must pour its content in the light of its experience.

Access to information held by a public authority was not possible until 2005. Lack of information precluded a person to realize his socio - economic aspirations, because he had no basis to participate in the debate or question the decision making process even if it was harming him. Official Secret Act, 1923 acted as a remnant of colonial rule shrouding everything in secrecy. The common did not have any legal right to know about the public policies and expenditures. It was quite ironical that people who voted the persons responsible for policy formation to power and contributed towards the financing of huge costs of public activities were denied access to the relevant information. This culture of secrecy resulted in prolific growth of corruption. In face of non-accountability of the public authorities and lack of openness in the functioning of government, abuse of power and unscrupulous diversion of the public money was the order of the day. Under such conditions, public and various NGOs demanded greater access to the information held by public authorities. The government acceded to their demand by enacting RTI Act 2005.

Origin of Right to Information

Global Overview The world in the 21st century has marked many a strides and paradigm shifts in the understanding, analysis and contextualization of the various cultures of the world affairs. RTI which is the cynosure of this discourse is not something new. In fact there is a long history at international level towards the attainment of this right and

mobilization of the masses for achieving it. With development of human ideals and establishment of democratic governments in most of the civilized countries, this topic came to the fore. Many international organizations and regional groups recognized this right to be part of their systems.

Constitutional Provisions facilitating Right to Information in India The incorporation of fundamental rights as enforceable rights in the modern Constitutional documents as well as in the internationally recognized charter of human rights, emanate from the doctrine of natural law and natural rights. In India at the time of national movement, freedom fighter promised to the people of India that they will provide the natural rights as fundamental rights through the “Suprema lex”, that is Constitution to the people of India. These fundamental rights are similar to human rights as declared by the United Nation in 1948¹⁴. In this context, Supreme Court said in *Chairman, Railway Board v. Chandrima Das* that “the applicability of Universal Declaration of Human Rights and principals thereof may have to be read, it need to, into the domestic jurisprudence.” It traces the events that expedited the passage of the 2005 Act, which provided the citizens of our country an important instrument to ensure transparency in governance. Rights are the interests which are recognized and protected by law. The sanctity of right enhances if it is adopted by the Constitution of a country. In Indian context, where the common people were subject of negligence for centuries, constitutional principles are the only hopes that can ensure freedom of all sorts. Information has a pivotal role in

strengthening public by making them knowledgeable.

Accessing information, however in a developing country like India is a cumbersome task to be accomplished by majority of less educated and illiterate citizenry oblivious of its rights. Red tapism and bureaucratic supremacy is highly hesitant in empowering people. Moreover the colonial legacy which was copious with policy of secrecy still haunts the system. Here the Constitution of India comes to protect the common masses by providing them certain fundamental rights within Part III. It is not easy to violate these fundamental rights except the procedures laid down by the law, which must be in the consonance with spirit of Constitution. Similarly, RTI is a right imbibed within Article 19 (1) (a) of the constitution. The Constitution of India although incorporates provisions of various leading democracies, is primarily founded on bedrock of Government of India Act, 1935. The system of governance therefore is not free from many vestiges of past which constituted a stumbling block in the free flow of information to the people.

The right to information has not been expressly provided in the constitution. It is derived from the Article 19 (1) (a). That is to say, it is implicitly imbibed within the constitutional framework. However, judiciary in several landmark cases has expressly held RTI as natural concomitant of Article 19 (1) (a). Let us now see some important cases which raised RTI to the status of a constitutional right because of the juristic interpretation of the learned judges. Judicial activism has carved the sculpture out of Article 19 (1) (a) -

which is the bedrock of democracy. Upon a thorough analysis it can be safely stated that direction towards the realization of RTI within the constitutional ambit incepted right from the verdict in *Hamdard Dawakhana v. Union of India*. Supreme Court for the first time declared RTI to be part of Article 19 (1) (a) in *Bennett Coleman v. Union of India*, where it held *Newsprint Control Order of 1972-1973* issued under the *Essential Commodities Act, 1955* to be ultra vires Article 19 (1) (a) of the constitution. Ray, CJ in the majority judgment opined that, "It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of press embodies the right of the people to read." Here what is referred as 'right of the people to read' refers to the right of the readers to get the information.

In *Dinesh Trivedi v. Union of India*, the apex court dealt with the right to information. Emphasizing the importance of this right, Court observed "Democracy expects openness and openness is concomitant of a free society and the sunlight is the best disinfectant." In this Case, while considering the questions of the disclosure of the *Vohra Committee Report* the Supreme Court once again acknowledged the importance of open government in a participative democracy.

The court observed that, "In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare". The strongest exposition

in this regard came from Justice K. K. Mathew in *State of U. P. v. Raj Narain* who emphasized that in “government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries.” The facts of this case were that Raj Narain who challenged the validity of Mrs. Gandhi's election required disclosure Blue Books which contained the tour program and security measures taken for the Prime Minister. Though the disclosure was not allowed, Mathew, J. held that the people of country were entitled to know the particulars of every public transaction in all its hearing.

The major breakthrough was attained in *S. P. Gupta v. Union of India* when the apex court imparted constitutional status to RTI. The point of contention in this case was again with regards to the claim for privilege laid by the government of India in respect disclosure of certain documents including correspondence between Chief justice of India and the Chief Justice of Delhi High Court in connection with the confirmation of Justice Kumar who was an additional Judge of the Delhi High Court. Justice Bhagwati, in his case opined that the concept of open government stating it to be the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1) (a) of the Constitution. It was held by the learned Judge that, RTI or access to information is essential for an ideally successful democratic way of life. Hence, it is

imperative that disclosure of information regarding the functioning of Government must be the rule and secrecy is justified only where the strictest requirement of public interest demands.

The RTI is not exclusively traceable in Article 19 (1) (a) only. There are some other provisions too, which in some or the other way provide right to access the information or to obtain the information to concerned persons. Article 22 (1) of the Constitution of India entitles every person who is detained to know the grounds of his or her detention. Similarly, Article 311 (2) of the Constitution provides that a government servant is entitled to know why he or she is being dismissed or removed or reduced in rank and to be given an opportunity to make representation against the proposed action. The horizon of RTI has expanded so much so that Supreme Court in a recent judgment has considered RTI to be the offshoot of Article 21 of the Constitution of India.

Movement for Right to Information in India

Paradoxes are galore in our system. But movements by the masses for a right to which they are entitled by the virtue of bring the part of democracy is a disturbing aspect. However it is true that, while the common public has been aware of the importance of RTI, those wielding the political clout have been reluctant in transforming the right into practical legal reality. It all began in 1990 when the Mazdoor Kisan Shakti Sangathan (MKSS), a collective of farmers and labourers, was formed in Devdungri, Rajasthan. Members of the collective were working for a state employment generation scheme, yet were

being paid significantly less than the guaranteed minimum wage.

This enticed them to demand their legal entitlement. In response they got an answer that the official documents are not consonant with the necessary work that ought to be done by them. Such official documents were wrapped in the walls of bureaucratic 'secrecy' unavailable even to the persons, to which they were related. However, some clues by the sympathetic officer indicated towards enormous anomalies. Tackling these discrepancies required some unique medium to sensitize the people directly and easily for this purpose; MKSS adopted the means of placing the disclosed information in the public domain through village based public hearing called as *jan sunwais*. With the beginning of the RTI entered with this movement, which made people realize that secrecy enabled corrupt officials to siphon off minimum wages and other entitlements of the poor. A movement demanding the RTI was thus born and its first champions were the disempowered rural workers in the remote rural area of Rajasthan.

Salient features of right to information act, 2005:

- The term Information includes any mode of information in any form of record, document, e-mail, circular, press release, contract sample or electronic data etc.
- Any citizen (excluding the citizens within J&K) may request information from a 'public authority' (a body of Government or 'instrumentality of State') which is required to reply expeditiously or within thirty days.

- Citizens have a right to: request any information (as defined); take copies of documents; inspect documents, works and records; take certified samples of materials of work; and obtain information in the form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode.
- The Act relaxes the Official Secrets Act of 1889 which was amended in 1923 and various other special laws that restricted information disclosure in India. In other words, the Act explicitly overrides the Official Secrets Act and other laws in force as on 15 June 2005 to the extent of any inconsistency.
- Applicant can obtain Information within 30 days from the date of request in a normal case. In specific circumstances Information can be obtained within 48 hours from time of request. If it is a matter of life or liberty of a person.
- The Act also requires every public authority to computerise their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. The Act, in particular, requires every public authority to publish 16 categories of information. This includes the particulars of its organisation, functions and duties; powers and duties of its officers and employees; procedure followed in the decision making process; norms set for discharge of its functions; rules, regulations, instructions, manuals and records, held by it or under its control or used by its

employees for discharging its functions; etc.

- The Act enumerates the types of information(s) that are exempted from disclosure.[7] However, these exempted information(s) or those exempted under the Official Secrets Act can be disclosed if public interest in disclosure outweighs the harm to the protected interest.[8] Also, the exempted information(s) would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates.
- Penalty for refusal to receive an application for information or for not providing information is Rs. 250/- per day but the total amount of penalty should not exceed Rs. 25,000/-
- If an applicant is not supplied information within the prescribed time of 30 days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the PIO. If still not satisfied the applicant may prefer a second appeal with the Central Information Commission (CIC)/State Information Commission (SIC) within 90 days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

Key provisions:

- **Section 2(h):** Public authorities means all authorities and bodies under the Constitution or any other law, and inter alia includes all authorities under the Central, state governments and local bodies. The civil societies substantially funded, directly or indirectly, by the public funds also fall within the ambit’
- **Section 4 (1)(b):** Maintain and proactively disclose information.
- **Section 6:** Prescribes simple procedure for securing information.
- **Section 7:** Fixes time limit for providing information(s) by PIOs.
- **Section 8:** Only minimum information exempted from disclosure
- **Section 19:** Two tier mechanism for appeal
- **Section 20:** Provides penalties in case of failure to provide information on time, incorrect, incomplete or misleading or distorted information.
- **Section 23:** Lower courts are barred from entertaining suits or applications. However, the writ jurisdiction of the Supreme Court and high courts under Articles 32 and 225 of the Constitution remains unaffected.