



BLE-001

Introduction to the Indian Legal System

Block

1

RULE OF LAW: PRINCIPLES AND CONCERNS

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November, 2009

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ISBN-978-81-266-4287-8

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Further information on the Indira Gandhi National Open University courses may be obtained from the University's office at Maidan Garhi, New Delhi-110 068 or the official website of IGNOU at www.ignou.ac.in

Printed and published on behalf of Indira Gandhi National Open University, New Delhi by Director, SOL, IGNOU, New Delhi-110068.

Laser Composed by : Tessa Media & Computers, C-206, A.F.E-II, Jamia Nagar, New Delhi-25

Printed at : Gita Offset Printers, C-90, Okhla Industrial Area-I, New Delhi-110020

BLE-001 INTRODUCTION TO THE INDIAN LEGAL SYSTEM

We begin our exploration of our laws and the legal system with the first course – “*An Introduction to the Indian Legal System*”. A legal system comprises of laws which set out our rights, duties and remedies and also the institutional mechanisms by which these laws can be implemented and enforced. These include administrative machinery, the judiciary and the police. The Constitution of India is the fundamental law of the land and the content and functioning of our legal system is governed by our constitutional values.

The basic premise underlying a legal system is the belief in the ‘rule of law’. In the first block, we will locate the concept of ‘rule of law’ within our constitutional framework and explain it. We will read about the values enshrined in our constitution that inform our legal system. We will impart a working knowledge of how we are governed and the role of citizens in democratic governance under rule of law.

Our constitution guarantees us certain rights, but at the same time also imposes some duties on us. This will form the subject matter of our second block. The makers of our constitution have given us certain fundamental rights to enable us to live a life of dignity, without any fear, and to realise our full potential. While guaranteeing civil and political rights, the constitution provides a roadmap for the state in the form of directive principles of state policy, for the progressive realisation of social and economic rights. An activist judiciary, however, has been interpreting the right to life, an omnibus fundamental right, to include rights, such as, right to health and right to a clean environment.

In the third block, we will introduce you to institutions that have a mandate to make, implement and enforce laws. Separation of power implies power sharing between the different organs of the State, such that no one organ becomes all-powerful. Our constitution sets out in detail the institutional arrangement for this power sharing. The bulk of the Articles in the Constitution provide for various institutions, such as, legislature, executive, judiciary, local governments, Election Commission, Attorney General, and Comptroller and Auditor General. All these institutions collectively provide the checks and balances so essential for the success of our democracy.

Lack of access to the legal system undermines the citizen’s faith in the rule of law and affects the credibility of our legal structures to deliver justice. This concern has prompted many efforts by both state and civil society. In the fourth block, we discuss some select experiences and innovations to facilitate access to justice.

Are we truly an inclusive society, where socio-economic status does not dictate the extent of rights enjoyed by an individual? Is our system of governance people-centric, transparent and accountable? As we proceed with this course, we want you to approach it with a spirit of inquiry, with the Preamble to our Constitution providing the point of reference.

Get yourself a copy of the Constitution and let us get started.

BLOCK 1 RULE OF LAW: PRINCIPLES AND CONCERNS

The Constitution provides a dynamic value system, which is subjected to constant interpretation and amendments. This block provides an overview of, and the rationale for the constitutional system that we have adopted. It introduces the values enshrined in our Constitution and the institutional mechanics for realising these values. We will impart a working knowledge of how we are governed and our role as citizens in democratic governance under rule of law.

A legal system comprises of laws setting out rights, duties, remedies and the institutional mechanisms for enforcement of these laws, such as, administrative machinery, judiciary, police and prisons. The basic premise underlying a legal system is the belief in the '*rule of law*'. We will explore the concept of 'rule of law' in the first unit. We will identify the requirements of this concept, its application in our country, and the debates surrounding the concept.

The concept of rule of law needs to be understood in the Indian context and in the light of our constitutional values. We will take you through the values enshrined in our constitution in the second unit on 'Constitutional Values'.

Our greatest strength is our democratic system. In the third unit, we will define democracy and describe the democratic process in our country, including the conduct of elections. We will see what democracy means for an ordinary citizen.

UNIT 1 RULE OF LAW

Structure

- 1.1 Introduction
- 1.2 Objectives
- 1.3 Dicey's Thesis on Rule of Law
 - 1.3.1 Absence of Arbitrary Power
 - 1.3.2 Equality before the Law
- 1.3.3 Supremacy of Law
- 1.4 Rule of Law in India
 - 1.4.1 Rule of Law and the Constitution of India
 - 1.4.2 Rule of Law and Administrative Law in India
- 1.5 The Wider Meaning of Rule of Law
- 1.6 Concerns
- 1.7 Summary
- 1.8 Terminal Questions
- 1.9 Answers and Hints
- 1.10 Glossary
- 1.11 References and Suggested Readings

1.1 INTRODUCTION

Do you believe that the law should protect everyone equally and punish the wrongdoer, irrespective of his/her caste, race, religion, and status? Or should there be different laws and procedures to govern different persons? These are a few questions that might arise when you study any legal system. Learning the concept of 'Rule of Law' enables you to address these questions in a positive frame of mind.

Every country has a set of legal rules that apply to all citizens or a distinct set of people. The fundamental principle of a democratic nation is that no one is above the law, which is also known as Rule of Law. Rule of Law makes everyone subordinate to the law, irrespective of his/her status in the society. Under Rule of Law, the law does not recognize the status of a person for both protecting rights and punishing for violations.

Therefore, Rule of Law is a fundamental value on which rests any democratic political system. Rule of Law refers to a government subject to the law and a system in which the law will prevail over the whims of government officials. The officers of the Government are as equal before the law as any ordinary citizen. It denotes equality before the law and absence of arbitrary powers with government officials. Accordingly, no bureaucrat or minister, not even the King is above the law. Every person, no matter what position she/he holds or what powers she/he otherwise exercises, is equal before the law.

The term ‘Rule of Law’ is derived from the French phrase *la principe de legalite* (the principle of legality), which refers to a government based on principles of law and not of men. Thus, Rule of Law not only advocates equality in protection and punishment, it also means absence of arbitrary exercise of power by government.

Rule of Law subjects every governmental action to the test of legality. That is, all official action should be legal. For instance, if a minister gives an arbitrary order, it will be against Rule of Law and the Courts can quash such an order. The minister, as in this example, will not be allowed to keep himself/herself above the law and he/she will not be given any immunity as far as an illegal action is concerned. Therefore, Rule of Law is a key index that determines the quality of good governance in a country.

In this Unit, we will discuss the concept of Rule of Law and its principles, and how it has been imbibed in the Indian Constitution and the legal system. We will also explore the challenges faced by our nation in implementing Rule of Law.

1.2 OBJECTIVES

After reading this unit, you should be able to:

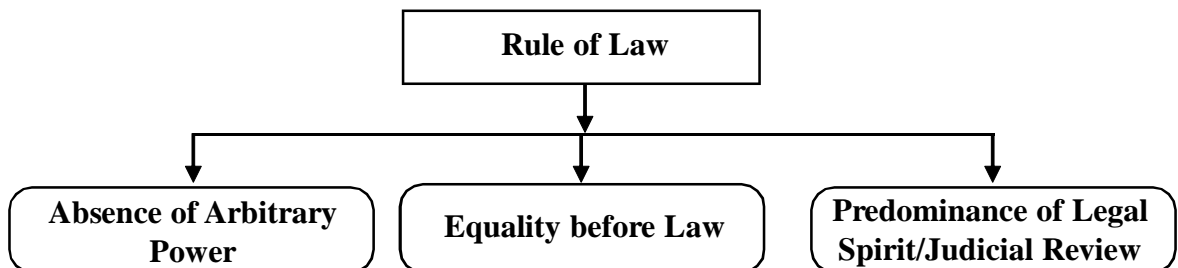
- ✓ explain the concept of Rule of Law;
- ✓ state the principles of Rule of Law;
- ✓ explain the necessity and efficacy of Rule of Law;
- ✓ demonstrate how Rule of Law has been imbibed in the Indian legal system; and
- ✓ identify the challenges in implementing Rule of Law in the present-day context.

1.3 DICEY’S THESIS ON RULE OF LAW

The concept of Rule of Law is of old origin. Edward Coke is said to be the originator of this concept, when he said that the King must be under God and Law. This was against the age-old belief that the ‘King can do no wrong’ and that the King makes the law and therefore is above the law. In India, the concept can be traced to the *Upanishads*, which provide that “Law is the King of Kings. It is more powerful than they (Kings). There is nothing higher than law.”

Professor A.V. Dicey developed this concept in the course of time and expounded the concept of Rule of Law in his treatise, *Law of the Constitution*.

As per A.V. Dicey, the Rule of Law is based on three principles depicted in the following figure:



1.3.1 Absence of Arbitrary Power

It is not possible for any government to function effectively unless government officers are allowed to exercise discretionary power. 'Discretionary power' means the power to act in the way the officer deems fit, which may result in the abuse of power by administrative officers.

When Professor Dicey formulated the concept of Rule of Law, he was very well aware of the harm that might result from the use of power by State officials. Therefore, he advocated that arbitrary power shall not be conferred on any officer. Arbitrariness denotes unreasonableness and is against all norms of law and justice. The officers have to carry out the law made by Parliament and should not exercise any more power.

Main features

- No person could be punished or made to suffer in body or property except for breach of law.
- The State cannot punish any person except for violation of law.
- Any wide discretionary power or arbitrary power vested in the State violates Rule of Law.
- In the most fundamental sense, this principle attempts to protect the citizens from arbitrary and abusive use of government's power.
- The authorities who are empowered to act must do so in accordance with the law.

For example, if a Transport Director is given uncontrolled discretionary power to allow or refuse or cancel permits for running public transport buses, his power may result in arbitrary cancellation as well as allotment of bus permits. He may act as per his whims and interests, in any unreasonable or arbitrary way. So Dicey suggested that the officers are not to be given any power that would lead them to act arbitrarily. According to Dicey, wherever there was discretion, there was room for arbitrariness.

Rule of Law is against any form of arbitrary action on the part of the government. Any unreasonable or arbitrary action is considered to be illegal. Therefore it can be nullified by a court of law.

Activity

Analyse the governmental action in the following instances and identify the presence of arbitrary power, if any.

- Government issues an order for acquisition of private property after paying reasonable compensation to the property owners. The purpose for acquisition is not mentioned in the order. The line of shops on one side of the Market Road is accordingly ordered to be vacated within 15 days. The shopkeepers are not given any chance to present their objection to the said order.
- The Government notifies to withdraw the recognition of all primary schools, which do not comply with the safety requirements, as specified in a law passed by the Goa Legislature. The school authorities are given 6 months' time to adapt to the requirements.
- The Minister of Petroleum is given the power to allot petrol pump outlets as he thinks fit. He makes all the allotments to his near friends and relatives.

In the first illustration, the order is arbitrary and against Rule of Law because the government is exercising uncontrolled power. The shopkeepers are not even allowed to voice their claims. In the second illustration, Government is merely implementing the requirements as mentioned in the law made by the Legislature. In the third illustration, the minister’s action is totally arbitrary and violates Rule of Law.

Thus we can see that the principle underlying Rule of Law is that the government (executive) must act under the law, and not by its own whims and fancies. The Executive does not have and cannot have any power of its own. Whatever power it exercises are given to it by a law made by the Legislature.

<p>Self-assessment Questions</p> <p>1) What is the meaning of ‘arbitrariness’?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>2) How does Rule of Law control arbitrariness?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

1.3.2 Equality before the Law

Rule of Law not only means that no person is above the law, but also that everyone, irrespective of his/her rank or status, is subject to the ordinary law and to the jurisdiction of ordinary court. It means universal subjection of all classes to one law administered by ordinary court. ‘Universal subjection’ means that every person from Prime Minister to clerk is under the same responsibility and liability for violation of law. Every person is subjected to one and the same body of law.

In any polity, disputes may arise between individuals and also between individuals and the government. According to A.V. Dicey, equality before law denotes application of the same system of law and procedure to all such disputes, irrespective of whether government is a party or not. Different laws and different procedure to deal with disputes wherein government is a party violates Rule of Law. Any such attempt would amount to protecting government officials. Therefore, the legality of the acts of the government should be decided by the same courts that are independent of the Executive.

Main features

- All are equal before the law.
- Every person is liable for breach of law, irrespective of his/her status.
- No special treatment or privileges for government officials.
- Government officials are liable for breach of law, just like any ordinary citizen.
- No separate courts to deal with disputes between government and citizens.
- All disputes are subjected to the jurisdiction of the same courts.
- Courts must be independent of the Executive.

Illustrations

- 1) An university makes a rule allowing only persons working in the Government sector to take admission in evening college. This would be violative of equality before law as it discriminates between government servants and non-government servants.
- 2) Government announces a policy to give preference to less educated persons over more educated ones in the matter of appointing dealers for ration shops. Thereafter, appointments are made exclusively on the basis of interview. This policy violates the principle of equality before law, as the less educated are given special treatment over those who are more educated.
- 3) Parliament passes a law stating that only graduates shall have the right to vote for the Lok Sabha Elections. Such a law would be violative of equality before law because a valuable right of the citizen is denied on the ground of lack of educational qualification. Here, graduates and the undergraduates are treated differently by the law. Such a differential treatment is against the concept of treating everyone equally before the law.

Self-assessment Questions

3) What does the phrase “Equality before law” signify?

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1.3.3 Supremacy of Law

The general principles of British Constitutional law, which is unwritten, are developed by the decisions of courts, especially individual rights. As these rights are recognised by the courts and subsequently got Constitutional status, Dicey viewed them as supreme and having higher protection from violation. He described it as predominance of the legal spirit. The first two principles of rule

of law become meaningless when they cannot be secured by courts. Therefore, the essence of the third principle is that the citizens should be able to enforce the rights that are recognised and the courts must be sufficiently empowered for that purpose.

Dicey opined that mere recognition of these rights by a written constitution would not automatically promote Rule of Law as many written constitutions in the world also enumerate exceptions wherein these rights cannot be enforced. Further, the constitutions may also make it permissible for Parliament to amend these rights. For example, Articles 358 and 359 of the Indian Constitution permit the President of India to suspend certain Fundamental Rights during a national emergency. Article 368 empowers Parliament to amend the constitution. Further, to promote the supremacy of law, a system of strong, independent and impartial courts is mandatory.

Main Features

- Mere enumeration of rights is not sufficient.
- Recognised rights should have proper remedies for violation.
- Rights should be enforceable in Court.
- Courts should have the power of judicial review.
- Courts need to be empowered to protect the rights of the citizens.

Self-assessment Questions

- 4) What is the essence of the principle ‘Supremacy of Law’?
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- 5) Will a written Constitution automatically promote Rule of Law?
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- 6) Name the three principles on which the Rule of Law is based?
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1.4 RULE OF LAW IN INDIA

1.4.1 Rule of Law and the Constitution of India

A state is generally viewed as just an independent political entity. In this narrow view, the functions of the state are restricted to maintenance of law and order and protection of the nation from external invasion. However, a modern state has become more complex and carries out a wide range of functions. For example, Government controls the economic, social and political relations of citizens. Government carries out its activities through basic organs such as the Legislature, Executive and Judiciary. These organs are governed by a fundamental law called Constitutional law. Constitutional law being the fundamental and the highest law of the land, all other laws in the nation need to be consistent with the philosophy of the Constitution. Moreover, the three organs of the government having been created by the Constitution are also subject to it. Therefore, recognition of Rule of Law by the Constitution would automatically ensure Rule of Law in the nation.

Rule of Law is amply imbibed in the Constitution of India. It runs as a golden thread through the fabric of Indian Constitution. Several provisions in the Indian Constitution apparently promote the idea of Rule of Law.

Absence of arbitrary power, the first principle of Rule of Law, can be traced from the following provisions of the Constitution of India:

- 1) Right to Equality under Article 14 of the Indian Constitution includes right against arbitrary use of power by the government. Supreme Court in *E.P. Royappa v State of Tamil Nadu* (AIR 1974 SC 555) and *Maneka Gandhi v Union of India* (AIR 1978 SC 597) held that Article 14 embodies a guarantee against arbitrariness. Equality is antithetical to arbitrariness and any government action that is unreasonable or arbitrary denies equality, and is void. Article 14 not only strikes at arbitrariness in executive or administrative action but also legislative action. Therefore, Article 14 imposes an obligation on the government to act in a just, fair and reasonable manner.
- 2) Right to life and personal liberty under Article 21 requires the government to act justly, fairly and reasonably in matters of life and liberty.
- 3) Article 245 read with Seventh Schedule of the Indian Constitution deals with distribution of legislative power between Centre and State. This Constitutional scheme prescribes three lists such as Central List, State list, and Concurrent list. Under this scheme, Central Government can pass law only on subjects mentioned in Central list, State government can pass law only on State list and both Centre and State governments can pass a law on the Concurrent list.

Equality before law, the second principle of Rule of Law, can be traced from the following provisions of the Constitution of India.

- 1) The Preamble of the Constitution of India intended to secure equality of status and opportunity.
- 2) Articles 14 to 18 in Part III of the Indian Constitution guarantee the fundamental right of equality. Article 14 provides for equality in general and states that every person is equal before the law and State shall provide

equal protection to all persons. Article 15 prohibits the State from discriminating against its citizens on grounds of race, religion, caste, sex, and place of birth. Article 16 guarantees all citizens equality of opportunity. Article 17 prohibits the practice of *untouchability* whereas Article 18 prohibits titles.

- 3) In several cases the Supreme Court held that Right to Equality is a Basic Structure of the Constitution and could not be abridged or amended. Even though Article 14 confers equality as a Fundamental Right, it does not mean absolute equality. Equality means equality among equals and like must be treated alike.
- 4) Therefore, special treatment for different people is not a violation of Article 14. For example, reservations for backward classes, different tax slabs on the basis of income is not against equality. Similarly, different courts to deal with different cases do not violate equality as the special courts are also under the supervisory jurisdiction of the ordinary courts.

Supremacy of the law, the third principle of Rule of Law, is well recognised by the Indian Constitution under Articles 13, 32, and 226.

- 1) Article 13 expressly provides for judicial review over the legislations passed by the legislature. Under this Article, no law, made before or after the enactment of our Constitution, should violate Part III of the Constitution. Any such law would be void. This protection was extended even to the rules, regulation, executive orders and customs having force of law.
- 2) Article 32 confers writ jurisdiction on the Supreme Court under which the court has power to issue any order or grant any relief for violation of Fundamental Rights. This jurisdiction of the Supreme Court cannot be restricted, except according to the provisions of the Constitution. Right to approach the Supreme Court under Article 32 itself is a Fundamental Right.
- 3) Article 226 confers similar jurisdiction on High Courts. High Courts can exercise writ jurisdiction.

Any law restricting the jurisdiction of the court under Articles 32 and 226 would be null and void.

<p>Self-assessment Question</p> <p>7) How has supremacy of the judiciary in ensuring Rule of Law been enforced in the Indian Constitution?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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1.4.2 Rule of Law and Administrative Law in India

In a welfare state, the Government has countless functions to perform. To mention a few, it has to take care of law and order, protect the country from external aggression, provide welfare services like healthcare, education and housing schemes, provide public utility services like water supply and electric supply. It also has to control the market to ensure quality of goods and make available essential commodities at a fair price. There is, in fact, no end to the list of governmental functions. To perform this huge task, the government confers powers on its officers and imposes duties on them.

The chances of corruption and abuse of power are more when more powers are given to the officers. Administrative Law is a branch of law that helps to control governmental exercise of power. Administrative Law deals with the powers and functions of Government officials, and control mechanisms over their use of power. Therefore, we can see that the focus of Rule of Law and Administrative Law is one and the same. Both aim at control of power and prevent arbitrary use of power by officials.

However, it is noteworthy to mention here that when Dicey formulated his Rule of Law, he thought that Administrative Law was against Rule of Law. Let us see this conclusion drawn by Dicey in the form of a logical premise

Statement 1: Administrative law deals with giving of powers, that too discretionary power, to officers.

Statement 2: Wherever there is discretion, there is scope for arbitrariness.

Statement 3: Rule of law is against arbitrariness.

Inference (Dicey's): Administrative Law is opposed to Rule of Law.

This inference has been proved to be wrong because Administrative Law deals not only with conferring of powers on the officers, but also focuses on controlling the powers of the government. It is Administrative Law that makes it possible for the Courts to strike down any arbitrary exercise of power by the Government.

Moreover, as Dicey thought, absence of arbitrary power need not necessarily mean absence of discretionary power for the reason that a welfare state can function effectively only if such powers are given to the executive officers. In reality, Administrative Law does not infringe upon Rule of Law. On the contrary, Administrative Law, being a system of control of administrative power, promotes and strengthens Rule of Law.

As discussed, the scheme of the Constitution of India is based on the concept of Rule of Law, wherein any authority is under the supremacy of law. Rule of Law requires that any abuse of power by a public officer should be subject to control of courts. The Supreme Court of India and the various High Courts are authorised by the Constitution of India to strike down any arbitrary action on the part of the Government.

The concept of Rule of Law is often invoked to challenge unreasonable governmental action. The whole idea is that Administration cannot exercise arbitrary powers and that it should function in accordance with the law. The

obligation to act fairly on the part of administrative authorities was evolved by the Courts to ensure Rule of Law and to prevent failure of justice. It is a fundamental norm of Rule of Law that every governmental action shall be fair. Any action that is unfair tends to be arbitrary and the first principle of Rule of Law, as we have already seen, is absence of arbitrariness. To ensure fairness in governmental action, Courts have developed the principles of natural justice. There are two main principles of Natural Justice, namely:

- 1) Rule against Bias
- 2) *Audi Alteram Partem* or Rule of Fair Hearing

‘Rule against Bias ‘means that no one shall be a judge in her/his own cause. This aims at settlement of disputes by an impartial judge. It also means that any governmental authority exercising a decision-making function should be impartial and should not have any interest in the subject matter of the dispute; also s/he should not be partial towards any party to the dispute. For example, if a member of an ‘Interview-cum-Selection Committee’ is also a candidate, it would amount to bias and therefore a violation of Natural Justice and Rule of Law

‘*Audi Alteram Partem*’ means ‘hear the other party’. That is, the judge shall not decide a matter unless both the parties are given an opportunity to present their case. Similarly, when any administrative authority is taking an action which affects the rights and liabilities of a person, Natural Justice demands that the person should be given a right to be heard. For example, if a government employee is dismissed from service, s/he should be given an opportunity of being heard before the dismissal order is passed. If such a chance was not given to the employee, the dismissal order would be violative of Natural Justice and therefore against Rule of Law.

Further, Rule of Law would be strengthened if the Executive were to be required to formulate its reasons when reaching its decisions, and to communicate them to the concerned party.

The Supreme Court of India has held in *Maneka Gandhi v Union of India* (AIR 1978 SC 597) and more clearly in *Tulsiram Patel v Union of India* (AIR 1985 SC 1416) that non-observance of the principles of natural justice in State action is violative of Rule of Law.

Thus, the principles of Natural Justice aim at promoting fair governance, which is the main concern of Rule of Law and of Administrative Law.

Thus, Indian Administrative Law has benefited from Rule of Law by way of establishing judicial review of administrative action to ensure that administration acts in accordance with law.

<p>Self-assessment Question</p> <p>8) What are the two main principles of Natural Justice?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

1.5 THE WIDER MEANING OF RULE OF LAW

Rule of Law can be understood and applied in two senses, i.e.

- 1) Formalistic/Narrow sense
- 2) Ideological /Wider sense.

In the formalistic sense, Rule of Law merely means that the government should be subject to law, so that law will prevail and not government officials. Usually Rule of Law is defined and understood to be a formalistic application of the principle of equality, adequate control over governmental power and supremacy of the Judiciary. However, in developing and under-developed countries, Rule of Law means much more than these. Improving the quality of life and ensuring safe and healthy living conditions all go towards securing a just democratic order. Hence, the wider meaning of Rule of Law assumes significance.

In its ideological sense, Rule of Law represents an ethical code for the exercise of governmental power. Such an ethical code would necessarily contain within it accountability and respect for human rights. The holders of public power should be made accountable for the exercise of their power. A government that fails to respect and promote human rights would invariably be deviating from the concept of Rule of Law.

The modern concept of Rule of Law was developed by the International Commission of Jurists (ICJ). According to this formulation, the Rule of Law is a dynamic concept and implies the following principles.

- The individual is **possessed of certain rights and freedoms** and that she/he is entitled to protection of these rights and freedoms by the State.
- There is an absolute need for an **independent judiciary** for ensuring effective machinery for the protection of fundamental rights and freedoms.
- **Equal access to justice:** The primary obligation of the legal profession is to use its best efforts to ensure that adequate legal advice and representation are provided. This would include extending free legal aid to the poor.
- The **establishment of social, economic and cultural conditions** would permit all individuals to live in dignity and to fulfill their legitimate aspirations. This would include recognition of civil and political rights as well as the establishment of the social, economic, educational and cultural conditions, which are essential for the full development of the individual's personality.

The modern concept of Rule of Law is especially important in Third World countries, where, in reality, the principles of Rule of Law (Absence of arbitrariness, Equality before law and Predominance of the legal spirit) will prevail only if the government creates socio-economic and politico-cultural conditions in which the dignity of individuals can be realised.

Self-assessment Questions

- 9) What is the modern concept of Rule of Law?

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10) Explain how this modern view would be relevant for the Third World countries?

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1.6 CONCERNS

Strict implementation of Rule of Law in a legal system like India poses several serious challenges. The socio-economic and political conditions in India raise many concerns on effective implementation of Rule of Law. Some of the concerns/challenges are listed below. However, this list is not exhaustive.

- 1) Poverty: Offering special treatment by way of reservations may *per se* appear to be a violation of Rule of Law. However, several decades of exploitation and uneven distribution of wealth in India has resulted in rendering certain sections of the people backward.
- 2) Fundamentalism and communalism: Religious intolerance, particularly against minorities would seriously undermine the role of rule of law. Further, this situation becomes even more complex due to special protection conferred on minorities by the constitution.
- 3) Regionalism: Raise of regionalism endangers the unity of the nation. Demand for special treatment on the basis of demographical area severely weakens the rule of law.
- 4) Terrorism: Terrorism and terrorist attacks on the public life demands stringent laws. Laws enacted to counter terrorism, particularly preventive detention laws, would confer a lot of discretion on law-enforcement agencies. This discretionary power might result in arbitrariness, and hence violates Rule of Law.
- 5) State violence: Violation of law by law-enforcing agencies like the police and armed forces, particularly in cases of arrest and detention, would have a severe impact on Rule of Law. This is more so as the government may not be interested in punishing these agencies as they form part of government machinery and to uphold the law and order.

1.7 SUMMARY

Let us sum up what we have studied in this unit:

- ✓ We discussed the concept of rule of law and how important it is in making democracy meaningful. We also learned the three principles of Rule of law as formulated by A.V. Dicey.

- ✓ We further discussed the adoption of Rule of Law in India. Under this section, we analysed how rule of law was imbibed in the Constitution of India. Further, we also learned various provisions under the Indian Constitution dealing with Rule of Law.
- ✓ We saw how Rule of Law, though viewed as an objection to administrative law, actually strengthened the administrative law. We also understood how the principle of natural justice promotes Rule of Law in administrative law.
- ✓ We then examined how the scope of Rule of Law widened, particularly in the Third World context.
- ✓ We also discussed the concerns and challenges that lie ahead for effective implementation of Rule of Law.

1.8 TERMINAL QUESTIONS

- 1) Discuss the meaning of Rule of Law. Examine various principles of Rule of Law as laid down by A.V. Dicey.
- 2) Does the Indian Constitution follow Rule of Law?
- 3) Is Rule of Law against administrative law? How far has Rule of Law strengthened administrative law in India?

1.9 ANSWERS AND HINTS

Self-assessment Questions

- 1) Arbitrariness denotes unreasonableness and is against all norms of law and justice. It means abuse of power by government officials.
- 2) Rule of Law is against any form of arbitrary action on the part of the government. Any unreasonable or arbitrary action is considered to be illegal. Therefore it can be nullified by a court of law. The principle underlying Rule of Law is that the government (executive) must act under the law, and not by its own likes and fancies. The Executive does not have and cannot have any power of its own. Whatever power it exercises are given to it by a law made by the Legislature, which is subject to judicial review.
- 3) 'Equality before law' signifies that no person is above the law and everyone despite his/her rank or status is subject to the ordinary law and jurisdiction of ordinary court. It means universal subjection of all classes to one law administered by ordinary court. 'Universal subjection' means that every person from Prime Minister to clerk is under the same responsibility and liability for violation of law. Every person is subjected to one and the same body of law.
- 4) The essence of the principle of supremacy of law is that the citizens should be able to enforce the rights that are recognised and the courts must be sufficiently empowered for that purpose.
- 5) Dicey opined that mere recognition of these rights by a written constitution would not automatically promote Rule of Law as many written constitutions in the world also enumerate exceptions wherein these rights cannot be enforced. Further, the constitutions may also make it permissible for Parliament to amend these rights.

- 6) The three principles on which the Rule of Law is based are:
 - 1) Absence of Arbitrary power
 - 2) Equality before law
 - 3) Predominance of legal spirit/ Judicial Review
- 7) Judicial review has been provided for in the Indian Constitution in Art. 13, 32 and 226. Legislations passed by the legislature cannot violate Part III of the constitution or else they can be declared null and void by the court. Also a person can approach the Supreme Court & High Courts under Articles 32 & 226 respectively if his/her fundamental rights are violated.
- 8) The two main principles of natural justice are:
 - 1) Rule against Bias: It means no one shall be a judge in her/his own cause.
 - 2) *Audi Alteram Partem*: It means that the judge shall not decide a matter unless both parties are given an opportunity to present their case.
- 9) The modern concept of Rule of Law was developed by the International Commission of Jurists. According to this formulation, the Rule of Law is a dynamic concept and implies the following principles.
 - The individual is **possessed of certain rights and freedoms** and that she/he is entitled to protection of these rights and freedoms by the State.
 - There is an absolute need for an **independent judiciary** for ensuring effective machinery for the protection of fundamental rights and freedoms.
 - **Equal access to justice**: The primary obligation of the legal profession is to use its best efforts to ensure that adequate legal advice and representation are provided. This would include extending free legal aid to the poor.
 - The **establishment of social, economic and cultural conditions** would permit all individuals to live in dignity and to fulfill their legitimate aspirations.
- 10) The modern concept of Rule of Law is especially important in Third World countries, where, in reality, the principles of Rule of Law (Absence of arbitrariness, Equality before law and Predominance of the legal spirit) will prevail only if the government creates socio-economic and politico-cultural conditions in which the dignity of individuals can be realised.

Terminal Questions

- 1) Rule of Law means that the government and the citizens are equally subject to the same law. It implies absence of special privileges and immunities on the government. The three principles of Rule of Law are: Absence of Arbitrary Power, Equality before Law and Predominance of the Legal Spirit.
- 2) The Indian Constitution has adopted the concept of Rule of Law. Article 14 of the Constitution prohibits the State from denying to any person equality before law and equal protection of the laws within the territory of India. Articles 19 and 21, read with Article 14 envisage absence of arbitrariness in

governmental functions. Predominance of the legal spirit is made possible by virtue of the power given to the Supreme Court and the High Courts to strike down arbitrary and unconstitutional action by the Legislature and Executive.

- 3) Dicey had projected Administrative Law as being opposed to Rule of Law, because he thought that giving of discretionary power to government officials would lead to arbitrariness. However, Administrative Law deals not only with conferring powers on the government officials, but also prescribes limitations on the governmental powers. It also provides remedies to the citizens against unwarranted and arbitrary state action.

1.10 GLOSSARY

Rule of Law	:	A system in which the law will prevail over the whims of government officials.
Discretionary power	:	The power to act in the way the officer deems fit.
Equality before the Law:		Universal subjection of all classes to one law administered by the courts.
Supremacy of Law	:	A legal system wherein the citizens are able to enforce their rights and the courts are empowered and independent, for that purpose.
Constitutional Law	:	Fundamental law governing the functioning of the State.
Right of equality	:	Fundamental rights guaranteed by Articles 14 to 18 in Part III of the Indian Constitution
Judicial review	:	The power, provided under Article 13, of the Supreme Court and High Courts to review the constitutionality of legislations and executive actions.
Writ jurisdiction	:	Article 32 confers writ jurisdiction on the Supreme Court under which the court has power to issue any order or grant any relief for violation of Fundamental Rights
Administrative Law	:	Deals with the powers and functions of government officials and control mechanisms over their use of power
Rule against Bias	:	No one shall be a judge in her/his own cause and aims at settlement of disputes by an impartial judge; also means that any governmental authority exercising a decision-making function should be impartial and should not have any interest in the subject matter of the dispute.
<i>Audi Alteram Partem</i>	:	Literally means 'hear the other party'; the judge shall not decide a matter unless both the parties are given an opportunity to present their case.

Modern concept of Rule of Law : Concept developed by the International Commission of Jurists, wherein, the individual is possessed of certain rights and freedoms, there is an independent judiciary, there is equal access to justice, and the establishment of social, economic and cultural conditions would permit all individuals to live in dignity.

1.11 REFERENCES AND SUGGESTED READINGS

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UNIT 2 CONSTITUTIONAL VALUES

Structure

- 2.1 Introduction
- 2.2 Objectives
- 2.3 Meaning of Constitution
- 2.4 Constitutional Values
 - 2.4.1 Sovereignty of the People
 - 2.4.2 Separation of Powers
 - 2.4.3 Democracy
 - 2.4.4 Constitutionalism
 - 2.4.5 Republic
 - 2.4.6 Socialist
 - 2.4.7 Secular
 - 2.4.8 Justice, Liberty, Equality and Fraternity
 - 2.4.9 Federalism
 - 2.4.10 Independent Judiciary
 - 2.4.11 Fundamental Rights
 - 2.4.12 Directive Principles of State Policy
- 2.5 Summary
- 2.6 Terminal Questions
- 2.7 Answers and Hints
- 2.8 Glossary
- 2.9 References and Suggested Readings

2.1 INTRODUCTION

The legal system of any country can be divided into laws governing the State and laws by which the State governs its citizens. Constitution falls in the category of the laws that govern the State. Since the Constitution governs the State and also confers powers on the State, any law made by the State to govern its citizens should be consistent with the values set out in the Constitution. Thus, the type of legal system adopted by a State depends on the values and principles contained in its Constitution..

The Constitution defines the structure, composition and powers of the basic organs of the government of a country. The constitutional values determine the relationship of these governmental organs with its citizens. They define the rights of the citizens and vest obligations on the State to promote and protect those rights. They also define the legislative (law-making) powers of the State.

2.2 OBJECTIVES

After reading this unit, you should be able to:

- ✓ explain the meaning of ‘Constitution’;
- ✓ explain the need, necessity and importance of a Constitution;

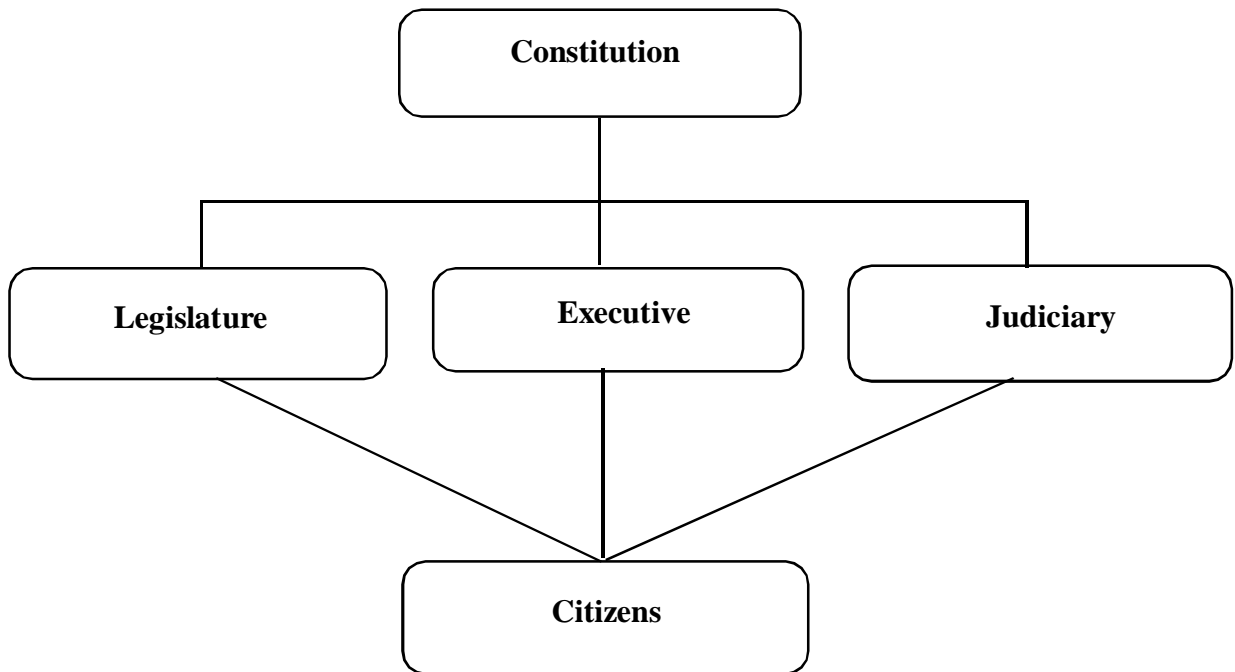
- ✓ describe the nature of the Indian Constitution; and
- ✓ identify the values in the Indian Constitution.

2.3 MEANING OF CONSTITUTION

According to HM Seervai, a ‘Constitution’ is a document that has a special legal sanctity and sets out the framework and the principal functions of the organs of the government or State. It also establishes principles that should govern the operation of those organs in terms of the powers, functions and composition of such organs. The constitution also regulates the relationship of these organs with the people.

At this juncture we need to understand that the constitution generally contains basic principles and not all the rules governing those organs. One way of viewing a constitution is that it forms a skeletal framework for governance. In the same manner that the human skeleton is the basic structure on which our bodies are framed, a Constitution is the skeleton of a State on which all other laws, rules and regulations must rest. Any law, rule or regulation framed by a government that goes outside the framework is against the Constitution.

A modern state consists of three basic organs, namely, the Legislature, the Executive, and the Judiciary. The Legislature makes laws. The Executive implements the laws framed by the Legislature. The Judiciary interprets these laws. Hence, in every modern country, the constitution deals with the powers, functions, structure and limitations of these organs of the State.



Self-assessment Questions

1) What is the role of a Constitution?

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2) Why must a citizen be aware of the Constitution and the values enshrined in it?

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2.4 CONSTITUTIONAL VALUES

The Indian Constitution came into force on 26th January 1950. Before the commencement of the Constitution, India was governed by the Government of India Act, 1935. A Constituent Assembly was set up in 1946 to draft the Indian Constitution. The Constituent Assembly adopted the Constitution of India on November 26, 1949. The provisions of the Constitution were drafted after taking into consideration the working of several constitutions in the world. The study of different constitutions across the world and their working enriched the experience and understanding of the constitution framers. As a result, India today has a unique, elaborate and a modern Constitution. The rich cultural heritage, diversity of languages and religion, and the problems of partition in our country also immensely influenced the framers of the constitution on the constitutional values that need to be adopted. Let us now briefly analyse those constitutional values.

2.4.1 Sovereignty of the People

The Constitution grants powers to the government and sets rules for the government to follow while using such powers. Though the Constitution provides power to the government, it receives this authority to confer such powers from the people. People are the source of the Constitution and the Constitution emanates from them. Therefore, the ultimate source of validity and legitimacy to the Constitution are the people.

The Preamble of the Constitution of India states: “*We the people of India ...do hereby adopt, enact and give to ourselves this Constitution*”. Therefore it is evident that the people are sovereign and they hold the ultimate power. People rule themselves through elected representatives who are bound by the constitution created by the people. Thus, in India all the powers lie with the people. The government can only govern the citizens in accordance with the power given by the people through the Constitution. If the government abuses the power given by the people, they have a right to overthrow the government, but only legal means.

2.4.2 Separation of Powers

It is an old saying that “*Power corrupts and absolute power corrupts absolutely*”. Concentration of power in one organ of the government would result in

dictatorship. Therefore, one of the fundamental constitutional values is separation of powers amongst the three organs of the government. The Indian Constitution divides the duties of government among its three branches. As stated earlier, the Legislature is empowered to make law, the Executive implements the law and the Judiciary interprets the law. In theory, each organ is independent and cannot interfere with another. However, in a welfare state such as India, a strict adherence to separation of powers is not possible and is also not advisable. Even though the Constitution of India divided the powers amongst the Legislature, Executive, and Judiciary; each of these organs, are empowered to exercise some control over the others to ensure that the others function according to constitutional values.

2.4.3 Democracy

Democracy means that people rule themselves by consensus. Democracy could be of two kinds:

Direct Democracy: In a direct democracy **all decisions** are made by a majority of the citizens. The people govern themselves through decisions that are reached by either a referendum or popular vote. This method however, is possible only in small countries or in areas where the population is less. In large countries or in countries with a large population, the exercise of direct democracy is tedious and time consuming. For example, if in India, we had direct democracy and a decision had to be reached on whether the voting age should be reduced from 18 years to 16 years, ensuring that all the millions of people voted would be extremely difficult, time consuming and expensive. However, in a smaller country like Bhutan, this exercise would be relatively faster and less expensive because also of its lesser population.

Indirect Democracy: Whereas, in an indirect democracy, people first elect representatives to form and run a government. These elected representatives then take decisions relating to policy and governance of the country. Thus, the Government would be run by the elected representatives. These representatives are elected by the people for a fixed period. Indirect democracies are generally of two types – a Parliamentary democracy or a Presidential democracy. In a Parliamentary democracy, the nation would be ruled by the majority party in the Parliament whereas in a Presidential democracy, people elect a person as President.

The Indian Constitution establishes a Parliamentary form of government. The basic feature of Indian democracy is that the government is responsible to the Legislature. The President of India is a nominal head. The real executive power is vested with the Prime Minister and Council of Ministers.

2.4.4 Constitutionalism

Constitutionalism implies limited government in accordance with constitutional procedures and norms. The government should be based on, and should be responsive to popular will, and should serve the public interest. A truly constitutional regime requires rule of law, democracy and government by elected representatives. The other feature of a constitutional regime is that public power should be limited, that its exercise should not be arbitrary and that it should meet certain normative standards, including protection of human rights.

Constitutionalism also requires separation of powers, independent courts, judicial review of legislative and executive action and a higher degree of openness and accountability in government.

The Constitution not only prevents the concentration of power but also provides checks and balances for the powers of each organ. This enables each organ to check the abuse of power by other organs. Constitutionalism means control over the power of the government to prevent any arbitrary action by the government.

Under the Indian Constitution, the Legislature can make laws. Such laws cannot violate fundamental rights. The Judiciary is empowered to decide the constitutionality of the legislations passed by the Legislature. The Judiciary is entitled to declare a law passed by the Legislature as void and unenforceable if it violates fundamental rights or goes against the constitutional scheme of distribution of powers.

The task of the Executive is to implement the laws passed by the Legislature. But it is the Legislature that controls the appointment and tenure of the Executive. Similarly, executive action could be reviewed by the Judiciary for violation of fundamental rights and principles of natural justice. Every law passed by the Legislature needs the President’s approval for implementation. Though the Judiciary is involved in interpreting laws, matter of appointment, tenure, and salaries of judges are controlled by the Executive and the Legislature. In addition, if a judge of the High Court or the Supreme Court is guilty of misconduct, he can be removed by Parliament through a vote on impeachment. This shows that all three organs while generally independent of each other, also exercise a degree of control over the other organs.

<p>Main features</p> <ul style="list-style-type: none"> • It insists upon limitations upon government. • It imposes checks and balances on the organs of the government. • Unfettered discretionary power is against the Constitutionalism. • It promotes rule of law. • The antithesis of constitutionalism is despotism.
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<p>Self-assessment Questions</p> <p>3) Name the three basic organs of the state?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>4) Name two features of a truly constitutional government?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

2.4.5 Republic

'Republic' means that the head of the State is an elected representative of the people. The President is the head of the State in India. The President of India is not a hereditary monarch like the Queen in Britain or the King in Thailand. The President is elected indirectly by the Electoral College for a period of five years. The Electoral College consists of members of the Parliament and members of the Legislative Assemblies of the States and Union Territories.

2.4.6 Socialist

The word 'Socialist' was added to the Preamble of the Indian Constitution by the 42nd Amendment to the Constitution in 1976. This word was added to ensure that the goal of the Indian Constitution became clearer and more explicit. The word 'socialist' indicates that the material resources of the country and the means of production is either owned or controlled by the government. It also indicates the government's intention to bring economic equality and prevention of concentration of wealth in few hands.

Economic equality and equal distribution of wealth are the prime concerns of the Constitution. In *Excel Wear v Union of India* AIR 1979 SC 25 the Supreme Court held that the addition of the word 'socialist' might enable the Courts to lean more in favour of nationalisation and State ownership of the Industry. The word 'socialist' has been translated into action by the Government by the nationalisation of Banks, abolition of Privy Purses for hereditary kings, conversion of the right to property from a Fundamental Right to a legal right.

2.4.7 Secular

The word 'Secular' was added to the Preamble of the Constitution by the 42nd Amendment in 1976. This was done in order to make it clear that the nature of Indian Constitution is secular. Even before the inclusion of this word, the Preamble of the Constitution expressly mentions that the Constitution of India was adopted to secure to all its citizens, "liberty of thought, expression, belief, faith and worship". Further, Articles 25 to 28 of the Constitution guarantees freedom of religion as a fundamental right.

'Secularism' does not mean anti-God or pro-God. It means that the State does not have a religion of its own. Thus, whether a person is devout, an atheist, or an agnostic, all should be treated alike by the State. It eliminates God from matters of the State and ensures that no one is discriminated against on the ground of religion. As religion is a matter of personal faith and belief, a secular State keeps away from religion and it is not concerned with religions. It maintains an equal distance from all religions. Thus, in matters of religion, the State is neutral. This principle applies to all organs of the State – the Legislature, the Executive and the Judiciary. Thus, Government offices do not have pictures of Gods on their walls. In *S.R. Bommai v Union of India* AIR 1994 SC 1918 Supreme Court held that the secularism is one of the basic features of the Indian Constitution. Religious pluralism is the cornerstone of Indian culture and religious tolerance is the foundation of secularism in India. Indian secularism demands equal respect for all religions.

Self-assessment Question

5) What do you understand by the word ‘Secular’?

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2.4.8 Justice, Liberty, Equality and Fraternity

The Preamble to the Indian Constitution declares that the Constitution was adopted to secure to all its citizens Justice, Liberty, Equality and Fraternity.

Justice Social, Economic and Political

Justice may be understood as harmonious reconciliation of individual conduct with the general welfare of society.

Social justice aims at abolition of all kinds of inequalities, which may result from the inequalities of wealth, opportunity, status, race, religion, caste, title and the like.

Economic justice aims at distribution of material resources for the common good and to prevent concentration of wealth. It also includes equal pay for equal work and right against exploitation, etc.

Political justice means absence of any unreasonable or arbitrary distinction among the people in political matters. It also includes single electorate and adult franchise. In India, every citizen is entitled to contest in elections and also participate in voting irrespective of race, religion, sex, caste, and place of birth.

Liberty: of thought, expression, belief, faith and worship.

Liberty means absence of undue and arbitrary interference with individuals’ freedom. Liberty of thought and expression was expressly guaranteed by the Indian Constitution under Article 19 (1) (a). This Article guarantees to all citizens “freedom of speech and expression”. Articles 25 to 28 promote liberty of belief, faith and worship. Under Article 25, every person has a “freedom of conscience and the right freely to profess, practice and propagate religion”.

Equality: of status and of opportunity.

Equality means no person is above the law and that everyone, irrespective of rank or status, is subject to the same law. Articles 14, 15, 17 and 18 of the Indian Constitution provide equality of status. Article 16 specifically deals with equal opportunity in public employment. The concept of equality under the Indian Constitution aims at abolition of all sorts of distinctions and discriminations.

Fraternity:

Fraternity means the spirit of brotherhood. It is a feeling that all people are children of the same soil and the same motherland. This term was inserted by the Draft Committee keeping in view the religious, linguistic and racial diversity in India.

Several provisions in the Constitution, such as single citizenship, right to move, reside and settle anywhere in India, and freedom of trade and commerce throughout the territory of India create a feeling of brotherhood among the Indian citizens.

2.4.9 Federalism

The Indian Constitution provides for a federal set-up with a strong Union. A Federal Constitution establishes a dual polity with the Union government at the centre and State government at the regional level. Part XI of the Indian Constitution provides for division of powers between Union and State governments. Articles 245 to 255 deal with legislative relations between the Union and State Governments. In Schedule VII of the Constitution of India, the subjects of legislation are divided under three lists, namely Union, State and Concurrent Lists. The Union List contains 97 entries on which Union government can pass laws. The State List contains 66 subjects on which State government can make laws. The Concurrent List enumerates 47 subjects, on which both Union and State can make laws.

Similarly, Articles 256 to 263 embody Administrative relations between Union and State governments. Further, the Constitution incorporates an elaborate scheme of distribution of financial relations between Union and State governments.

2.4.10 Independent Judiciary

Independence of the judiciary is one of the prerequisites for the successful functioning of a democracy. The Constitution of India envisages several safeguards to ensure the independence of the judiciary.

The judges of the Supreme Court and High Courts are appointed by the President of India on the aid and advice of the Council of Ministers. However, the Chief Justice of India is to be consulted in making any such appointment. In *Supreme Court Advocates on Record Association v Union of India* and *in re Presidential Reference AIR 1999 SC 1* the Supreme Court held that the Chief Justice of India shall be the senior most judge of the Supreme Court and in matters of appointment of other judges to the Supreme Court and High Court, President is bound by the recommendations made by the Chief Justice of India in consultation with other senior judges. These two cases took away the discretionary power of the Executive in appointing and transfer of judges of the Supreme Court and High Courts.

The tenure of the judges is secured under the Constitution. Judges of the Supreme Court and High Courts would retire only after reaching 65 years and 62 years respectively. Judges cannot be removed before the expiry of the tenure except by an order of the President by way of impeachment under the Indian Constitution. According to Article 124, a judge of the High Court or Supreme Court can be impeached only for proved misbehaviour or incapacity. The impeachment proceedings require support of majority of total members and not less than two-third of majority of those present and voting in each house of Parliament. The salaries and allowances of the judges could be determined by the legislature. But once they are determined, they cannot be altered to the

disadvantage of the judges during their tenure of office. The salaries and allowances could be enhanced but not diminished. The salaries, allowances and expenditure of the court would be charged to the Consolidated Fund of India and Consolidated Fund of States respectively and they are not subjected to vote of the Legislature.

The Constitution of India prohibits the judges of Supreme Court from practicing before any court after their retirement. Further, the Constitution also debar the judges of the High Court from practicing before a Court where he/she had been a judge. This ensures absence of bias or undue influence.

Self-assessment Question

6) What are the safeguards that are provided in the Indian Constitution to ensure the independence of the judiciary?

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2.4.11 Fundamental Rights

Recognising certain basic rights and giving them a Constitutional basis so that these rights may not be violated by the government is one of the most important features of modern democratic constitutions. The Indian Constitution is one example of such a practice. Part III of the Indian Constitution secures certain basic rights known as Fundamental Rights. These rights aim at individual liberty and provide security against arbitrary action by the government. These rights represent the cherished values of the people of India.

Main Features

- Contain basic freedoms.
- Prohibitions against State.
- Beyond the reach of majority.
- Limitations on the power of the government.
- Object is to establish a government of law and not of persons.
- These rights are justiciable rights.

Originally, the Constitution of India recognised seven fundamental rights. But by the Constitution 44th Amendment Act, Right to Property was removed from the list of fundamental rights. At present the Indian Constitution guarantees six fundamental rights, namely:

- 1) Right to Equality - Articles 14 to 18
- 2) Right to Freedom - Articles 19 to 22

- 3) Right against Exploitation - Articles 23 & 24
- 4) Right to Freedom of Religion - Articles 25 to 28
- 5) Cultural and Educational Rights - Articles 29 to 30
- 6) Right to Constitutional Remedies - Articles 32 to 35

2.4.12 Directive Principles of State Policy

Articles 36 to 51 of the Indian Constitution contain the Directive Principles of State Policy. These principles establish India as a welfare state. These principles were included in the constitution with a view to secure socio-economic democracy. They impose a positive obligation on the state to implement the directives contained in it. They contain broad principles to govern and guide the Legislature and the Executive in the governance of the country.

Main Features

- Set out the aims and objectives of the government.
- These principles must be kept in mind while passing laws and framing policies.
- They impose positive obligations on the government to implement the directives
- They constitute social and economic programmes for a modern democratic State.
- They are non-justiciable rights.

2.5 SUMMARY

In this unit, we learned about:

- ✓ The meaning of a Constitution and how and why it is necessary in a modern democracy.
- ✓ The meaning of the different types of democracy.
- ✓ The various values such as socialism, secularism, value for human rights and human dignity that are emphasised in our Constitution.
- ✓ The role and purpose of a Constitution in ensuring that the rights of the citizens are protected.
- ✓ The functions of the various organs of the State and how they are controlled through mechanisms present in the Constitution.

2.6 TERMINAL QUESTIONS

- 1) How are the ideals contained in the preamble to our Constitution realised in our country?
- 2) Discuss the concept of secularism of a constitutional value.
- 3) How does the constitution secure all its citizens justice, liberty, equality and fraternity?

2.7 ANSWERS AND HINTS

Self-assessment Questions

- 1) A 'Constitution' is a document that has a special legal sanctity and sets out the framework and the principal functions of the organs of the government or State. It also establishes principles that should govern the operation of those organs in terms of the powers, functions and composition of such organs. The constitution also regulates the relationship of these organs with the people.
- 2) We need to be aware of the values enshrined in our Constitution:
 - i) In order to be able to protect our rights against any violation
 - ii) To enable us to participate effectively in the functioning of our democracy
 - iii) To ensure that the government works towards realisation of our constitutional ideals and does not deviate from the roadmap envisaged for inclusiveness.
- 3) Legislative, Executive and Judiciary.
- 4) Rule of Law and Democracy are the two features.
- 5) 'Secularism' does not mean anti-God or pro-God. It means that the State does not have a religion of its own. It eliminates God from matters of the State and ensures that no one is discriminated against on the ground of religion. As religion is a matter of personal faith and belief, a secular State keeps away from religion and is neutral.
- 6) The constitution ensures that the salaries and allowances of the judges cannot be altered during their tenure and secondly they can only be removed by a special process called impeachment.

Terminal Questions

- 1) Refer to Section 2.4
- 2) Refer to Sub-section 2.4.7
- 3) Refer to Sub-section 2.4.8

2.8 GLOSSARY

Sovereignty of the People : People are the source of the Constitution and the Constitution emanates from them. Therefore, the ultimate source of validity and legitimacy to the Constitution are the people.

Separation of Powers : The Legislature is empowered to make law, the Executive implements the law and the Judiciary interprets the law. Each one is independent and cannot interfere with another.

- Constitutionalism** : Constitutionalism implies limited government, in accordance with constitutional procedures and norms.
- Republic** : The head of the State is an elected representative of the people
- Socialist** : The State strives towards achieving economic equality and prevention of concentration of wealth in few hands
- Secularism** : Absence of a State religion
- Federal Constitution** : Establishes a dual polity with the union government at the centre and state government at the regional level

2.9 REFERENCES AND SUGGESTED READINGS

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UNIT 3 DEMOCRACY

Structure

- 3.1 Introduction
- 3.2 Objectives
- 3.3 What is Democracy?
- 3.4 What does Democracy mean for You and me?
- 3.5 The Role of a Constitution in a Democracy
- 3.6 Distribution of Powers in a Democracy
- 3.7 Sleeping?
- 3.8 The Future of Democracy
- 3.9 Summary
- 3.10 Terminal Questions
- 3.11 Answers and Hints
- 3.12 Glossary
- 3.13 References and Suggested Readings

3.1 INTRODUCTION

On 24 January 2009 activists belonging to certain group barged into a pub in the city of Mangalore on India's southern coast, and beat up young girls and women for "violating traditional Indian norms". They claimed that women and girls should not go to places such as pubs, since this was against their idea of what a 'traditional Indian woman' should be like.

Soon after that incident, on 6 February 2009 activists of the same group dragged the daughter of a Kerala MLA (Member of the Legislative Assembly) and her friend off a bus, and held them for some time before releasing them. The activists seemed to be upset at the fact that unmarried, unrelated boys and girls were traveling together.

It seems a little strange to start a discussion on democracy in this way, does it not? We usually think of a democracy as a system where people elect their own government, and everyone has the right to vote. Yet, as we shall see in the course of this Unit, democracy means a whole lot more. The concept of democracy includes not only the right to vote, and to have regular elections where everyone can participate; it also includes the right to live a free and meaningful life, in the manner that one sees the best. Seen from this perspective, events such as the ones highlighted above become important to our understanding of democracy. These events talk about unfair treatment meted out to women in our country. How many other events can you think of from your recent reading of newspapers, where other groups, such as people belonging to religious minorities, members of the dalit community, or migrants to big cities have been treated in an unfair manner? What impact does this have on your understanding of Indian democracy and how it has functioned over the past six decades and more?

Hopefully, reading this Unit will give you a better understanding of democracy so you can better answer these questions, and think through these questions in a more informed manner. So let's get started!

3.2 OBJECTIVES

After studying this unit, you should be able to:

- ✓ explain the concept of democracy stands for, and how it has evolved over the years;
- ✓ describe how democracy functions in India;
- ✓ describe the role of a constitution, and of various institutions in a democracy;
- ✓ explain sharing of power in between the various participants in a democracy;
- ✓ identify what democratic rights are, and how they are guaranteed and implemented in a democratic country; and
- ✓ identify the direction in which democracy is heading around the world, and what the outcomes and future of democracy are.

3.3 WHAT IS DEMOCRACY?

At the beginning of this Unit, we mentioned an incident wherein citizens of our country were not allowed to live their lives in the manner that they best saw fit. Another group of citizens used force and violence to ensure that their own opinions and views on life were foisted upon others. We would all agree that such incidents and outbreaks of violence, especially against the exploited sections of society, such as women, are unacceptable.

But is it not right to say that democracy stands for a system where we choose our own government, and where the majority takes decisions on behalf of everyone, including the minority, and those people who may have voted for the opposition in the last elections? How do we reconcile both these concepts – of a rule by the majority, and of the rights of each individual to live freely?

If we think about this question, it becomes obvious that our concept of democracy must change. We now realise that democracy means not only the right to choose a government, or that the majority rules over all of us. Democracy now seems to us to have many different aspects. In addition to our initial understanding of democracy, we now see that democracy also includes the idea that each individual must have certain rights that are guaranteed and protected. If we put all these notions together, and add a few more thoughts and ideas, we come up with the following definition of democracy:

Democracy is a form of government that allows people to choose their rules. In a democracy:

- Only leaders elected by people should rule the country
- People have the freedom to express views, freedom to organise and freedom to protest.

In fact, democracy is not a very new concept: it has been talked about, and even implemented in, certain countries for a long time now. The word ‘democracy’ was coined from a combination of the Greek words ‘*demos*,’ meaning ‘people,’ and ‘*kratos*,’ which means ‘rule or strength’. This word came into use around the 4th or 5th century B.C. following the implementation of this system in some of the Greek nation-states, notably, Athens.

Since the time democracy was introduced in Athens, it has spread across the world, and today, most countries in the world proclaim themselves to be democracies. But not all of them are true democracies in the sense that we understand the term.

In the United States of America, for example, the President is directly elected by the people, and does not even need the support of his party in their Parliament, which is called the Congress: he can veto bills without any approval of the Congress. The United State of America, therefore, is said to have a **presidential democracy**. On the other hand, in our country, and in some other countries, like the United Kingdom, representatives to Parliament are elected by us. These representatives, in turn, choose the President, who is the head of state. In addition, there is an Upper House of Parliament, the *Rajya Sabha*, which is composed of nominees, mostly from the various states. The leader of the political party that has the confidence of the Lower House, the Lok Sabha, is usually invited to form the Government by the President. All decisions are taken by the Prime Minister and the Council of Ministers. These ministers, however, only hold power until the time they have the confidence of the Lok Sabha. If a majority of the members of the Lok Sabha decide that they no longer have confidence in the Government of the day, the Government has no choice but to resign. This is why we say that India has a **parliamentary democracy**.

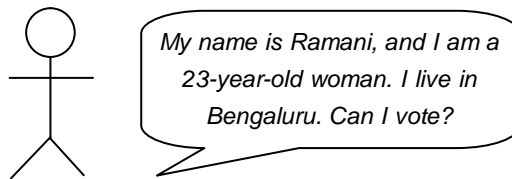
<p>Self-assessment Questions</p> <p>1) Define democracy.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>2) We follow the system of parliamentary democracy in India. Is this statement true or false?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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3.4 WHAT DOES DEMOCRACY MEAN FOR YOU AND ME?

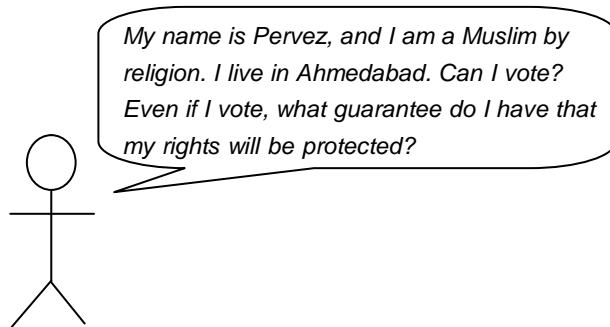
We have seen that democracy takes different forms throughout the world, and some countries that call themselves democratic would not stand the test of true democracy. The following portions of this Unit will help us better understand this concept of a ‘true’ democracy.

Now that we have a more comprehensive understanding of what democracy means, we can look at each of the parts of this definition in a little more detail.

The next few paragraphs will acquaint us with a few people from around the country and help us to understand the concept of democracy from their perspective.



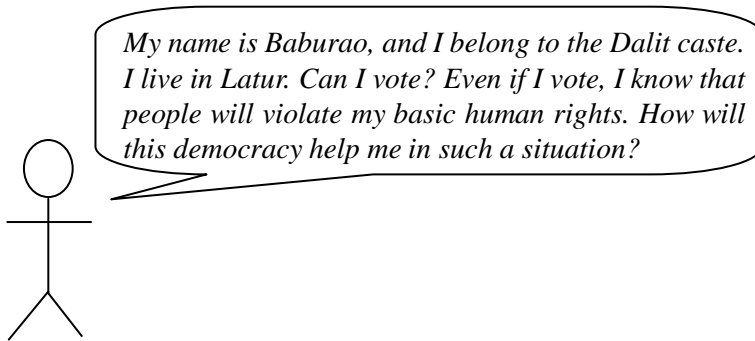
Ramani’s question seems very simple, and at first glance, even a little silly: why should Ramani not be able to vote? There seems to be nothing wrong with what she has told us about herself, and we all know that in our country, all adults have the right to vote. This is known as ‘**Universal Adult Suffrage**’. When we view the history of democracy in the past few decades, however, this question makes more sense: did you know that many European countries that initially adopted the democratic system of government did not allow women to vote? Women in these countries struggled for their right to vote for a long time. This struggle was known as the ‘**Suffragist**’ movement, and it was only after a long and hard struggle that women were granted the right to vote in these countries.



Pervez’s question also seems simple to answer: is there any reason why Pervez should not be allowed to vote? But a second look at his question reveals a deeper concern: even if Pervez does vote, what would happen if the party he voted for in the elections loses? What if a party that is opposed to the interests of a religious minority comes into power? Would that mean the people such as Pervez would lose all their rights, and would have to fear for their rights?

Clearly not – we know that we have a Constitution, and that this Constitution guarantees all of us certain rights. These rights remain constant no matter which political party comes into power, and cannot be amended unless a huge majority of the people elected to Parliament vote to do so. You will learn more about the

Constitution, and about these fundamental rights, in later units, but it is useful for you to remember that the rule of a majority in a democracy is tempered by certain unchanging rules that are set out in a Constitution.

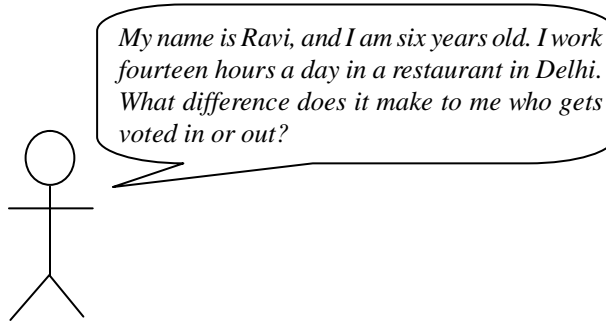


Now that you have met Ramani and Pervez, you would not jump to the conclusion that Baburao's question is also frivolous! Baburao has asked us two questions: the first is whether he has the right to vote, and the second is what recourse he has in the event that the government of the day does not protect his rights. Let us answer these questions in turn.

Baburao is a Dalit, and this community has long had to suffer exploitation at the hands of the more advanced sections of society. For a long time, Dalits were denied basic human rights. They were not allowed to visit certain parts of a village, or even to drink water from the common wells. If this sounds like a history lesson, it is not: this is true even today, in large parts of our country. Similarly, the African-American community in the United States of America was not allowed to vote. Many of the members of this community were initially brought to the United States of America as slaves, and exploited in the most inhumane manner. Their struggle for their dignity even led to the American Civil War, and finally, people of African-American descent were allowed the right to exercise their vote in 1965. Our Constitution made no such differentiation, and people of all castes, creeds, and religions are guaranteed the right to vote.

Now, let us move on to Baburao's second question. If a Dalit does not have even basic human rights, what use is the right to vote? Regardless of whichever government comes into power, Baburao's situation will not change – he will continue to be exploited. But we know that that is not how a democracy functions: even if the Government in power does not pass any laws, or take any action to protect people like Baburao, he still has the right to approach a court of law to ask for the rights that the Constitution has guaranteed people like him if the court passes an order in his favour, the Government will have to obey it, and take measures to protect Baburao.

Now we understand that aside from the right to vote, and the guarantee of certain rights, democracy also means that power is shared between different institutions – in this case, we saw how power is shared between the executive (the Government's ministers), the legislature (the elected Parliamentarians, who pass laws), and the judiciary (the judges who decide disputes, and who are entrusted with the task of protecting our Constitutional rights.)



At first glance, Ravi’s question leaves us dumbfounded. It does not seem as if there is an answer to his question at all. After all, we do have universal adult suffrage, but children do not have a right to vote. There are a lot of other people in Ravi’s situation: not only children, there are also numerous other groups of people who, for some reason or the other, are not able to vote. This could be, for example, because a person lives in an area where the booths are routinely ‘captured’ during elections. That is, they are taken over by a political party, and it is no longer possible for an ordinary citizen to approach these booths to cast their vote; or it could arise because somebody feels that they do not like any of the political parties that are standing for elections, and therefore do not have a choice in the matter. What answer does democracy present for these people?

The answer to Ravi’s question is a combination of all the answers that we saw earlier, when we spoke with Ramani, Pervez, and Baburao: in a participative democracy, all those people who are considered mature enough to vote, must be given the right to vote. Participative democracy assumes that people will cast their vote in a sensible manner, so that only those rulers who are mature enough to understand the situation of *all* members of society are elected – including people like Ravi, who cannot vote. In addition, the inalienable rights enshrined in the Constitution are guaranteed to all citizens – even those who are not old enough to vote, and so, Ravi’s rights are guaranteed and protected. Furthermore, the rights of children and other exploited sections of society are enforceable – which means that one can approach a court of law to enforce these rights. In fact, any citizen of India can write a letter to the National Human Rights Commission to complain about the violation of their basic human rights. The National Human Rights Commission is entrusted with the task of investigating such a violation, and with approaching the courts to ensure that these rights are protected. In addition to the National Human Rights Commission, there are also State Human Rights Commissions in the country, and citizens can approach any of these if their human rights have been violated. You will study about the National Human Rights Institutions in Unit 12 under ‘Institutional Mechanisms’ (Block 3).

So, we see that a true participative democracy means much more than a system where everyone has the right to vote at periodic intervals. It also includes certain democratic rights, a constitution that guarantees and protects these rights, and the distribution of powers between various institutions that ensures that nobody, not even an elected representative, has unbridled authority to rule the country in an arbitrary manner. Our study of the later units will show us a lot more about each of these aspects, but it would be useful to look at each of these in a little more detail now.

Self-assessment Question

3) A true participative democracy means that all adults above the age of 18 years have the right to vote. Do you agree with this statement?

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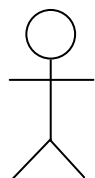
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3.5 THE ROLE OF A CONSTITUTION IN A DEMOCRACY

We, the people of India, having solemnly resolved to constitute ourselves into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC...

Are these words familiar to you? These are the opening words of the Constitution of India, and are taken from the Preamble to the Constitution. Have you ever wondered about the first five words of the Preamble? Let us take a closer look at them:

We, the people of India...

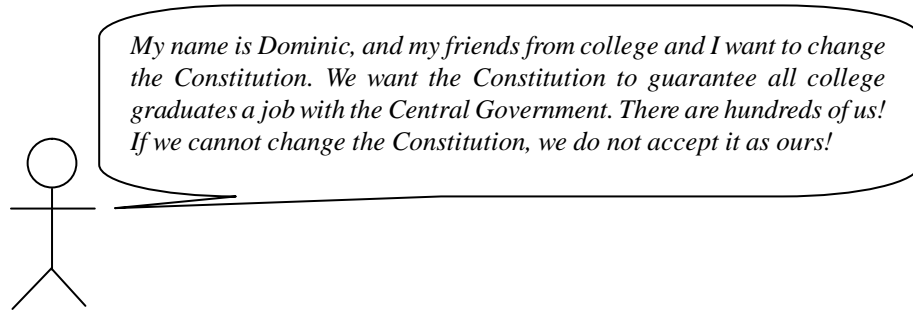


My name is Vishnu, and I am thirty-five years old. I was not even born when the Constitution was drafted – and neither my parents nor my grandparents were members of the Constituent Assembly! This is not my Constitution!

On face value, these words seem to imply that all of us, that is, the people of India, sat down together and wrote the Constitution. If you are reading this, chances are that you were not even alive when the Constituent Assembly sat down to draft the Constitution! Then what do these words mean?

When the members of the Constituent Assembly sat down to draft the Constitution, they intended it to be a set of rules and guiding principles that the government of the day would follow, regardless of whichever political party came into power. They thought that there should be some stability in the government’s policies, and that these should not change at the whims and fancies of the political party that came into power. Thus, we see that the Constitution acts as a stabilising force in a democracy, and serves to temper the desires of the party in power. With the Constitution as the supreme authority, the political party

in power can only implement its policies in line with the overall policies of the Constitution. The Constitution is a **living document**, and if enough of us decide that we want to amend the Constitution, we can. Therefore, the Constitution is not set in stone, and can be modified to suit the changes in social and economic policy that must necessarily come about with the evolution of India as a nation over the years. Now it is clear to us that although we may not have been members of the Constituent Assembly, the Constitution nonetheless belongs to each and every one of us. It ensures the smooth functioning of democracy, and can be changed if enough of us want it to. We will learn more about the Constitution in later units.



Furthermore, these words also seem to imply that if we like, we can march up to Parliament, and change the Constitution as we wish. A reading of one of the later Units will show you that this is not possible – we cannot change the Constitution according to our whims and fancies. A Constitutional amendment is a fairly tough matter, and requires a majority of three-fourths of the members of Parliament. Then, do these words have any meaning at all?

Although the Constitution can be changed, it cannot be amended merely because a few of us feel it should. India is a large country, and it is certain that there will be lots of groups who have opposing points of view on what the Constitution should look like. For example, at the beginning of this Unit, we saw how there was one group of people who felt that women going to bar was against Indian culture, while the women in question thought quite otherwise! If a small group of people could change the Constitution, it is likely that we would have not one, but many hundreds of Constitutions, each serving the needs of a small interest group. This is why the Constitution can only be amended through a three-fourths majority of the members of Parliament. Since it is such an important document, and carries such authority, it is only logical that it be changed only when there is a clear mandate from the overwhelming majority of people in the country to do so.

But what if there is a situation where a political party comes into power that has an overwhelming majority in Parliament? Imagine a situation where a political party gains ninety per cent of the seats in Parliament. In their five years in power, the members of this party may change the entire face of the Constitution! Chances are that a visitor to India, who returns at the end of this party's term, would not be able to recognise the Constitution at all! What happens to the stabilising function of the Constitution in such a situation?

In 1973, thirteen judges of the Supreme Court of India were presented with exactly this question. In a landmark judgement, called *Kesavananda Bharati v State of Kerala*¹, the Supreme Court of India held that there are certain parts of

¹ (1973) 4 SCC 225.

the Constitution which Parliament cannot amend, regardless of how big a majority of the members of Parliament may wish to do so. This un-amendable part was named ‘*The Basic Structure of the Constitution,*’ and no government may alter it. The Supreme Court judges also showed their wisdom in defining the Basic Structure very loosely. It includes things such as the Fundamental Rights, the Directive Principles of State Policy, and the distribution of powers between the Centre and the State governments. We will read about these aspects in more detail in later units, but for the moment, it is important to remember that just because the Constitution can be amended, it is not the plaything of the government of the day.

So, you see, although you cannot change the Constitution because a few friends and you want to see it changed, it is still the best possible way to ensure that democracy is not reduced to rule by the mob. Our study of the Constitution in later units will explain this to us in much more detail.

Although we will learn about our fundamental rights in more detail in a later unit, it would be useful to understand the basic nature of these rights at this stage. Our Fundamental Rights are contained in Part III of the Constitution, and are divided into the following categories:

- Right against exploitation;
- Cultural and educational rights;
- Right to freedom of religion;
- Right to equality;
- Right to freedom; and
- Right to Constitutional remedies.

A first glance at these categories would reveal to you that these rights are fairly comprehensive. Just exactly how they work is a much bigger topic, and we will examine this in the unit relating to Fundamental Rights, which appears later in this course.

Before we leave this topic, let us sum up everything that we have learnt: while all countries that have a Constitution need not necessarily be democracies, it is most likely that all democracies will have a Constitution. The Constitution lays down certain rights, rules, and policies that the government of the day will have to follow, regardless of which political party comes to power. It ensures the smooth functioning of a democracy, and prevents the rules of the mob. It helps ensure that all interest groups and communities are fairly represented in a democracy. We know that democracy is an imperfect system. With a strong Constitution in place, however, it is a little easier to remove the ill effects of these imperfections, and bring democracy closer to the ideal that we want it to be.

Self-assessment Questions

4) Can the Indian Constitution be amended easily?

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5) How does a Constitution ensure a stable democracy?

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3.6 DISTRIBUTION OF POWERS IN A DEMOCRACY

“Two crises of an unprecedented magnitude rocked India during the years 1974 to 1977. From January 1974 to June 1975 the country went through a turbulent period marked by a series of agitations – bandhs and gheraos, strikes and shutdowns, closures of colleges and universities, two massive popular movements in Gujarat and Bihar, that demanded resignations of the state governments and dissolution of the state assemblies. While the movement in Gujarat was successful in achieving these twin objectives, that in Bihar, popularly known as the JP movement (after its leader, Jayaprakash Narayan, popularly known as JP) failed to do so. The latter, however, soon spread, especially in North India, and developed into a movement for the ouster of the Prime Minister India Gandhi. This was followed by the second ‘watershed’ in India’s recent history: the imposition of the Emergency by Mrs. Gandhi on 26 June 1975. The step sent shock waves across the nation and the trauma continued for nearly nineteen months. Political observers, both at home and abroad, talked of a crisis of India’s political system and its democracy, with many predicting that the dark night of a long-term dictatorship had descended on the country.”

- Bipan Chandra, *In the Name of Democracy*, Penguin Books, 2003.

The passage above talks about two very important crises that shook India in the 1970s: one was the effect that a series of popular movements had on the country, and the second, the proclamation of Emergency by the Government of the day.

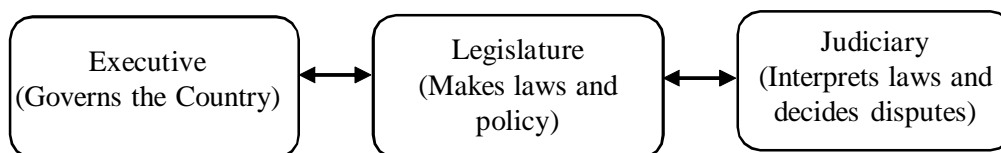
A glance at the newspapers of the day will show you that we still have a number of protests and uprisings across the country even today: there are different groups, called ‘interest groups’, that strive to fight for the rights of different people or causes. Some of these may relate to environmental causes, others relate to the rights of minorities, and yet others may be striving for a separate state, or even for complete independence from the country. Some of these causes may relate to people spread across the country: for example, communal forces may be fighting for what they think are the rights of the members of a particular religious community. The members of this religious community may be spread across the country. On the other hand, there were protests in Mumbai’s Borivali area on February 4, 2009: residents of the area congregated upon the station at Borivali, and shut down the suburban railway services there because they felt that there

were not enough trains servicing their station. This is an example of a protest that relates to local causes.

The newspapers may also carry stories about how the police, or the army were called in to quell protests in certain parts of the country. We also know that the government passes laws from time to time, in order to provide for the interests of certain communities, or causes. Sometimes, these laws are proposed in Parliament, but enough members do not vote for them, and they do not see the light of day. In other cases, these laws, even after they are passed by Parliament, are vetoed by the President, who sends them back to Parliament for reconsideration. Eventually, this bill may be passed, and turn into law. Even then, however, the law may be challenged in a court of law, and it is up to the judiciary to determine whether the law is valid, or not.

The instance that the passage above talks about is one where the emergency was proclaimed in the country in 1975. We will study the implications of such a proclamation in later units, but for the moment, it is enough for our purposes to have a basic understanding of what an ‘Emergency’ means. When a proclamation of Emergency is in effect in the country, some of your fundamental rights can be suspended, and the Government effectively has the power to ‘*rule by decree*’. All power rests in the hands of the Central Government, and even the authority of the State Governments is severely diminished. Such a proclamation may only be made within strict Constitutional limits, and only if a large majority of the members of Parliament approve it. In the situation that the passage talks about, there was a lot of apprehension in the country about whether the proclamation of Emergency meant that we had moved away from a democratic system of government to a dictatorship.

We know, however, that that is not the case - India is still, thankfully, a democracy, and elections are held routinely. What, then, happened to ensure that we did not become a dictatorship, and that the world’s greatest experiment in democracy continues to exist? Let us find out!

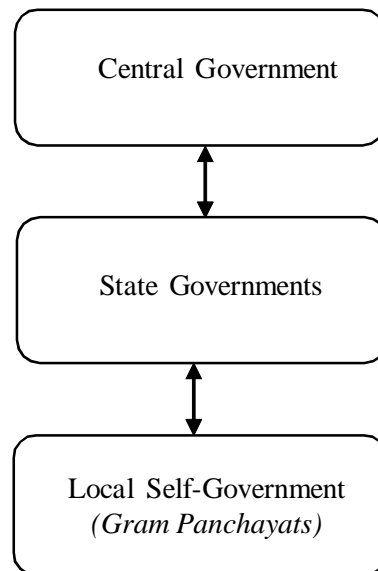


The diagram above may seem familiar – after all, we have already heard about the division of powers amongst the Executive, the Legislature, and the Judiciary. We know that this system ensures that no one branch of the government has unfettered authority. Each of these institutions acts in a different manner, and together, they ensure that there is a system of checks and balances. This ensures that the country functions in the manner that the Constitution intends it to. This separation of powers is very important in the context of a democracy: even if a political party comes into power, it cannot implement its own wishes on the people of the country. The people do, of course, have the power to vote the government out of power in the next elections, but they also have the right to challenge the actions of the government before the judiciary. The judiciary, since it is independent of the executive and the legislature, is entrusted with the task of taking decisions in line with the provisions of the Constitution. This is known as a **horizontal separation of powers**.

We know that the leader of the political party with the largest majority in Parliament is invited to form the Government. The Prime Minister, along with the Council of Ministers, takes all decisions while in power. These ministers, therefore, form the executive. In recent times, we have seen that no political party has been able to muster a large enough majority in Parliament to form a government on its own. These parties, therefore, join forces with a number of other political parties to form a **coalition**. A coalition government comprises representatives from all the political parties that provide the government support. This, however, is only one part of the executive – what we could call the **political executive**.

In addition to the Prime Minister and the Council of Ministers, there is also a **permanent executive**. This comprises the large force of civil servants, police force, and other executive authorities that are not appointed through popular elections. These executives remain in office regardless of which political party is in power. They continue to have powers, and discharge their functions irrespective of when the elections take place.

Therefore, we see that even within the executive, there is a separation of powers between the political executive and the permanent executive, to ensure that there is no arbitrary exercise of power. This ensures the smooth functioning of democracy.



The division of powers amongst the Executive, the Legislature, and the Judiciary that we saw is just one form of the separation of powers in a functioning democracy. In addition, we know that in our country, power is divided amongst various governments as well. The Central Government, which is in charge of the administration of the Union as a whole, has certain powers granted to it under the Constitution. These powers include matters such as the defence of the Union, and foreign affairs. In addition, the Constitution also grants certain powers to the government in each State. These include matters such as the police, and trade and commerce.

In 1992, the Constitution of the country was amended to provide for local self-government. This means that power has been **decentralised**, right down to the district level. This was done because it is an obvious point that the people living

in each area know best how that area should be administered, and how the money budgeted for the development of that area should be spent. We now, therefore, have *gram panchayats*. The *gram panchayats* are comprised of elected representatives from that village or district, and work under the supervision of the *gram sabha*. The *gram sabha* is comprised of all the voters in the village. A few *gram panchayats* are grouped together to form what is typically called a *panchayat samiti*, or block, or *mandal*. The members of this body are elected by all the members of the *panchayats* of that district. All the *panchayat samiti* or *mandal* members of an area together comprise the *zilla* (district) *parishad*. Most of these members are elected.

We now see that India has not only a horizontal separation of powers, but also a **vertical separation of powers**. The Central Government, the state governments, and the units of local-self government are each given certain powers and functions, and thereby, we can ensure that no one body has unlimited authority, and that people living in each part of the country have a say in how they are governed.

This is also known as **federalism** - a system that a lot of democratic governments follow in differing measures. In the United States of America, for example, there is a very strong federal structure, and each State that forms a part of the Union has a vast range of powers. The Federal Government, on the other hand, has only limited powers. In India, we follow a slightly less strict federal structure – the Central Government’s powers are listed in Union List, which appears in the Seventh Schedule to the Constitution; the state governments’ powers appear in the State List in the Seventh Schedule; both, the Central and state governments, may pass laws on matters listed in the Concurrent List, but a Central law would prevail over a state law in case of a conflict; finally, the Central Government has powers to pass laws on all residuary matters, that is, matters not set out in any of the three lists. In India, therefore, the balance of power is tilted slight in favour of the Central Government.

Power in the Indian democracy is also shared between different groups of people and communities. For example, reservations to a certain percentage of seats in each level of government – Central, state, and local self-government – are made for women, for members of the Scheduled Castes and Scheduled Tribes, and Other Backward Classes. This ensures that members of these exploited sections of society have a voice in the democratic process, and that democracy does not reduce to the dictatorship of the majority.

Finally, we see that in India, there are a lot of different political parties and pressure groups that compete amongst themselves. This competition ensures that each party of interest group is accountable to the people, and that no one group or political party has power for too long. This is another form of power sharing, one which all healthy and mature democracies have.

One of the major criticisms of democracy is that it encourages the rule of the majority, and ensures that the elected representatives effectively become dictators for their term of office. Now that we have seen how power is shared in a true democracy, however, we can easily answer this criticism: democracy means not only that everyone should have a right to vote, and that the people get the ruler they choose. It also means that power is shared between various institutions and groups of people, so that no one person or group or institution ever has too much power, or for too long.

Self-assessment Question

6) Explain horizontal and vertical distribution of power and how this helps to strengthen democracy.

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3.7 SLEEPING?

A crowd gathers outside a cinema theatre on a holiday. The film is clearly popular, and the crowd is eager to get their tickets and watch the movie. A group of young men appears, and starts going up to people in the crowd. They start asking random people in the crowd why they are asleep, and tell them that they should have a cup of tea to wake them up. People are confused, and when the leader of the young men walks up to a lady, and asks her to have a cup of tea and wake up, matters reach a head: the irritated young lady tells the youth that it is a holiday, and that she wants to watch a movie – she is not asleep!

The young man pauses for a moment, and then tells her that if she is not voting on election day, then she is asleep.

If all of us are asleep, then how will the country awake?

This is an advertising campaign being run on television, and on the Internet in recent times by a private company. Though the company is trying to sell tea, it is also trying to ensure that as many people as possible participate in elections. You can find the website for the ‘Jaagore’ campaign, as it is called, in the ‘References and Suggested Reading’ section of this Unit. The campaign is extremely popular, and the website directs people on how they can register to vote in the elections.

Why do you think the campaign is encouraging people to vote in the elections? What difference does it make whether only one per cent of the population votes in elections, or if no one at all votes?

You must remember that the very basis of a participative democracy is the participation of people in the government of the country. And the one way in which people can participate most effectively is by voting in elections. A lot of us complain constantly about the faults and drawbacks of our country, but many among us do not bother to even vote in elections. And yet, we are proud of the fact that India is a democracy!

But what exactly are elections, and how are they conducted? We know that elections are a formal process through which people choose their rulers. In India, elections are held at multiple levels, and at many different times. The ‘General Elections’ are held to elect representatives to the Lower House of Parliament, the *Lok Sabha*. A separate set of elections is held to choose members for the Legislative Assembly in each state. Then, there are elections for various local bodies, such as Municipal Corporations, and other governance bodies, such as *Panchayats*.

Conducting these elections in a smooth, efficient, and above all, free and fair manner, is the job of the Election Commission of India. The Election Commission is a quasi-judicial body. This means that not only does the Commission conduct the elections, it also sets down the rules that candidates and political parties must follow (this is the called '*the Model Code of Conduct*') in elections, and even has some of the powers of a court to hear and decide matters relating to elections. The Election Commission is a Constitutional body, and is headed by a Chief Election Commissioner, and two other Election Commissioners. In addition, each state and Union Territory also has its own election commission, which works under the supervision of the Election Commission of India.

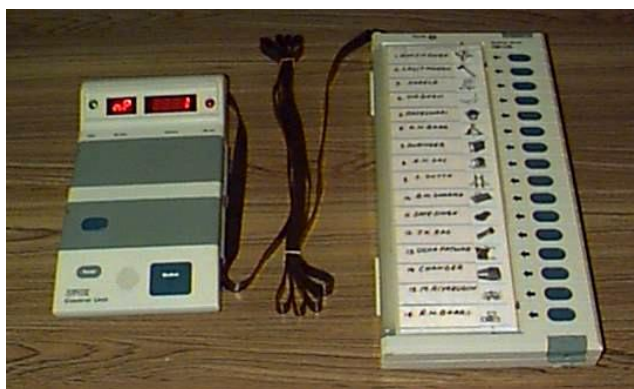
The Model Code of Conduct, which we just heard about, sets out the rules that political parties and candidates must follow when participating in elections. These rules cover the entire conduct of candidates and political parties, such as what they can say in their campaign speeches, how much money they can spend in their election campaigns, and that the party or candidate in power cannot use the official governmental machinery, or public funds for campaign purposes.

You can view the Model Code of Conduct, Voters' Guidelines, and other important relating to elections, on the Election Commission's website, the address of which is: <http://www.eci.gov.in>

Any citizen of India who are 18 years of age as on first January of the year for which the electoral roll is prepared are entitled to be registered as a voter in the constituency where he or she *ordinarily resides*. Only persons who are of unsound mind and have been declared so by a competent court or disqualified due to 'Corrupt Practices' or offences relating to elections are not entitled to be registered in the electoral rolls. The rules relating to who can and cannot vote are set out in the Representation of the Peoples Act, 1950.

The country is divided into 543 constituencies, and a member is elected to the *Lok Sabha* from each constituency. The delimitation of constituencies, and the allocation of seats is also governed by the Representation of Peoples Act, 1950

At the time of the last General Elections, conducted in 2004, there were over 670 million registered voters in India. Can you imagine what a colossal process it would be to conduct an election on such a large scale? Thankfully, the Election Commission introduced a novel machine, which helped ensure that the elections went off as smoothly as possible: the Electronic Voting Machine ('EVM'). With the introduction of the EVM, elections in India are now conducted in a high-tech manner, on par with the most advanced techniques in the world.



Electronic Voting Machine

The Election Commission announces the date of the elections, nominations, and other such matters. The Model Code of Conduct comes into force from the date of that announcement. Campaigning must stop on the day before the day of voting.

Names of eligible voters are included in the electoral rolls, and only those citizens whose names appear in the rolls may vote. The Election Commission also introduced a system of ‘Elector’s Photo Identity Card,’ popularly called a ‘Voter’s Identity Card’ recently. This has helped streamline the process of identifying registered voters, and ensuring that all eligible voters can participate in the elections.

Once the votes have been collected, the EVMs are sealed, and sent for counting. It is then the Election Commission’s responsibility to count the votes, tabulate the results, and announce the successful candidates.

So you see, elections are a massive exercise, but are absolutely necessary to ensure that we survive as a true democracy!

Self-assessment Question

7) What is the ‘model code of conduct’ and whom does it apply to?

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3.8 THE FUTURE OF DEMOCRACY

Now that we have studied the concept and application of democracy in our country in some detail, we are prepared to analyse whether this system has been successful, and what course democracy is likely to take in our country, and in the world, over the next decades.

We know that democracy has not achieved all the goals that the makers of our Constitution thought it would. There are still some sections of our society that are oppressed, and do not have access to basic democratic rights. Political parties do not always do what they say they will at election time. Corruption in the administration still exists at an unacceptably high level, and many sections of society are still disenfranchised.

Does this mean democracy in our country has failed?

To answer this question, we must consider several factors: are elections held regularly, and are these free and fair? What percentage of eligible voters actually participates in such elections? Do we have public debates on major policies and legislation? Do citizens have the guarantee that their fundamental rights and other rights will be protected? Do we have a right to information, and to question the government’s actions?

Next, compare the success of democracy in our country with other countries that attained freedom and adopted democracy around the same time as us. These would include not only our South Asian neighbours, but also a lot of African countries. How do you think democracy has fared in India, especially when compared with these other countries?

If you think through each of these questions carefully, chances are that you would draw up a mixed report card for democracy's success in our country.

We can only try and understand what the future of democracy will look like if we take a long, hard look at what the outcomes of democracy in our country have been. Although you can judge this against various factors, such as economic development, and social progress, you must also consider whether democracy and the rule of law in our country have resulted in greater participation of the people in government.

The future of democracy also seems threatened at times by the rise of reactionary and violent forces in parts of our country, and across the world. In a situation where terrorism and the use of violence by foreign powers is a very real threat, people sometimes tend to think that an authoritarian government, rather than a democratic one, would be best equipped to handle such a situation. Nonetheless, believers in democracy claim that an open, inclusive government is the only one that will be able to bring the marginalised and the discontented into the public space, and will encourage their participation in government.

Changes in society and technology, too, have encouraged the spread of democracy in new forms: you may be aware of the spread of 'social networking' and 'community' websites on the Internet. These encourage the spread of information and greater discussion amongst people spread out across the globe. This may seem frivolous at first glance, but perhaps this next nugget of information will change your mind: a gentleman called Macon Phillips was recently appointed as the first New Media Officer for the White House by President Barack Hussein Obama. If the President of the most powerful country in the world feels that these forms of media are important, then perhaps we should reconsider our view too!

In short, democracy faces many challenges in the current political and social climate. Added to that, the current economic crisis has also made some people change their preferences towards a more authoritarian, 'in-control' form of government. At the same time, more countries are moving towards democracy – we saw an instance of this in our neighbourhood recently when the people of Nepal came together to overthrow the monarchy and establish a Constitutional democracy.

The most important thing that you should remember, though, is that it is far easier to live in a dictatorship than in a democracy. When you do not have any powers and nothing to do, you can sit quietly and watch the wheels of government roll unstopably by; but when you are a citizen in a functioning participative democracy, you are as responsible as anyone else to ensure that the government is accountable, functional, and participative. Make sure you know what your rights and duties are, and that you know exactly how you can participate in the democratic process – if enough among us do that, democracy in this country has a safe and bright future!

Self-assessment Questions

8) People often criticise democracy as a ‘soft’ form of government, which cannot tackle problems such as terrorism or factionalism adequately. What do you think? Explain how democracy can handle such situations, if at all.

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9) How effective do you think the democratic process has been in this country? Do you think democracy has a future in India?

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3.9 SUMMARY

Let us sum up what we have studied in this unit:

- ✓ Democracy means much more than just the right to vote. Aside from the fact that in a true participative democracy, all citizens have the right to vote, and the people get to choose their own rulers, citizens must also be guaranteed certain basic democratic rights. A democracy is also characterised by having a Constitution that provides stability and guidance to the government’s policies, and a division of powers among various institutions and groups, so that no one person may ever have too much power, or for too long.
- ✓ There are various forms of democracy in the world. In the United States of America, for example, there is a presidential democracy. In India, we have a parliamentary democracy. There are a number of countries that claim to be democratic, but are not really democratic in the true sense.
- ✓ A Constitution guarantees the citizens in a country certain basic rights, and ensures that the overall growth and development of a nation stay on track. This ensures that the nation cannot be held to ransom by the whims and fancies of the government of the day. Our Constitution can be amended to allow for changes in social and economic circumstances, but such changes cannot affect the basic structure of the Constitution, nor can they be made lightly.
- ✓ Furthermore, a democracy is characterised by a separation of powers – horizontal, vertical, and between various political parties and interest groups. This ensures that the rule of law prevails in the country, and that no one person or group can rule the country arbitrarily.

3.10 TERMINAL QUESTIONS

- 1) Try and think of a few people in your society, or people that you routinely come across in your daily life, who for one reason or the other, are not able to participate in elections or cast their vote. Why do you think these people are unable to vote? What solutions does our participative democracy offer them? Try and think of at least five.
- 2) One morning, you are studying at home, when the phone rings – it is the Chief Election Commissioner, and the Commissioner wants your advice! The Commissioner wants you to write the text for a short advertisement, which will explain to people why voting is important, and explaining, in brief, how they can register as eligible voters. Conduct some research on the Internet, and particularly, on the website of the Election Commission of India, and gather all the information you need. Once you have this information, think through what you want to say to people, and write the text for the advertisement.

3.11 ANSWERS AND HINTS

Self-assessment Questions

- 1) Democracy is a form of government where people choose their representatives through free and fair elections.
- 2) True.
- 3) A true participative democracy means much more than a system where everyone has the right to vote at periodic intervals. It also includes certain democratic rights, a constitution that guarantees and protects these rights, and the distribution of powers between various institutions that ensures that nobody, not even an elected representative, has unbridled authority to rule the country in an arbitrary manner.
- 4) No, it can be amended only when three fourths majority of the members of the Parliament approve it.
- 5) While all countries that have a Constitution need not necessarily be democracies, it is most likely that all democracies will have a Constitution. The Constitution lays down certain rights, rules, and policies that the government of the day will have to follow, regardless of which political party comes to power. It ensures the smooth functioning of a democracy, and prevents the rules of the mob. It helps ensure that all interest groups and communities are fairly represented in a democracy.
- 6) The division of powers and functions between the Executive, the Legislature, and the Judiciary is referred to as horizontal distribution of power. This system ensures that no one branch of the government has unfettered authority. Each of these institutions carries out its functions under the Constitution, and together, they ensure that there is a system of checks and balances. This ensures that the country functions in the manner that the Constitution intends it to. Vertical distribution of power is a result of decentralised governance. The Central Government, the state governments, and the units of local-self

government are each given certain powers and functions, and thereby, ensuring that no one body has unlimited authority, and that people living in each part of the country have a say in how they are governed.

- 7) The Model Code of Conduct sets out the rules that political parties and candidates must follow when participating in elections. These rules cover the entire conduct of candidates and political parties, such as what they can say in their campaign speeches, how much money they can spend in their election campaigns, and that the party or candidate in power cannot use the official governmental machinery, or public funds for campaign purposes.
- 8) Although democracy is an inclusive form of government, it does not mean it is the plaything of any group that wishes to enforce its wishes upon others without their consent.

A true democracy provides for certain basic rights for all citizens. In order to protect these rights, the elected government is given powers. Through these powers, and in the manner that the people have chosen, the government can take any actions necessary to fight terrorism or factionalism.

In fact, it is only through participation in the democratic process that marginalised groups can be brought into the mainstream. This is the only effective, long-term solution to such problems.

- 9) The makers of the Constitution took on a great challenge – effectively, the first general elections in the country were a massive sociological experiment – the largest-ever democratic elections in the world.

Since the first general elections, democracy has travelled a long way in India. Popular participation in the general elections is still fairly high, with over half of the registered voters regularly turning out to vote at elections. This number has remained steady over the decades. The emergence of regional parties shows that various groups who would not have been able to have their voice heard otherwise, are now able to exert their influence at the national level.

Although India has not achieved the economic or social progress that it has the potential to, it is an effective participative democracy, and one hopes that as more people are brought within the folds of this process, such progress will be achieved. If things progress along the logical path set over the past decades, democracy does have a bright and stable future in the country.

Terminal Questions

- 1) Refer to Sections 3.4 and 3.5
- 2) Refer to the website of the Election Commission

3.12 GLOSSARY

- Universal Adult Suffrage** : All adults above a certain age have the right to vote.
- Participative Democracy** : A democratic system that ensures certain rights, a constitution that guarantees and protects these rights, and the distribution of powers

between various institutions that ensures that nobody, not even an elected representative, has unbridled authority to rule the country in an arbitrary manner

- Coalition** : A coalition government comprises of representatives from all the political parties that provide the government support.
- Political Executive** : Comprises of the President, Prime Minister and Council of Ministers.
- Permanent Executive** : Comprises of civil servants, police force, and other executive authorities, who are appointed and not elected.

3.13 REFERENCES AND SUGGESTED READINGS

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Web Resources

<http://www.eci.gov.in/>

<http://www.jaagore.com/>