

BPAE - 143

ADMINISTRATIVE SYSTEM IN BRICS



“शिक्षा मानव को बन्धनों से मुक्त करती है और आज के युग में तो यह लोकतंत्र की भावना का आधार भी है। जन्म तथा अन्य कारणों से उत्पन्न जाति एवं वर्गगत विषमताओं को दूर करते हुए मनुष्य को इन सबसे ऊपर उठाती है।”

— इन्दिरा गांधी



“Education is a liberating force, and in our age it is also a democratising force, cutting across the barriers of caste and class, smoothing out inequalities imposed by birth and other circumstances.”

— Indira Gandhi

ADMINISTRATIVE SYSTEM IN BRICS

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COURSE INTRODUCTION

BRICS is the acronym coined for an association of major emerging national economies, that is, Brazil, Russia, India, China and South Africa. The formal names of these countries are Federative Republic of Brazil, Russian Federation, Republic of India, People's Republic of China and the Republic of South Africa. The bilateral relations among these nations are mainly based on equality, mutual benefit and non-interference. It's an important grouping, bringing together the major emerging economies from the world, comprising 41 per cent of the world population*, having 24 per cent of the world GDP* and more than 16 per cent share in the world trade*. These countries have been the main engine of the global economic growth over the years. It has been observed that BRICS are together to deliberate on important issues under the three pillars of political and security, economic and financial, and cultural and people to people exchanges (<https://BRICS2021.gov.in/about-BRICS>). Thus, in view of above, study of administrative system in BRICS has significance in development through joint efforts. The major objective of this discipline specific Elective Course on Administrative System in BRICS is to familiarise the learners with Constitutional framework and structure of the government in the BRICS nations. As BRICS members are known for their influence on regional affairs, therefore to understand their administrative system, the study focuses on Constitutional framework and structure of the Government in BRICS countries. The description of role of bureaucracy in policy-making, implementation and analysis provides a clear understanding of administrative system. In addition, Course highlights various control mechanisms over administration, personnel management, planning process, budgeting and audit system; and local governance in selected nations. It also deals with emerging issues such as citizenship, governance and administration; growing role of civil society; and administrative reforms in governance. The Course has been divided into six Blocks and fourteen Units.

* Based on World Bank data (2019)

BLOCK 1
CONSTITUTIONAL FRAMEWORK AND
STRUCTURE OF GOVERNMENT IN
BRICS

**BLOCK 1 : CONSTITUTIONAL
FRAMEWORK AND STRUCTURE
OF GOVERNMENT IN BRICS**

UNIT 1 BRICS: Constitutional Framework

UNIT 2 BRICS: Legislature

UNIT 3 BRICS: Executive

UNIT 4 BRICS: Judiciary

UNIT 1 **BRICS: CONSTITUTIONAL FRAMEWORK***

Structure

- 1.0 Objectives
- 1.1 Introduction
- 1.2 Constitutional Framework of Brazil
- 1.3 Constitutional Framework of Russia
- 1.4 Constitutional Framework of India
- 1.5 Constitutional Framework of China
- 1.6 Constitutional Framework of South Africa
- 1.7 Conclusion
- 1.8 Glossary
- 1.9 References
- 1.10 Answers to Check Your Progress Exercises

1.0 **OBJECTIVES**

After studying this Unit, you should be able to:

- Discuss the importance of Constitutional framework for a Country;
- Explain the political system of BRICS;
- Describe the history of Constitutional framework of BRICS; and
- Highlight the features of the Constitution of Brazil, Russia, India, China and South Africa.

1.1 **INTRODUCTION**

The Constitution of a country is the written supreme law (with few exceptions) by which all other laws and rules in a country must comply. It defines the main rights and responsibilities of the state, various institutions that make up the state and, in some cases, those of citizens. A Constitution is generally more difficult to adopt, amend or revoke, as it requires some form of special approval process that includes a specifically created assembly, a referendum or a super majority

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within a parliament (or the approval of national and sub-national parliaments in a federal state). The constitutions often include definition of the role and responsibilities of an institution, that is, elected or appointed to pass legislation and represent the interests of citizens. These institutions can be known by many names such as parliament, national assembly, congress, legislature, but all have almost similar mandates. A Constitution is the basic and legal frame of a country. It is a law, or a collection of laws and rules that create the framework for how a country is going to be governed and this framework usually describes the powers of different levels of government and the process for creating laws. In this Unit, we will discuss the Constitutional framework of BRICS; and their basic features.

1.2 CONSTITUTIONAL FRAMEWORK OF BRAZIL

With an area of 8.5 million square km. and a population of over approximately 202 million, Brazil is the largest and most populated Latin American country. Brazil became independent in the year 1822 after more than hundreds years rule of Portuguese. Prince of Portugal became Pedro I, Emperor of Brazil, after independence. Since then, the country wrote seven Constitutions beginning with the Constitution of 1824. The Constitution of 1824 gave the Emperor wide range of powers such as control over governing institutions, the legislature and provincial governments and it lasted till 1889, when Pedro II was overthrown and the Republic of Brazil was formed. Since 1889, the country had several forms of government, including state autonomy and centralisation, authoritarianism and democracy.

The Constitution of Brazil in 1891

The first republican Constitution of Brazil was very similar to the Constitution of United States. It established the Presidential system and introduced male universal suffrage from the age of 21. It also contained several provisions such as separation of powers, checks and balances, a bicameral legislature, direct elections, and a federal chamber.

The Constitutions of Brazil from 1934-1937

In the year 1930, Getulio Vargas organised a military revolt and led a Coup de' Etat. In 1934 this government created a new Constitution. After couple of years, Vargas faced a counter-revolution, forcing him to stage a coup, after which he began a new Constitutional process, which ultimately resulted in reshaping the features of Constitution such as authoritarian, giving importance to executive and legislative powers of the President, who was the supreme authority of the State. The President had powers to appoint the Governors of the provinces, who in turn appointed the mayors of cities. During this period, all political parties were dissolved; the Congress was closed; and individual rights and guarantees were suspended. The government had a great intervention in the economy. The Constitution of 1937 allowed Vargas to proclaim a dictatorship called the New State (Estado Nôvo) and to remain in power for another decade.

The Constitution of Brazil in 1946

In 1946, the Constitution was being replaced by the New State's dictatorship of Getúlio Vargas after he was overthrown by his war minister. A representative democracy was established and a new President, Eurico Gaspar Dutra, was elected for five years. This time constituent assembly drafted a more balanced and liberal Constitution, which re-established the basic individual rights and the separation of powers.

The Constitutions of Brazil in 1967-1969

There were so many drawbacks in the Constitution of 1946, which severely compromised its document's spirit and eliminated its democratic character as well. Therefore, it was replaced by a new Constitution of 1967. This document was again changed through a Constitutional reform in 1969. Both Constitutions were characterised with centralised power in the hand of executive, in particular in the President, because they sought to institutionalise the military regime.

Transition of the Constitution in 1988

In 1970s, the military regime of the previous Constitution faced popular uprisings and dissatisfaction as economic progress become too slow and it ultimately transit the authoritarian rule to democracy in 1974. The President Ernesto Geisel and his Chief of the Cabinet, General Golbery de Couto e Silva conducted a gradual process of political opening or liberalisation, which was characterised by small advances that limited the establishment of a full democracy. Thereafter, in year 1985, the government approved the convocation of the National Constituent Assembly (Assembléia Nacional Constituinte (ANC)) to draft a new Constitution. For the drafting of Constitution of 1988, 559 member Assembly adopted a "from scratch" participatory methodology and organised public hearings. After twenty months of deliberation, the ANC produced the 1988 "Citizen Constitution".

Structure of the Government under Constitution of 1988

Under the new Constitution, Brazil is a presidential, federal republic. An amendment was being done in 1996, in which municipalities were incorporated with states as part of the federation. Consequently, the country is composed of 26 States and the Federal District (Brasilia). The federal, state, and municipal governments have their own Legislative, Executive and Judicial institutions. The aim of the Constitution of 1988 was to give state and municipal governments more administrative autonomy and responsibility for policy implementation and decentralising the federal power.

Main Features of the Constitution of Brazil**i) *The Executive branch***

The executive branch is headed by a President who is directly elected for a four year term. She or he is both, head of the State and head of the Government. Although, all of the Brazil's Constitutions since 1891 prohibited consecutive presidential terms, but after the amendment of 1997 this rule has been changed

as the President now has no limit on number of terms but may not serve more than two terms consecutively.

ii) ***The Legislative branch***

The federal legislative branch is bicameral, consisting of the Chamber of Deputies and the Senate. There are 513 federal Deputies, 3 members from each state and federal district are elected to serve eight-year terms. One-third and two-thirds of members are alternatively elected every four years and 81 senators are elected by proportional representation from each state and serve four year term.

iii) ***The Judicial branch***

The federal judiciary is composed of the Federal Supreme Court, the Superior Court of Justice, Regional Federal Courts, Labour Courts, the Electoral Court and the Military Court. The Supreme Federal Court is the highest court and consists of 11 justices appointed by the President and approved by the Senate. The Court can declare federal, state, and municipal laws unconstitutional and therefore can declare such laws as null and void.

New Constitutional Developments and Challenges

In 2013, the Brazilian government faced a wide-spread national dissatisfaction, expressed in the country's largest protests in 20 years on a range of issues. These included corruption accusations, the costs associated with hosting the 2014 FIFA World Cup, and the general high living costs. The President Dilma Rousseff sought to overcome this situation, proposing to vote on amending Brazil's Constitution by calling for a Constitutional assembly to reform the political system.

The Constitution of 1988 served the country for more than three decades with several amendments done in 1992, 1993, 1994, 1995 and 1996.

The polarisation of contemporary Brazilian politics only serves to reinforce the critique of presidentialism advanced in 1988. The radical party has favourable political setting to win elections in all scenarios. Therefore, there is feeling surfaced for the need of change in the Constitution in coming times.

1.3 CONSTITUTIONAL FRAMEWORK OF RUSSIA

Since the disintegration of the Soviet Union in 1991, Russia has adopted different economic and legislative reforms to adept itself into the new model of capitalistic free market economy. The Russian government has made efforts in establishing a new statutory framework, which substantially differentiate itself from that of the Soviet Union era and tried to bring the country up to modern standards. Due to shortage of time, since its new regime, Russia has developed its legal structure at a fairly quick pace and in a fairly large scale. However,

current Russian legislative system is still deemed very unstable and not well established.

Constitutional Structure of Russia

The Constitution of the Russian Federation was adopted by national referendum on December 12, 1993 which came into force on 25th December, 1993 and it gave detailed structure of its various powers, which are headed by different heads like federal sovereign power, federal structure and governing system, later on these powers are being modelled after many western democratic systems embracing the doctrine of separation of powers by composing of three branches executive, legislature and judiciary. The Constitution of Russia consists of preamble and two sections. The Constitution also specifically emphasised on self-determination, human rights and civil liberties of citizens as key points, as no other form of democratic government ever has existed before in its history.

Basic Features of the Constitution of Russia

i) *Federal Structure*

The Russia Federation is comprised of 83 federal entities, among which are 46 oblasts (provinces or districts), 21 republics, 4 autonomous okrugs (districts), 9 krais (territories), 2 federal cities, and 1 autonomous region (oblast). (subject to change).

The Constitution of Russia granted these entities some autonomy over their own internal economic and political affairs, it also list out some reserved powers to these entities. The Constitution also gave discretionary powers to the regional bodies to pass laws, provided those laws do not contradict the Constitution and existing federal laws.

ii) *Executive Branch and its Structure*

The highest executive power is split between the President and the Prime Minister, with the President being the dominant figure. The President is elected by popular vote for a four year term, which was later amended to six year term by the Parliament in 2008. The President has the right to choose the Prime Minister with the approval of the State Duma and as the head of the state, he makes decisions on domestic and foreign policies, holds the position of Commander-in-Chief of the armed forces, possesses veto power over legislative bills, issues decrees and directives that have the force of law, resolves issues of citizenship of the Russian Federation, awards state decorations and grants pardons (Russiapedia, 2011).

iii) *Parliament and Legislative system*

The legislature is represented by the Federal Assembly of Russia, which consists of two chambers, i.e. the State Duma the lower house, and the Federation Council the upper house. The two chambers possess different powers and responsibilities, while the State Duma is of more significance, as the State Duma carries the main responsibility for passing federal laws. Although bills may originate in either legislative chamber, they must be first considered by the

State Duma and be adopted by a majority vote before it could be turned over to the Federation Council, which has 14 days to take a vote on it. If rejected, the bill will be returned to the State Duma, which then can only pass it with a two-thirds vote again in the same form. If a bill is adopted by the Federation Council, it must be signed by the President to become law. The President has a final veto, but the State Duma and Federation Council also have the overriding power by passing a two-thirds vote.

iv) ***Judicial System***

The Russian judiciary system basically comprised of three types of courts:

- The courts of general jurisdiction, subordinated to the Supreme Court;
- The arbitration court system under the High Court of Arbitration; and
- The Constitutional Court.

The Ministry of Justice administers the judicial system, and the General Prosecutor's Office, Internal Affairs and Federal Security Service perform the duties of law enforcement (Zubarev, 2008).

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) What are the main features of the Constitution of Brazil?

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2) Discuss the legislative system in Russia.

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1.4 CONSTITUTIONAL FRAMEWORK OF INDIA

The Republic of India is located in South Asia and bordered by Pakistan, China, Bangladesh, Myanmar, Nepal and Bhutan. It is the world's seventh largest country in terms of geographical size as well as having the world's largest democracy. Demographically it is the second most populous country after China. It is also a very diverse country with different cultures and religions mutually coexisting. Basically there are two official languages i.e., Hindi and

English are used for federal business, while the Constitution recognises the existence of many other languages.

Being a federal Nation it has 28 federated entities and eight union territories as on March, 2021. It has parliamentary form of government based on the Westminster model. In 18th century it was annexed by the British East India Company and later on in the mid of 19th century, it fell under British colonial rule. The colonial administration of British India or British Raj ended with the struggle by Indians for independence, which was marked by a widespread non-violent resistance movement resulted in independence from the British Colonial Empire in 1947.

Constitutional History of India

After independence a constituent assembly was framed in 1948 to draft the Indian Constitution, which was being adopted later on in 1950 and still in force till date, this Constitution basically consist of the fundamental law of India was mostly embodied in a series of statutes enacted by the British Parliament. Key among them was the Government of India Acts of 1919 and 1935.

The Government of India Act, 1919

The primary purpose of this Act was to expand native participation in the government as well as to establish dual form of government with limited powers. The imperial legislative council was transformed into a bicameral legislature for India. At last, the Act also established the position of a High Commissioner with residence in London to represent India in the United Kingdom.

The Government of India Act, 1935

This Act was adopted in response to opposition from the National Congress of India towards the Act of 1919 for doing too little in terms of granting autonomy. Its key provisions included:

- Abolition of the dual form of government or diarchy and the granting of a larger degree of autonomy for the provinces.
- Establishment of a Federation of India.
- Introduction of direct suffrage and extension of the franchise.
- Membership of the provincial assemblies was altered so as to include more elected Indian representatives, who were able to form majorities and be appointed to form governments.
- The establishment of a Federal Court.

The Constituent Assembly of 1948 and the Constitution of 1950

In 1946, the British decided to examine the possibility of granting independence to India. As a result, a British Cabinet Mission was dispatched to India to hold discussions with the representatives of British India and the Indian States in order to agree on the framework for writing a Constitution, and set up a

constituent body and an executive council. Following this Mission and the ensuing negotiations, a Constituent Assembly was indirectly elected by the provincial legislatures comprising 278 representatives including 15 women. Parties represented in the Constituent Assembly were the Congress Party, which had a majority. The Constituent Assembly met for the first time in December 1946 and by November 1949 the draft Constitution was approved. The Constitution came into effect in January 1950 and the Constituent Assembly was transformed into a Provisional Parliament.

The Constitution, which is still in force has been amended over 105 times (August, 2021) and it is one of the most frequently amended Constitutions in the world. It is also known to be one of the longest and most detailed Constitutions in the world with 395 articles, 22 parts and 8 schedules to begin with which now (as on August, 2021) has increased to 470 articles 25 parts and 12 schedules with five appendices. Some of the basic features of Indian Constitution are given below.

Basic Features of the Constitution of India

The Indian Constitution – Federal System with Unitary bias

Indian Constitution declares that India, i.e. Bharat shall be a Union of States, however, our form of Government also exhibits many federal characteristics namely, supremacy of Constitution, division of powers between Union and States, and existence of an independent judiciary.

Written and Detailed Constitution

The Constitution is a wholly written document, which incorporates the Constitutional law of India. It was fully debated and duly enacted by the Constituent Assembly of India. It took the Assembly 2 years, 11 months and 18 days to write and enact the Constitution.

Self-made and Enacted Constitution

Indian Constitution is a Constitution made by the people of India acting through their duly elected and representative body, the Constituent Assembly, which was organised in December 1946. The first session of the assembly was held on 9th December, 1946 and the Objectives Resolution was passed on 13th December, 1946, which became Preamble of the Constitution on 22nd January, 1947.

Fundamental Rights

Provisions of Fundamental Rights are incorporated in Part III of the Constitution. They protect the basic rights of freedom, equality, life and religion. They are considered inviolable by the State as there are provisions of judicial remedies to safeguard these. Our fundamental rights are not sacrosanct and absolute.

India is a Republic

The Preamble declares India to be a Republic. India is not ruled by a monarch or a nominated head of the state. India has an elected head of state, the President

of India who wields power for a fixed term of 5 years. After every 5 years, the people of India indirectly elect the President of the country.

Fundamental Duties

There can be no rights without duties. Original Constitution had no provision for Fundamental Duties and, therefore, Part IV-A of the Constitution was inserted by the 42nd Amendment to the Constitution to lay down a code of duties for the citizens of the country.

Besides, having other features like parliamentary form of the government, mix of rigidity and flexibility, independent judiciary, single citizenship, bicameral legislature and directive principles of the state policy.

1.5 CONSTITUTIONAL FRAMEWORK OF CHINA

China became the People's Republic of China on 1st October 1949. Now (March, 2021) China consists of 23 provinces, five autonomous regions and four municipalities. Hong Kong and Macau are two special administrative regions whose laws differ from those applicable to the rest of China. Provisionally, China has a population of over 1,447,024,052 people (Worldometers, 2021). The majority of these are Han Chinese, constituting just slightly over 90 per cent of the population, while there are several other sizeable minorities such as Tibetans and Uighurs.

China has adopted three Constitutions since its proclamation as People's Republic of China. The first Constitution, in accordance with common programme, was adopted in 1954 and in 1975 another Constitution was adopted due to political upheaval in China. After the death of Mao-Zedong another Constitution was adopted to be known as 1978 Constitution.

Its present Constitution was promulgated on 4th December 1982, which was prepared by the Central Committee of the Communist Party of China after prolonged nationwide discussions. It was officially recognised by the National People's Congress (NPC), which met in December 1982. The draft of the Constitution adheres to four cardinal principles namely, adherence to socialist road; people's democratic dictatorship; leadership by the Communist Party of China; and by Marxism, Leninism and Mao Zedong thought.

Basic Features of the Constitution

i) *A Written Document*

The Constitution of People's Republic of China is written in nature. It is a brief document containing 138 Articles, which comprises of four chapters. Though, it is brief yet it lays down sufficient detail in it. The Constitution of China not only deals with political, social and economic objectives of the regime but also with the structure of the state machinery and its programme for future. According to Article I of the Chinese Constitution, People's Republic of China (PRC) is a

socialist state. The socialist system is the basic system of People's Republic of China. No individual or organisation is allowed to sabotage the socialist system.

ii) ***Flexible Constitution***

The Constitution of China is flexible. Article 64 of the Constitution declares statutes and resolutions are adopted by simple majority of the Deputies of National People's Congress. In comparison with other rigid Constitutions of the world the procedure of amendment in the Chinese Constitution is easier. Thus, the Constitution of China is considered to be flexible.

iii) ***Unitary system***

The Constitution of China provides for a unitary system. It provides for the centralisation of powers at the Centre. Though there are provinces autonomous regimes and municipalities, but they are given powers by the Central Government, which can be taken back whenever it is so desired.

iv) ***People's Republic***

Article II of the Constitution states that all powers in People's Republic of China belong to the people, which are exercised through National People's Congress and Local People's Congress. The people administer the state affairs and manage their economic, social and other affairs through various channels in various ways in accordance with law.

v) ***Democratic Centralism***

The Article III of the Constitution emphasises that the state organs of People's Republic of China apply the principle of democratic centralism. The people, at different levels, are instituted through democratic election and responsible to the people. All the state organs are created by the people's congresses. The division of powers and functions between the Centre and the local state organs is guided by the principle of giving full play to initiative and enthusiasm of local authorities under the unified leadership of central authorities.

vi) ***Communist Party of China***

Like the Soviet Russia, the political system of China is also characterised by one party system, i.e. the Communist Party of China (CPC) under the leadership of Mao Zedong and Marxist and Leninist thought is the guiding and controlling force in China. Though the Constitution does not emphatically and clearly declares the supreme position of the Communist Party, yet in practice, the party exercises complete control over the machinery of the government.

vii) ***Unicameral Legislature***

The Constitution of the People's Republic of China declares that there will be a unicameral legislature to be known as National People's Congress (NPC). It is the highest organ of the state power and the sole legislative assembly of China. It is repository of all powers and authority in the country and people exercise their powers through it. Its Deputies are directly elected by the people.

viii) *Fundamental Rights and Duties*

The Article 33-56 of Chapter II of the Constitution provide detailed description of the fundamental rights and duties of the citizens. The individual's rights include right to vote, freedom of religion, freedom of speech, freedom of press, freedom of assembly, freedom of association, freedom of procession and of demonstration. The state also protects the right of citizens and their lawfully earned income and saving, house, property and also his right to inherit property. The important duties include safeguarding the unity of the country, to abide by the laws of Constitution, to defend the motherland and resist aggression.

ix) *No Discrimination and Exploitation*

The Constitution of China declares that all nationalities are equal. All types of discrimination or oppression with any nationality and acts, which undermine the unity of the nationalities, are prohibited. It also disbands the exploitation of man by man or exploitation of men by state.

1.6 CONSTITUTIONAL FRAMEWORK OF SOUTH AFRICA

Being located in the southern tip of the African continent, South Africa is bordered in the north western region by the Orange River that separates it from Namibia, in the eastern region by the Limpopo River that separates it from Zimbabwe and South Eastern Botswana. It is Africa's most multiracial nation comprising People's of African, Asian and European descent. It has 11 official languages.

Political System of South Africa

The territory of South Africa was formerly a British colony until its accession to independence, as a self-governing dominion in 1910. This was done after the British Parliament passed the South Africa Act (1909), by merging the four British dependencies of Cape Colony, Orange Free State, Natal and Transvaal. Although the objective of the British in merging these dependencies was to unite South Africa and consolidate its imperialist interests, but it resulted in dividing the South Africa, with blacks excluded from political participation. This development ultimately leads to discontentment and racial conflict in the country. The practice of exclusionary politics was later institutionalised under the system of apartheid an extreme form of legal segregation based on race, and enforced by the Nationalist Party government between 1948 and 1994. In the year 1994, a sudden change occurred that leads to end the white minority rule. Winds of democracy started blowing across Africa, and an increasingly unmanageable and violent revolutionary forces within South Africa forced the Nationalist Party (NP) government of President F. W. de Klerk to introduce reforms, which ultimately resulted in the establishment of a Constitutional democracy headed by the first non-white president Nelson Mandela following his African National Congress (ANC)'s overwhelming win in the first multiracial elections in April 1994.

Constitutional History of South Africa

South Africa's Constitutional history and development can be divided into three key phases: the period between 1909 and 1910, the period 1910 and 1990 and finally the period 1990 to present times.

The South Africa Act of 1909

The period 1909 to 1910 covers the independence period and that period was essential for the genesis of the Constitutional development of South Africa. This period was characterised by the enactment of the South Africa Act by the British Parliament, establishing an independent Union of South Africa comprising the territories of Cape Colony, Orange Free State, Natal and Transvaal. In reality, this was South Africa's Independence Constitution.

The Constitution of 1961

In 1960, following the drafting of a new Constitution, South Africa's white voters voted in a Constitutional referendum to abolish the Union of South Africa created by the South Africa Act of 1909, instead a Republic of South Africa was established. Although premised on the South Africa Act, the 1961 Constitution severed all ties with the British Empire as the state president replaced the Crown and the Governor General and All references to "king", "queen", and "crown".

The Constitution of 1983

In 1983, a series of legislative reforms resulted in the enactment of a new Constitution and a reconfiguration of state institutions and power. These reforms were implemented through the Constitution of the Republic of South Africa Act of 1983. It provided for an executive authority that was shared amongst an executive president elected for a 5 year term.

The Constitutional development in the 1990s

In 1990, mounting international and domestic pressure and growing evidence and realisation among the white political class that the apartheid system was unsustainable, forced the NP towards dismantling the system. The first step was the lifting of the ban on political organisations in particular the African National Congress (ANC) and, the release of veteran opposition leader, Nelson Mandela, after 27 years in prison. This was followed by a repeal of the apartheid legislation. Between these developments and against a backdrop of intense political violence, the NP, the ANC and other political organisations, engaged in a series of negotiations under the umbrella of the Convention for a Democratic South Africa (CODESA). These negotiations eventually led to the adoption of an interim Constitution to govern the transition to a new South Africa. This came after an all-white referendum in which over 60 per cent of whites voted in favour of absolute reforms.

The Constitution of 1996

Constitutional court passed the Constitution of the Republic of South Africa Act 108 of 1996. It has been declared in the document that Constitution is the supreme law of the land and no other law can supersede it. It has provisions

to protect the rights of the people of the country and is rated as one of the progressive document. Human dignity, achievement of equality and advocacy of human rights and freedom are the hallmark of this Constitution of 1996. The Constitution has amended 17 times through amendment acts.

Basic Features of South Africa Constitution

i) *Legislative Branch*

The bicameral Parliament of South Africa makes up the legislative branch of the national government. It consists of the National Assembly (the lower house) and the National Council of Provinces (the upper house). The National Assembly consists of 400 members elected by popular vote using a system of party-list proportional representation. Half of the members are elected from parties' provincial lists and the other half from national lists.

The President is elected by the members of the General Assembly. Upon election the President resigns as an MP and appoints a Cabinet of Ministers from among the members. Ministers however retain their parliamentary seats. The President and the Ministers are responsible to the Parliament, of which they must be elected members. General elections are held at least once every five years.

ii) *Executive Branch*

The President, Deputy President and the Ministers make up the executive branch of the national government. Ministers are Members of Parliament who are appointed by the President to head the various departments of the national government. The President is elected by the Parliament from its members. The ministers individually, and the Cabinet collectively, are accountable to the Parliament for their actions.

iii) *Judicial Branch*

The third branch of the national government is an independent judiciary. The judicial branch interprets the laws, using as a basis the laws are enacted and explanatory statements are made in the Legislature during the enactment. The legal system is based on Roman-Dutch law and English common law and accepts compulsory ICJ jurisdiction, with reservations.

Check Your Progress 2

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) Bring out the main features of the Constitution of India.

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2) Distinguish between the Constitutional features of India and China.

3) Describe the Constitutional history of South Africa.

1.7 CONCLUSION

The Constitution of a country is generally the written supreme law by which all other laws and rules in a country must comply. It will define the main rights and responsibilities of the state, the various institutions that make up the state and, in some cases, those of citizens. In this Unit we have studied about prerequisite of Constitution for BRICS countries. We have also studied about different features of the Constitution of BRICS countries.

1.8 GLOSSARY

Constitution: A Constitution is a set of fundamental principles or established precedents, according to which a state or other organisation is governed. These rules together make up, i.e. constitute, what the entity is. When these principles are written down into a single document or set of legal documents, those documents may be said to embody a written Constitution; if they are written down in a single comprehensive document, it is said to embody a codified Constitution.

Judicial: The judiciary (also known as the judicial system or court system) is the system of courts that interprets and applies the law in the name of the state.

Legislature: A legislature is a deliberative assembly with the authority to make laws for a political entity such as a country or city.

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1.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - Refer Section 1.2
- 2) Your answer should include the following points:
 - Refer Section 1.3 (iii)

Check Your Progress 2

- 1) Your answer should include the following points:
 - Refer Section 1.4
- 2) Your answer should include the following points:
 - Refer Section 1.4 and 1.5
- 3) Your answer should include the following points:
 - Refer Section 1.6

UNIT 2 BRICS: LEGISLATURE*

Structure

- 2.0 Objectives
- 2.1 Introduction
- 2.2 The National Congress of Brazil
- 2.3 The Federation Assembly of the Russian Federation
- 2.4 Indian Parliament
- 2.5 The National People's Congress of the People's Republic of China
- 2.6 The Parliament of South Africa
- 2.7 Conclusion
- 2.8 Glossary
- 2.9 References
- 2.10 Answers to Check Your Progress Exercises

2.0 OBJECTIVES

After studying this Unit, you should be able to:

- Explain the legislative set up in BRICS;
- Compare their legislative systems; and
- Highlight the specific features of legislature in BRICS.

2.1 INTRODUCTION

It is a known information that legislature is primarily a body, which performs the task of legislation or “law-making”. The legislature is generally regarded as the first organ out of the three basic organs of the government, the other two being executive and judiciary. The legislature makes laws for the country, after substantial discussions and deliberations. In this way, a legislature is that part of the government, which has the responsibility to translate the will of the people and state in terms of policies and ensures their implementation through the appropriate authority created for the purpose. This makes the legislature truly significant in the functioning of any government particularly in democratic countries, where legislature is, generally, the assembly of elected

* Contributed by Prof. Swinder Singh, USOL, Panjab University, Chandigarh

representatives of the people and represents the common public opinion and aspirations. Beside all important tasks of law-making and properly shaping the dominant public will, the legislature performs a number of other significant functions too. Among these functions, we may include the effect of legislative to control over executive and finance; act as a forum of deliberations to frame the national policies; act as a ventilating chamber to highlight public grievances; perform the functions of semi-judicial nature such as “impeachment”; act as a nursery and training ground for national leaders and to perform some other miscellaneous functions varying from one country to another. It is worth mentioning that the structure, size and nomenclature of legislatures too vary from country to country. The legislature is known as “Parliament” or “Congress” or “National Assembly” in a large number of countries and also by other varied names in other countries. For instance, the legislature is called “Congress” in USA and Philippines, whereas Parliament in UK, India and South Africa. It is known as “Federation Assembly” in Russia, “National Diet” in Japan, “National Assembly” in France, Hungary, Zambia, South Korea and Kuwait. It is known as “Majlis” in Iran and Malaysia. From the structural point of view, there are broadly two types of legislatures – Unicameral or Bicameral. The Unicameral means a single house, whereas Bicameral legislature has two houses or chambers. Roughly, two-thirds of all the legislatures in the world are unicameral, while the remaining are of bicameral type. Again, there are variations on the basis of their way of formation, that is composed of either directly elected or indirectly elected members.

In this Unit, we will focus on the legislatures of BRICS viz., the National Congress of Brazil, the Federation Assembly of Russia, the Parliament of India, the National People’s Assembly of China and the Parliament of South Africa. In this regard, we will mainly focus on their composition and major functions.

2.2 THE NATIONAL CONGRESS OF BRAZIL

The legislature in Brazil, the National Congress is of bicameral type, which is composed of two houses — the Senate, the Upper house, and Chamber of Deputies, the Lower house. The total strength of the National Congress is 594.

- 1) The Senate is comprised of 81 members, having 3 representatives (regardless of the formulation or area) from each of the 26 states and the Federation District. These members are elected for 8 years on the basis of the principle of federalism as it provides representation to the states in the Federation units. Although the members are elected for eight years, but there are elections after every four years when alternatively, one-third or two-thirds members are replaced or renewed. The members are directly elected and the most voted candidates take the seat. The list includes two substitutes for each candidate. The members of the Senate elect the President of the Federation Senate and also Vice-Presidents. The President (Speaker) of the Senate acts as the ex-officio President of the National Congress and may call the joint sessions of the two houses.

Based on tradition, the President is chosen from the largest group in the house.

- 2) The members for Chamber of Deputies of the National Congress are elected as a whole after every four years. The division of seats is proportional to the population in the States and Federation District, with a minimum of 8 and a maximum of 70 Deputies for each unit of the Federation. Though, so to say, system of Proportional Representation has been adopted, yet the system grants disproportionate share of political power to the states. The members elect one President of the Chamber who acts as its Speaker. Both the Chambers have a “Chief Executive Office” comprising of the civil servants chosen by the Speaker. Each member has his/her own staff, paid by the house but chosen by the representatives themselves. The Congress meets in two sessions of nearly four and a half months each starting in February and August every year. Recess period is used by the members to nurture their respective constituencies.

- i) **Major Functions:** The major functions of the National Congress include primarily the task of law-making and power to control the public resources and finance. The Congress also enjoys the power to control the working of executive. The legislature undertakes its various functions with the help of a number of committees and sub-committees. The National Senate and the Chamber of Deputies as well as their committees may question Ministers of State – or any of their officers about the working of any department or agency. The officials are required to furnish full information asked by the legislature. In addition, the National Congress approves the national budget and exercises control over finances by various modes. In case of some serious issues of negligence of duty or of national security, at least one-third of the members of respective house can initiate Congressional Investigating Committee (CPI). The National Congress has the power to check the accounts of the President or the Vice-President of the Republic and the ministers of state; and can authorise legal process against the errant. The Congress ratifies international treaties undertaken by the executive; and authorises the President to declare war, in case of intrusion or circumstances. Another sweeping power of the Congress is to overrule the veto of a bill exercised by the President within 30 days.

As Brazil has adopted the system of bicameralism, any bill laid before one house must be revised by the other, thereby, assigning the power of legislation to both the houses.

- ii) **The Directing Board:** It is also an important part of the legislature. It has the duty to direct the legislative work and the administrative services of the House. It is a collegiate body comprising of 7 members, elected from among by the Deputies. Similarly there is also a Directing Board of the Federation Senate. The term of members of these Boards is two years. The Boards play significant role in the

legislative process, and work together for various important tasks including those relating to the Constitutional amendments. The Boards are assisted by the Secretariat General in their work and the Presidency towards the performance of its duties, coordination and guiding on various Constitutional functions.

- iii) **Committees:** The Congress works through various committees, which are of three types; Standing committees, Temporary committees and Joint committees. These committees comprise of the members of different parties on the basis of their strength in the house. Most of the proposals are discussed and analysed, in detail, by these committees and their reports are submitted to the house for further action. The committees may hold public hearings and may call officials and ministers to render the required facts and information. The Committees may also take up the field visits, inspect the offices, audit the accounts and also receive complaints against the government authorities. Thus, the committees enjoy vast power to approve or disapprove the matter under consideration.

2.3 THE FEDERATION ASSEMBLY OF THE RUSSIAN FEDERATION

The Parliament of Russia is called Federation Assembly. Like the Brazilian legislature, Russian legislature too is having a bicameral Parliament. The legislature in Russia is comprised of two houses — the Federation Council, Upper house, and the State Duma, Lower house. The Federation Council has 170 seats, while the State Duma has 450 seats.

- 1) **The Federation Council:** The members to the Council are appointed by getting two representatives from 83 Federation administrative units, one represents. Here, the legislative authority and the other represents the executive authority, as well as the representatives of the Russian Federation appointed by the President of Russian Federation whose number shall not exceed ten per cent of the Federation Council members representing legislative and executive representatives of the constituent entities.

To qualify as a candidate for the Federation Council, the candidate must be a Russian citizen with age not less than 30 years, having an unimpeachable reputation and should be a permanent resident for at least five years to proceed for the nomenclature of the Federation Council. Between the years 1996-2002, the Council was consisted of the heads of the executive and legislative bodies. However, after the reforms of 2000, they were replaced by the representatives of these bodies. The term of these members is the same as the term of office of the appointing (electing) bodies. The Federation Council is composed on the non-partisan basis.

The Federation Council elects its Chairman and his Deputies from its own members, who preside over the sessions and the meetings of the Council.

Functions and Powers of the Federation Council: Although both the houses are involved in the legislative process, it is observed that the Federation Council has less power than the State Duma. All the bills, must be placed before the State Duma first, even if those are proposed by the other house. In general, the Council enjoys following powers:

- a) It approves the changes in borders between the regions of Russian federation;
- b) It approves the Presidential orders on declaring the state of emergency or the introduction of martial law;
- c) It may approve the deployment of Russian Armed Forces outside its territory;
- d) It has power relating to appointment and dismissal of the President;
- e) It appoints Judges of the Constitutional Court and the Supreme Court; and
- f) It enjoys powers relating to the appointment and dismissal of the Prosecutor General and his/her Deputies, the Deputy Chairman of the Accounts Chamber and half of its auditors.

Significantly, powers of the Council reflect that it is a house to represent interest and opinion of the subjects of Russian Federation.

- 2) **The State Duma:** It is the other chamber of Russian Parliament, so called the Federation Assembly. The word Duma stands for “to think” or “to consider” the matters of National importance or to approve the policies. The State Duma is the lower house of the Parliament, which is comprised of 450 members, elected for a term of Five years. A citizen of Russian Federation having an age not less than 21 is eligible to participate in elections and may be elected. “One person may not simultaneously be a Deputy of the State Duma and a Member of the Federation Council”. The Deputies work in the Duma on an ongoing basis with a recess.

The Chairman of Duma is elected amongst the members, usually he is the preferred candidate of the President of Russian federation.

The State Duma: Powers and Functions:

As per the official site of the Russian government, the State Duma has following powers:

- a) Agrees on appointment of the Chairman of the Government (called Prime Minister) proposed by the President;
- b) Decide on the question of Confidence in the Government of the Russian federation;

- c) Hears annual reports of the Government on the results of its activities, and the issues raised by the State Duma;
- d) Appoints and removes the Chairman of the Central Bank, the Accounts Chamber of the Russian Federation and half of its auditors, and the High Commissioner for Human Rights;
- e) Declares an amnesty; and
- f) Makes charges against the President of the Russian Federation for his/her removal from the office.

Each house selects a Chairperson for the usual functions of conducting meetings and controlling the procedures.

Usually, both the houses sit separately but can meet together to listen to the messages of the President and the Constitutional Court, speeches of the heads of foreign states. It is worth mentioning that the meetings of both the houses are open.

There is a system of working through committees, which are constituted by both the houses from among their members. Until a few years back, there were 28 committees and several adhoc commissions in the State Duma, and 12 committees and 2 commissions in the Council. The Federation Council has established fewer committees, because of the rotational status of its members. The committee may set up some sub-committees too.

As far as the legislative process is concerned, the laws are first adopted by the State Duma, approved by the Federation Council or vice-a versa and are signed by the President. The Federation Council may disapprove any legislation; however, the State Duma can reverse this move by a minimum of two-thirds of votes. The President's veto can be overcome only if the law is readopted by both the houses by at least two-thirds of votes of the total number of members in the Federation Assembly. An important legislative process in Russia is, "draft laws may originate in any of the house of the Assembly or laws may be proposed by the President, local legislatures, the Constitutional Court, the Supreme Court or the Superior Court of Arbitration". The Part time character of the Federation Councils works into less developed committee structure, and its lesser powers vis-a-vis the State Duma makes it more a consultative and reviewing body than a law-making chamber". The significant power enjoyed by Duma is to approve the President's choice for the Prime Minister.

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) What are the major functions of the National Congress of Brazil?

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2) What is the difference between upper house and lower house in Russia?

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2.4 INDIAN PARLIAMENT

As per Article 79 of the Constitution of India, the Parliament consists of the President and the two Houses viz. the Rajya Sabha and the Lok Sabha. Making the President an integral part of the Parliament is in conformity with the principles and traditions of a parliamentary system of the government. Although the President himself/herself is not a member of the legislature, his/her participation in the legislative process is ensured by making him/her a part of the Parliament. The fact that s/he is the Chief Executive authority; and that the executive power is co-extensive with the legislative power also makes it necessary that s/he should become an integral part of the legislature. The President delivers only his/her opening address in the Parliament. Apart from this, a Bill passed by the House of Parliament cannot become law without the President's assent. The other legislative function of the President is to issue Ordinances, when both Houses are not sitting.

1) The Rajya Sabha (Council of States)

It is the "Upper House" or Chamber of Indian Parliament. In spite of the theoretical denunciations of Second Chambers, the Constituent Assembly was unanimous about the usefulness of the Rajya Sabha as an integral part of general scheme of the Union Parliament. As its name implies, this House is composed of the representatives of States i.e., the constituent Units of the Union and as such it represents the Federation principle. However, the different states of India have not been given equal representation in the Upper House, as is found in the American Federation. The maximum membership of the Rajya Sabha is limited to 250, out of which 12 members are to be nominated by the President of India from persons possessing special knowledge or practical experience with regard to matters like literature, science, art and social service. The remaining 238 seats are allocated to the States and Union Territories, largely in proportion to their population.

- i) **Election of Members:** Members of the Council of States are elected by the members of the respective Legislative Assembly in accordance with the

system of proportional representation by means of Single Transferable vote system. The representatives of the Union Territories are chosen in such a manner as the Parliament may by law determine. The states are not provided with equal representation in the Rajya Sabha. Equal representation is not desirable because of the great differences in areas and population of different States.

- ii) **Qualification of Members, Term and Quorum:** To be elected as a member, s/he should be a citizen of India and s/he should not be less than 30 years old besides some other qualifications. The Rajya Sabha is a permanent body and unlike the Lok Sabha, it cannot be dissolved. The term of its members is six years. But (as nearly as possible) $\frac{1}{3}$ rd of its members retire after every two years. However, any member is free to resign before the expiry of his/her term. The President has the power to summon the sessions of the Rajya Sabha. The Constitution imposes a duty upon the President, namely, that s/he must summon at least two sessions in a year and in such a way that the gap between one session and the other should not be of more than six months. One tenth of the total members should be present to start the proceedings of the House. Every member is required to attend its session. Any member remaining absent from it for a continuous period of 60 days ceases to be a member.
- iii) **Chairman and Deputy Chairman:** The Vice-President of India acts as the ex-officio Chairman of the Rajya Sabha. S/he presides over the sessions of the House. This pattern is adopted from the American Constitution. S/he, however, is not a member of the Rajya Sabha. As we know, the Vice-President is elected by the members of both the Houses and not by the Rajya Sabha alone. The Chairman may be removed from his/her office only if s/he is removed from the office of the Vice-President. The Chairman enjoys certain important powers. S/he has the final power to maintain order in the House. S/he controls the debates, discussions and deliberations of the House. S/he has the power to interpret the Rules of Procedure. The Deputy Chairman is a member of Rajya Sabha and is elected by the members of the House. In the absence of Chairman, s/he presides over the House.
- iv) **Powers of Rajya Sabha:** On legislative front, the powers of Rajya Sabha are almost equal to the Lok Sabha except the financial matters, where the powers of the Rajya Sabha are very limited. No bill can become law without the consent of Rajya Sabha. However, the two Houses do not stand on equal footing. The powers of Rajya Sabha, as discussed below, indicate that this chamber is less significant and less powerful as compared to the Lok Sabha.
 - a) **Legislative Powers:** The Parliament can make laws on all subjects included in the Union as well as in the Concurrent List. The Rajya Sabha enjoys equal power with Lok Sabha in this regard. Any legislative bill on any subject for which the Parliament has the jurisdiction can be introduced in this House. Any bill passed in

the Lok Sabha, requires the acceptance of Rajya Sabha also. It can propose any amendment or even completely reject the bill submitted to it. However, its rejection is not final. All such bills, over which there is a difference of opinion are referred to a joint session of both the Houses for the final decision. There, it may be passed by a simple majority. It indicates that the legislative power of Rajya Sabha stands diluted as the other House has a more than double of its strength and the Rajya Sabha is bound to lose the conflict between the two. Thus, the Rajya Sabha enjoys comparatively less powers.

- b) **Financial Powers:** Rajya Sabha has very minimal financial powers. Most importantly, no Money Bill can be introduced in the Rajya Sabha. The Money Bills passed by the Lok Sabha are sent to the Rajya Sabha for its approval, which it can only withhold for a maximum period of 14 days. It has no power to reject such bills. Thus, in financial matters, the Rajya Sabha has only an advisory role to play and the Lok Sabha has the final say. The Rajya Sabha can only delay the enactment of a Money Bill by fourteen days.
- c) **Executive Powers:** The Parliament exercises general control over the day to day activities of the executive. Members of the Rajya Sabha have the right to ask questions from the Ministers. They criticise the policies of Government and thereby, focus their attention on omissions or commissions. They have right to ask for any information.
- d) **Miscellaneous Powers:** The Rajya Sabha enjoys several other powers such as power to amend the Constitution, electoral power to elect the President and Vice-President, power to impeach the President in case of violations of the Constitution, removal of the Supreme Court Judges, charges against the Vice-President can be leveled only in Rajya Sabha, Special Power to declare State subject of State List as subject of National importance, and power to create and abolish the All India Services.

The Rajya Sabha is regarded as the second House of the Parliament. As compared to the Upper House of American legislature, again it is a weak house. But it is not a virtually, unimportant House like the second chamber in England, France or Canada. Indian Constitution makers wanted to add some more dignity to the Indian Legislature by adding the Rajya Sabha to ensure that law-making is not rushed through, if it is one house, and wanted to buy time in the other house to deliberate the legislation which might be the outcome of the passions of the moment. In this regard, because of its permanent character and presence of representatives of eminence from the states, it was intended to ensure a certain degree of stability, maturity and continuity in thought and action. The Constitution makers wanted to make the Rajya Sabha a deliberating chamber to give second look into the matters of importance. However, it is worth

mentioning that power to pass vote of No-confidence motion is prerogative of the Lok Sabha alone not of the Rajya Sabha

2) **The Lok Sabha**

The Lok Sabha or the lower house is the popular chamber of Indian Parliament. Its members are elected directly by the people. The maximum number of members to be elected to the Lok Sabha was originally fixed at 500. The membership was raised to 520 following the reorganisation of the states in 1956. It was further raised to 525 in 1967 and to 545 in 1973. The membership shall not be raised further in the 20th century. Out of maximum 552 members, not more than 530 from the States and not more than 20 members from the Union Territories are elected. The President has power to nominate two members from the Anglo-Indian Community, if s/he thinks that this community is not adequately represented.

The above seats are allotted to each State on the basis of its population in proportion to the total population in all the States and the Union Territories. These members are elected directly through secret ballot by adult franchise. Every citizen who is not less than 18 years of age and is not otherwise disqualified is entitled to vote at such election. The elections are conducted by the Election Commission of India.

The Lok Sabha is elected for a term of 5 years unless and until it is dissolved for some specific reason under the law. During proclamation of emergency its tenure can be extended for a period not more than a year.

i) ***Qualifications of Members***

- a) S/he must be a citizen of India.
- b) S/he must not be less than 25 years of age.
- c) S/he must be voter for any parliamentary constituency in India.
- d) S/he must possess such other qualifications as may be prescribed by the Parliament by law.

Disqualifications for Membership: A person is disqualified for being chosen:

- If s/he holds any office of profit under the Government of India or the Government of any State as is declared by the Parliament by law but not a Minister for the Union or for a State; or
- if s/he is of unsound mind and stands so declared by a competent court; or
- if s/he is an undischarged, insolvent; or
- if s/he has ceased to be a citizen of India; or
- if s/he is so disqualified by or under any law made by the Parliament.

In routine, three sessions of the Parliament are held in a year, that is, budget session, monsoon session and winter session.

ii) ***Powers and Functions***

Main function of both the houses is to make laws on the subjects mentioned under the Union list in the Seventh Schedule of the Constitution. However, the Parliament can legislate on the subjects falling under the State List-II. In case of emergencies like war, foreign aggression and rebellion, the Parliament acquires the power to legislate on any matter irrespective of the lists. In case of failure of State machinery and imposition of emergency suspending or dissolving the State Assembly, the Parliament assumes the powers of the State Assembly.

The functions of Lok Sabha are:

- a) **Legislative Functions:** As discussed earlier, both the Houses of Parliament have power to make laws on any subject included in the Union List as well as in the Concurrent List. The Lok Sabha has exclusive power in regard to Money Bills, otherwise a bill can be introduced in any of the Houses, and requires $2/3^{\text{rd}}$ majority to become an Act with consent of the President. However, the legislative powers of the Lok Sabha are not unlimited. This is so because the Indian Parliament is not a sovereign legislature as the British Parliament. It has to act under certain restrictions imposed upon its powers and functions by the Constitution. Any Law passed by it, which is not in accordance with the spirit of the Constitution, can be declared as unconstitutional by the Indian Supreme Court.
- b) **Financial Functions:** When the budget is prepared by the Finance Ministry and the Cabinet, it is submitted to the Lok Sabha for its approval. Though it goes to both the Houses but the Rajya Sabha has no power to reject it or hold it for more than 14 days. It is the Lok Sabha, which exercises effective control over the finances. It controls expenditure as well as the taxes, i.e. what new taxes to be imposed or the old taxes to be withdrawn. It ultimately sanctions the money to be spent by the executive out of the Public Fund.
- c) **Judicial Functions:** Sharing with the Rajya Sabha, the Lok Sabha enjoys certain judicial powers too. These include impeachment of the President of India, the Chief Justice and Judges of the Supreme Court and High Courts, the Chairman and Members of the Union Public Service Commission, the Comptroller and Auditor General of India, the Attorney General, etc. Apart from this, the grant of an amnesty also requires the approval of the Parliament.
- d) **Electoral Functions:** Electoral function of the Lok Sabha is the election of the President and Vice-President, which it shares with the Rajya Sabha and the State Legislative Assemblies. Besides this, Lok Sabha has a role in the election of the leader of majority party, that is, the Prime Minister, selecting the Speaker, the Deputy Speaker and the leader of opposition in the Lok Sabha.

- e) **Constituent Functions:** The Lok Sabha also enjoys the power to amend the Constitution of India. It may initiate the proposal, which requires the voting of both the Houses. In most cases, Constitutional amendment requires a majority of the total membership and two-thirds majority of the membership present and voting.
- f) **Executive Functions:** As indicated earlier, the Parliament exercises control over the activities of the executive. The Members have the right to ask questions from the Ministers regarding their departments or the activities concerning their respective departments. The members, in this way, bring to the notice of public the weaknesses of the Government. The members can also move and pass resolutions asking the Government to do or not to do a particular thing. Matter of urgent public importance can be brought to the notice of Government by way of Call Attention Motion. For asking any question, hours are fixed on each day of the working of Parliament. Members can even suspend the normal working of the Parliament by passing adjournment motion to focus the attention on a particular matter.
- g) **Miscellaneous Functions:**
- The powers of the President in regard to the declaration of Emergency are subject to the control of Parliament. If the Parliament is not satisfied, it may reject the declaration of Emergency.
 - It can allow the states to establish a Joint High Court or a Joint Public Service Commission.
 - It can make laws to implement the international treaties.
 - It can change the jurisdiction of the Supreme Court and High Courts.
 - It enjoys final power to create a new Public Undertaking by passing a special Statute for it.

2.5 THE NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA

China has unicameral system of legislature with the National People's Congress (NPC) as the highest body with most of the state powers.

The National People's Congress

It is the largest legislative body of the world with nearly three thousand members (2980 members in the last elections held in 2017). Each Congress is elected for five years tenure. Members are elected by municipal, provincial and regional people's congresses; and only the candidates who are members of the Chinese Communist Party are elected. The members are known as Deputies and are considered to be the part-time legislators and do not get any remuneration. The NPC generally meets annually only for two weeks in which important legislative items and issues are considered and voted. The Session of the NPC can be convened any time of the year as decided by the Standing Committee or

when one-fifth of the Deputies propose to call a meeting. Most of the powers of NPC are used by the Standing Committee (NPCSC), which is considered as the permanent organ. The number of Deputies to the NPC is prescribed by the law; and it is the Standing Committee, which must complete the election process two months prior to the completion of the five year term of the NPC.

Powers and Functions of the NPC

As per all the Constitutions of China, the NPC is the supreme organ of the state power of China. A large number of significant legislative and policy functions are performed by the NPC, which mainly include the following:

i) To Amend the Constitution and to Supervise its Enforcement

Only the NPC has the power to amend the Constitution. Amendments to the Constitution must be proposed by the NPC's Standing Committee or by more than one-fifth of the NPC Deputies and must be adopted by vote of more than two-thirds of the Deputies to the NPC. The current Constitution was adopted in 1982, and it was amended in 1988, 1993, 1999, 2004 and 2018. To uphold the dignity of the Constitution and to ensure its enforcement, the NPC is also granted the power to supervise its enforcement.

ii) To Enact and Amend basic Laws governing Criminal Offenses, the State Organs and other matters

Like any other legislature, the NPC performs the routine legislative functions, for example, the NPC has enacted the Criminal law, the Criminal Procedure Law, the Civil Law, the Civil Procedure Law, the Organic Law of the NPC, the Organic Law of the State Council, the Electoral Law, the Marriage Law, the Nationality Law, the Basic Law of the Hong Kong, and so on. The NPC also takes up the amendments to various laws from time to time.

iii) To Elect, Select and Appoint or Remove the members of Central State Organs from Office:

The NPC elects the President and Vice-President of the People's Republic of China, Vice-Chairpersons, Secretary General and members of its Standing Committee, as well as the Director of the National Supervisory Commission. It also decides on the choice of the Premier of the State Council upon nomination by the President, and also decides on the choice of the Vice-Premiers, State Councilors, Ministers in charge of ministries or commissions, the Governor of the People's Bank of China, and the Auditor-General and Secretary-General of the State Council, upon nomination by the Premier. It elects the Chairman of the Central Military Commission and decides on the choice of all other members of this Commission. Upon nomination by the Chairman, it also elects the President of the Supreme People's Court and the Procurator General of the Supreme People's Procuratorate. It also has the power to remove any of the above mentioned officials from office.

The NPC decides on questions of war and peace. It receives and decides reports of the plan for national economic and social development; and its implementation. It also assesses the reports on the Central and Local budgets and their implementation. It can approve the creation of autonomous regions and municipalities directly under the Central Government, decides on the establishment of special regions and system to be instituted there, and decides on questions of war and peace. For example, the establishment of the Hong Kong Special Administrative Regions, the Macao Special Administrative Regions, the building of the Three Gorges Dam project on the Yangtze River project and other various projects were decided by the NPC.

The Standing Committee (NPCSC)

As noted earlier the Standing Committee of the NPC is a permanent body as it is always in existence, but the members may change. It is composed of 170 members elected by the NPC for a term of 5 years. The NPCSC is headed by a Chairperson; several Vice Chairpersons, Secretary General and other members. The Chairperson and Vice Chairpersons cannot be elected for more than two consecutive terms. Members may also be recalled by the NPC. It is headed by a Chairman and has a Vice-Chairman and a Secretary General. It meets frequently throughout the year, at least once in two months. The Standing Committee is responsible to the NPC, and reports about its work to the Congress. The members of the Standing Committee are required not to hold any office in an administrative, supervisory, adjudicatory or procurator organ of the state. The Chairperson, Vice-Chairperson and the Secretary General constitute a “Council of Chairpersons”, which handles the important day to day work of the Standing Committee. The NPC can overrule any decision of the NPCSC and can remove member of Standing Committee.

● ***Powers and Functions of the Standing Committee***

The Standing Committee being the permanent body of the NPC exercises a large number of powers and functions. In fact, almost all the functions of NPC, in a way, are actually performed by the Standing Committee, while the NPC merely acts as a rubber stamp. It performs all the significant functions such as interpretation of the Constitution and supervision of its enforcement; to enact and amend laws; to take up the issues relating to national economic and social development; to supervise the work of the State Council, the Central Military Commission, the Supreme People’s Court; to annul administrative regulations, decisions or orders of the State Council that contravene the Constitution or other laws; to make major appointments; to institute state medals and titles of honor; to decide on entering the state of emergency; and so on.

2.6 THE PARLIAMENT OF SOUTH AFRICA

The Parliament of South Africa (SA) is popularly known as South Africa's National Legislature and the Country, like many other countries, follows bicameral system of legislature. Thus, South African Parliament is comprised of two houses: the National Assembly as the lower house, and the National Council of Provinces as the upper house. As per the mandate of the Constitution, role of the South African Parliament is to promote and oversee adherence to the value of dignity, equality, non-sexism, non-racial and all other rights constituted in the Bill of Rights, and to oversee the implementation of Constitutional imperatives. In South Africa, the sittings of the Parliament are generally open to the public.

1) National Assembly

National Assembly is the lower house of the National Legislature constituted of not more than 400 elected members. These members are directly elected by the people on the basis of proportional representation for a term of five years. In this regard, fifty per cent of members are elected from all the nine provinces, using a party list (proportionally) and the other half is elected by using the national list. As such, the political parties prepare the list of candidates to be elected, and seats are distributed to the parties in proportion to the number of votes the party received in the elections. The Assembly is headed by a Speaker who is assisted by a Deputy Speaker, and they are elected by the members of National Assembly in the first meeting after elections. The Speaker enjoys the status equal to a Cabinet Minister, but he is expected to act as non-partisan manner. The duties of Speaker include the duties to: preside over the House, conduct the meetings and maintain order; act as the spokesperson of that House; and act as the Chief Executive officer of the Parliament.

As per the Constitutional provisions, the National Assembly establishes many committees with assigned powers and functions. These committees report to the Assembly about their activities.

2) National Council of Provinces

As mentioned above, the National Council of Provinces (NCOP) is the upper house of the South African Parliament, which provides representation to the provinces, to protect the provincial interest. The NCOP is comprised of 90 members (10 delegates from each of the nine provinces). Each of the group of ten delegates comprises six permanent and four special delegates. The six permanent delegates are appointed by the respective provincial legislature, while the other four (special delegates) consist of the Premier of the Province and three other special delegates out of the provincial legislature. Generally, the Premier of the Province is the Head of the Province Delegation. Members from the Local Government Bodies also participate in the NCOP. There is an association of the South African Local Government (SALGA), which sends ten representatives to participate in the NCOP proceedings, but without right to vote. The NCOP maintains online link with the Provincial Legislatures and

Local Government Association. Information on draft legislations is uploaded and the public is also allowed to forward their suggestions and representations. There is also a provision that certain decisions by the NCOP require prior mandate from the provinces.

The NCOP is responsible and has crucial role in law-making and it can pass, amend, propose amendments or reject any legislation before it. Besides, the NCOP has initiated programmes such as its Taking Parliament to the People programme and Provincial week. These programmes also assist the NCOP in conducting effective supervision over the Executive.

i) ***Functions of the Parliament***

The Parliament of South Africa performs most of the functions, which are common for the legislative bodies. The following functions performed by it may be summarised here:

Basic Legislative Functions: The Constitution of South Africa confers on the National Assembly and the NCOP, the power to consider, pass, amend or reject any legislation and to initiate or prepare legislation. Like in India, a Money Bill may only be introduced in the National Assembly and not in the other house (NCOP). The Constitution distinguishes four categories of Bills:

- a) Bills amending the Constitution (Section 74)
- b) Ordinary Bills not affecting provinces (Section 75)
- c) Ordinary Bills affecting provinces (Section 76)
- d) Money Bills (Section 77)

Whilst any of these categories of Bills may be introduced in the National Assembly, only Bills referred to in section 76(3) of the Constitution may be introduced in the NCOP.

ii) ***People's Participation***

The Constitution of South Africa provides for both the houses of Parliament. To facilitate public involvement in the legislative and other processes of the houses and their committees, the business is conducted in an open manner. Whilst the Parliament may take reasonable measures to regulate the access, it may only exclude the public from a sitting of a House or Committee, if it is reasonable and justifiable to do so in an open and democratic society in an effort to streamline public participation processes and make it more effective. The Legislative Sector has developed a Public Participation Framework to guide the public participation activities of the Parliament and Provincial Legislatures.

iii) ***Control over Executive***

Legislative control over Executive is one of the cornerstones of democracy. It holds the Executive accountable for the actions and ensuring smooth execution of projects and policies. The legislative oversight of the executive is one of the essential features of the Parliament, which is undertaken through various mechanisms and Parliamentary Committees.

iv) ***International Participation***

The Parliament engages in international relations through its Portfolio Committee on International Relations and Cooperation and the Select Committee on Trade and International Relations. The committee oversees the work of the Department of International Relations and Cooperation by monitoring its budgets, holding hearings on pertinent matters of the international relations and engaging in site visits, amongst others. Various Parliamentary Committees also conduct study tours to different countries.

v) ***Cooperative Governance***

The legislature plays an important role in facilitating cooperative governance through its work with the other arms and spheres of the Government. This includes the appointment and dismissal of office bearers of the institutions supporting Democracy such as various Commissions, Boards and Councils. The Parliament also ratifies International Protocols and Conventions, confirm the provisional suspension of Magistrate, approves the salaries, allowances and benefits of Magistrates and Judges. The NCOP provides a forum for the representation of the Local Government at national level through the South African Local Government Association (SALGA). Specific cooperative governance mechanisms spearheaded by the NCOP include the NCOP Oversight Week, Provincial Week and Local Government Week. The NCOP oversight Week is established to enable members to follow up on matter arising from the Taking Parliament to the People's program and to verify the information received. Similar kind of cooperation is solicited in other fixed "weeks" named above.

Check Your Progress 2

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) What is the composition and term of Rajya Sabha?

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2) Write a note on the National People's Congress.

BRICS : Legislature

3) Explain the functions of South African Parliament.

2.7 CONCLUSION

In this Unit, we have briefly discussed the composition and nature of the legislative organs of BRICS countries. We have observed that the nature of legislature in all the BRICS countries does not differ much as far as the role and functions are concerned. However, the setup of these organs may vary depending upon the historical and political factors of each country. We have noted that out of the five BRICS countries, four have a system of bicameral legislature, while China has a unicameral system. The countries having a bicameral system have two houses each — lower and upper, one is composed of directly elected members and the other one indirectly elected.

2.8 GLOSSARY

Cooperative Governance: It refers to a set of internal and external mechanisms and controls, which enable the members to define and ensure the attainment of cooperative objectives, continuity and cooperative principles. In South Africa, the Department of Cooperative Governance and Traditional Affairs is responsible for facilitating the cooperative governance.

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2.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - Refer Section 2.2
- 2) Your answer should include the following points:
 - Refer Section 2.3

Check Your Progress 2

- 1) Your answer should include the following points:
 - Refer Section 2.4
- 2) Your answer should include the following points:
 - Refer Section 2.5
- 3) Your answer should include the following points:
 - Refer Section 2.6(i)

UNIT 3 BRICS: EXECUTIVE*

Structure

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Executive in Brazil
- 3.3 Executive in Russia
- 3.4 Executive in India
- 3.5 Executive in China
- 3.6 Executive in South Africa
- 3.7 Conclusion
- 3.8 Glossary
- 3.9 References
- 3.10 Answers to Check your Progress Exercises

3.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the structure of Brazilian Executive;
- Explain the set up and working of Executive in Russia;
- Discuss the Executive in India;
- Describe the Chinese system of Executive government; and
- Elaborate on the set up of South African Executive.

3.1 INTRODUCTION

In fact, Executive branch of a Government is responsible for running the government machinery, which requires formulation and execution of the state policies and holds the authority to govern the affairs of the state. Executive means “to execute” the policies and programmes framed by the legislature. Every form or any type of Government comprises of three important organs; Legislature, Executive and Judiciary. Executive organ is placed next to Legislature in all arrangements of governments. The relationship of three organs or to say their powers and role largely depends on their proximity to each other. In presidential form of government, like USA, generally “Principle of Separation of Powers” is followed, in which each organ is independent of each other and through “Checks and Balances” each organ exercises due control over others. Whereas the positioning of these organs is different in parliamentary democracy, as the legislature enjoys close relations with executive, since executive emerges out

* Contributed by Prof. Swinder Singh, USOL, Panjab University, Chandigarh.

of legislature only. Rather, elements of overlapping are visible between the two and theoretically judiciary is independent of the two. Therefore, relationship between the Legislature and the Executive organs determines the role of Executive, which has been discussed in this Unit.

World over, there are a few different types of executives prevailing in different countries. The most common types of executives are: Presidential, Parliamentary, Singular, Plural, Nominal, Real, Elected, Nominated, Dictatorial, etc. In a majority of countries, there are separate heads of the State and heads of the Government; and in some countries, there is a single incumbent holding both these positions simultaneously. Similarly, there are directly elected chiefs in a large number of countries. In this Unit, we shall focus on the executive organ of the Government in BRICS countries.

3.2 EXECUTIVE IN BRAZIL

Brazil has a federal presidential Constitutional republic, that is based on a representative democracy. The President heads the Executive branch of the Government and also is the Commander-in-Chief of the Brazilian armed forces. The Brazilian Executive is constituted of the President, the Vice-President, and the Cabinet. Other prominent bodies are the councils, such as Council of the Republic and National Defense Council. The President of the republic acts as head of the state, head of the government as well as the head of administration. The President is elected for a term of four years, which begins on January 1st of the year following his election. The elections for the President and the Vice-President are held simultaneously, which generally take place on the first Sunday of October. If required, there may be a second round of election, which takes place on the last Sunday of the same month. In order to run for the office, the candidate must fulfill the following requirements: to be a Brazilian citizen by birth, having an age of not less than 35 years at the time of election, should have legitimate full political rights, should be an eligible voter with an electoral residence in Brazil, should have the membership of a political party, and must not have replaced the incumbent President in the six months prior to the election date for the President.

As per the intent of the Constitution, the President on taking over the office has the duty to uphold the integrity and independence of Brazil, to present a plan of the government with programme priorities and a bill with budget guidelines and proposals. It is obligatory upon the Executive Branch to enforce the laws prepared by the Legislative Branch, but the President of Republic may also initiate this process. In certain emergency and important cases, it may adopt provisional measures as well as propose amendments to the Constitution and various legal proposals. The President is also entitled to veto or approve matters as well as authorise federal intervention in the states, enter a state of defense and state of siege, maintain relations with foreign states and accept the credentials of diplomatic representatives, and enter into treaties, international conventions and acts subject to approval from the National Congress. The office of the President

may also grant pardons and commute legal sentences by replacing a severe punishment imposed on the defendant with one more flexible. The President enjoys vast powers such as to manage the troops, creation of public offices, laws and matters concerning civil services, to appoint and dismiss ministers, initiate legislations for the public interests and to exercise other powers as provided in the Constitution. He can delegate his powers to the subordinate agencies. There is Constitutional provision to impeach the President in case of undermining the Federal Constitution. For common criminal offence, the President is tried before Federal Supreme Court or before the Federal Senate in impeachable offences.

The Vice-President is elected along with the President who is registered with him. The Vice-President will assume the office of President when he is abroad. The role of Vice-President (VP) is to assist the President, whenever need arises. Tenure of the VP is coterminous with the President, which is 4 years.

Cabinet Ministers play an important role in running the executive wing of the government. Ministers are at the apex of one or the other department and enjoy various autonomous powers to run the administration relating to financial, administrative or technical aspects. They are also responsible for establishing strategies, guidelines, and priorities for the use of public resources such as creating standards, and monitoring and evaluating federal programme. The Ministers are chosen by the President of the Republic. Only the head of the Ministry of State for Defense is restricted to native born Brazilians. The candidate for the ministerial berth must be above the age of 21 years and should possess their full political rights. Ministers are responsible for the coordination and supervision of the federal organs and administrative entities in their area of responsibility.

The government also has special Secretaries, directly responsible to the Presidency of the Republic and some other organs, which due to their strategic functions enjoy the status of a Ministry. Such organs include the Government Secretariat, which assists the President of the Republic in maintaining political and social coordination, particularly in relation to the National Congress, political parties, and to maintain dialogue with the states, the Federal District and Municipalities. The Secretariat is also responsible for the prevention and management of institutional crises, and also formulates policies to support micro and small businesses.

The Brazilian Cabinet is also responsible for analysing and monitoring questions regarding potential risks for institutional stability, for coordinating federal intelligence activities, and performing advisory functions relating to military and security issues, and other supporting functions for the President of the Republic.

3.3 EXECUTIVE IN RUSSIA

“Executive power in the Russian Federation shall be exercised by the Government of the Russian Federation. The Government of the Russian Federation shall consist of the Chairman of the Government of the Russian Federation,

Deputy Chairman of the Government of the Russian Federation and federal ministers” (Constitution of the Russian Federation, <http://www.Constitution.ru/en/10003000-07.htm>). As per the Russian Constitution, Russia is a federal semi-presidential republic. Under a semi-presidential structure, the President and the Prime Minister share governing responsibilities as head of the state and head of the government, respectively. The President does, however, hold more powers than the Prime minister. As a universal practice, all the three branches of the government share the responsibilities of running the administration of the country. The President, executive head, is elected by the citizens on the basis of universal, equal and direct suffrage by secret ballot for a 6-year term. This office is limited to two consecutive terms. However, the Constitutional changes (July, 2020) has extended the present term (which will end in 2024) of both the President and the Prime Minister for another two terms of six years each, which means both of them will remain in power till the year 2036.

As per Article 83 of the Constitution, the President enjoys a number of significant powers in relation to the executive. These include, appointing powers, controlling powers, policy related powers, military powers, and judicial powers and so on.

Above all, the President is the guarantor of the Constitution and of human and civil rights and liberties. He is the protector of sovereignty, independence and integrity of state; and ensures the concerted functioning and interaction of all bodies of state power. In this capacity, of the head of state he performs all ceremonial functions and is the face of the state inside and outside the country. He has the all-important power to appoint the Chairman of the Government. He nominates the Chairman with the consent of State Duma. He also has the power to nominate or remove the Chairman of the Federal Bank with the consent of State Duma. The Deputy Chairman and the Ministers are also appointed by the President. Besides, he appoints ambassadors to different countries with which country has diplomatic ties.

In relation to the Judiciary, the President makes recommendations to the Federal Council to appoint the Judges of the Constitutional Court of Russia, the Supreme Court and the Supreme Arbitration Court. Also, in regard to the appointment or removal of the Prosecutor General of the Russian Federation, the President makes recommendations to the Federal Council.

The President has the right to preside over the meetings of the Government (Cabinet). He has the right to turn down any decision of the Government or any act of the executive organs which, in his opinion is in contravention to the Constitution, federal laws, and international obligations or may be in violation of human or civil rights or liberties. The President is mostly involved in, both, the domestic and foreign policies of the country. This includes, appointing foreign ambassadors, participating in international discussions, and signing international treaties and agreements.

As the Supreme Commander-in-Chief of the armed forces, the President constitutes the Security Council of Russian Federation and prepares the military doctrine. He also carries the power to appoint or remove the commander of

armed forces. He plays central role as the Supreme Commander of the armed forces to declare martial law in the country or in any part of it. The President is also the controller of the nuclear button and is the key framer of the policy for national security.

In case of emergency, the President assumes more powers and responsibilities in regard to protection and preserving the territorial integrity and sovereignty of the country. He also enjoys certain other powers such as, to confer awards, titles etc. to distinguish persons or institutions, granting of amnesties or pardons in specific cases, and so on.

The executive branch works under the directions of the President. This branch consists of the Cabinet, which is also referred to as the Government. Its members include the Prime Minister, Deputy Prime Ministers and federal Ministers. The Prime Minister is also known as Chairman of the Government and Deputy Prime Ministers (currently, six of them including First Deputy) are known as Deputy Chairpersons. The federal Ministers carry out the duties of Ministers and departments. The President nominates the Prime Minister; the legislative branch must approve the nomination. Thereafter, the Prime Minister nominates Deputy Prime Ministers and federal Ministers. The executive branch is responsible for administering laws, created by the legislative branch and the President.

As the Prime Minister or the Chairperson of the Russian Cabinet of Ministers, he allots the portfolios to different Ministers. It is the responsibility of the Prime Minister to implement the Government policies, presidential decrees, legislations, treaties and agreements. These policies may relate to trade and commerce, electricity, gas, natural resources, agriculture, labour, migration, family related policies, social security and so on. It is his duty to inform about all the activities of the Government and also to inform annually to the State Duma about the overall work of the Government. On the financial front, the Prime Minister and the Cabinet Ministers are required to get the federal budget prepared, and introduce the monetary and fiscal policies. The Prime Minister is responsible to submit the same to the State Duma and also report about the budget implementation.

As the Prime Minister, he also signs the legislative Acts. In the same capacity, he is the ex-officio member of various important bodies, such as, the Security Council of Russian Federation, Supreme State Council of the Union State of Russia and Belarus, the Council of the Head of the Commonwealth of Independent States, etc.

Federal Ministers are appointed by the Prime Minister with the approval of President, of and these Ministers largely assist the Government in carrying its functions. The Government of Russia, which corresponds to western cabinet structure, includes the Prime minister, Deputy Prime Ministers and Federal Ministers. Under Articles 114 and 115, the Government of Russian Federation prepares and submits the federal budget, implements the foreign policy of Russia, and ensures execution of policies in the fields of health, education, social security and ecology.

In the Russian system, although there is a Prime Minister, his Deputy, various ministries, departments and other government agencies to look after the task of the executive, but, due to his central position, it is the President who dominates and significantly influences the executive functions, therefore establishing that Government of Russian Federation represents mixed model, having features of both presidential and parliamentary form of systems.

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) Discuss the two important powers of Brazilian President.

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2) What is the actual position of the Russian President?

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3.4 EXECUTIVE IN INDIA

India has adopted a parliamentary system of Government, which provides for a nominal and real executive. The President of India is the head of state and is considered as the nominal head. As per Article 53 of the Indian Constitution, the executive power of the Indian Union is vested in the President of India and is exercisable by him either directly or through his subordinate officers. In addition, Article 77 indicates that all executive actions of the government are expected to be taken in the name of President. Besides, Article 74 provides for a Council of Ministers to aid and advise the President in the exercise of his powers. In this way all the powers of the President are enjoyed by the Council of Ministers headed by a Prime Minister. The President occupies the same position as that of a British Crown.

Election and Powers of the President

As per the Constitution, a candidate for the office of the President must possess the following qualifications:

He must be a citizen of India, having not less than 35 years of age, should not hold any office of profit, and should possess all the qualifications required for

becoming a Member of the Parliament. The President is elected indirectly, i.e. not directly by the people but by the elected members of the Parliament and the elected members of the state legislatures, which is called the Electoral College. The President is elected for a term of 5 years and may be re-elected for another term. He can resign or can be removed as per the procedure mentioned in the Article 61 of the Constitution.

As far the as the powers and functions of the President is concerned, there is a long list provided in the Constitution, which may be classified as – executive powers, legislative powers, judicial powers, financial powers and emergency powers.

The executive powers of the President include the power of making major appointments and removals. It includes the appointment of the Prime Minister of India and other Union Ministers, the Comptroller and Auditor General of India, the Attorney General of India, the Judges of Supreme Court and High courts, the Chairman and Members of the Union Public Service Commission, the Chief Election Commissioner and members, and members of other various bodies. The President has got formal power to control the administration of the Union Government and the Union Territories, to issue directions to state Governors, to ask for any information from the government, and so on. On the legislative front too, s/he has a number of powers in relation to the Lok Sabha. For instance, money bill and certain other bills cannot be introduced to Parliament without her/his approval, s/he has power to summon, prorogue and dissolution of the Lok Sabha, s/he has right to address the house/s, s/he nominates certain type of members in various government bodies , and give assent to the bills, which have been passed by the Parliament.

The President is the Supreme Commander of armed forces and has the power to appoint the Chief of different wings of the forces. In relation to judiciary, besides the appointment of judges, s/he has the power to grant pardons or an appropriate mercy and s/he is the only authority for pardoning the death sentence.

The President of India has got important emergency powers too. These include the emergency arising out of war or internal disturbance (Article 352), emergency caused by the Constitutional breakdown in a state (Article 356) and the financial emergency (Article 360).

The President exercises all these powers only on the advice of the Council of Ministers headed by the Prime Minister. However, in three circumstances, the President can make use of her/his discretionary powers;

- i) The President can send back the advice given by the Council of Ministers for reconsideration.
- ii) The President has veto power by which s/he can withhold or refuse to give consent to the bill.

- iii) In case of no clear cut majority with any party in the Lok Sabha, after elections, the President can use discretion to call any party/ parties to prove their claim to constitute the Government.

The Vice-President

The Vice-President is elected simultaneously with the President of India in a manner and procedure followed for the election of the President with one deviation those members of state assemblies do not vote for the office of the Vice-President. S/he is elected for 5 years and can be re-elected for the second tenure. S/he can be removed by the resolution of Rajya Sabha passed by majority and the approved by the Lok Sabha. The Vice- President is the ex-officio Chairman of the Rajya Sabha. S/he can officiate as President in case of vacancy.

The Prime Minister

The Prime Minister of India stands at the apex of the government. S/he enjoys supreme command over the executive. S/he is appointed by the President on becoming the leader of the majority party in the Lok Sabha. As noted above, all the executive powers are formally vested in the President, but these are to be exercised only with the “aid and advice” of the Council of Ministers. The Prime Minister, being the head of the Council of Ministers, enjoys all these powers in actual practice. S/he has multiple roles as the administrative head, the political chief executive and the leader of the Lok Sabha. Let us discuss her/his roles:

- i) **To Constitute the Ministry:** The first and foremost function of the Prime Minister is to form the Council of Ministers. Article 75 of the Constitution is quite sketchy, which says that President is to appoint the Ministers on the advice of Prime Minister. In fact, the Prime Minister draws up a list of names and appointment of these persons is declared in the name of the President. The President may or may not be taken into confidence, while preparing the list.
- ii) **Power of Dismissing the Ministers:** A Minister who loses the confidence of the Prime Minister or who disagrees with her/his policies has to leave the office. In other words, the Ministers hold their office at the Prime Minister’s pleasure. What is therefore true of the Minister’s appointments is equally true about their dismissals. There are several ways in which a Prime Minister may drop her/his colleagues. S/he may simply ask for her/his resignation of such a Minister. S/he may dissolve the Ministry and reconstitute the same after dropping a few colleagues. S/he may even advise the President to remove a Minister as technically the Minister holds office during the pleasure of the President. S/he may also shift a Minister to some lesser prestigious Ministry.
- iii) **Power to Dissolve the Lok Sabha:** The Prime Minister may also advise the President to dissolve the Lok Sabha. It is one of the Constitutional powers of the Prime Minister to have the Lok Sabha dissolved, whenever s/he thinks it fit to do so. According to the principles of the Parliamentary

System, the President must grant such a request.

- iv) **As the Chief Administrator:** The Prime Minister is the real Chief Executive of the nation and as such s/he is the head of the administration and has full power to implement the programme and fulfill promises of the party. However, s/he has to be responsible for exercising of these powers. In this era of welfare states, people look upon the Government as the custodian of the interests and any lapses or failing on the part of Government are regarded breach of public trust and faith.
- v) **The PM's Role in International Affairs:** Whether or not the Prime Minister holds the Ministry of Foreign Affairs, s/he acts as the Chief architect of India's foreign relations. S/he serves as the spokesman of the nation. S/he attends the international conferences of crucial importance; participates in Commonwealth Prime Minister's conferences; enters into correspondence with the heads of other States; and decides on such vital questions as recognition of new States and Governments, establishment of diplomatic envoys, collaborating with foreign companies, and the likewise.
- vi) Being the head of the Council-of-Ministers, the Prime Minister secures coordination among various ministries and departments; and it is her/his duty to iron out any differences among different Ministers.
- vii) The Prime Minister, being at the top of the Government assumes the responsibility of socio-economic development of the country. In this regard, s/he provides the lead for developmental policies and socio-economic planning. S/he is the chairman of NITI Aayog and guides the administration for carrying out the developmental tasks relating to different sectors.

Positions of the Prime Minister

It is obvious that the President of India is merely a nominal head or a Constitutional head of the state, while the real powers are vested in the Prime Minister. This system of parliamentary democracy with Prime Minister as the actual ruler has been borrowed from the British system. In this system, the Prime Minister is the most important single person in the country. S/he exercises all the executive functions vested in the President under the Constitution. Here all the executive functions mean all the functions of the state including the defence, foreign affairs, development, finance, and so on. The Prime Minister, therefore, occupies the position of supreme ruler in India. S/he is the head of the Government and captain of the team. S/he is the kingpin of the system of our Government. S/he provides guidance and leadership to the nation, and is also responsible for the stability of the governmental machinery. S/he may take the nation backward or forward. S/he is, thus, the protector, preserver and promoter of the nation. S/he has been rightly remarked as "the Steersman of ship of the State", "little Moon among stars" and as "the Sun around which the planets revolve".

Cabinet Ministers

Cabinet refers to the Council of Ministers, generally, which is headed by the Prime Minister. Selection of a Minister is purely discretion of the PM, who picks up her/his ministers on the basis of many permutations and combinations in practice. They all are answerable to the PM for all their actions and activities. They play their role on the command and direction of PM and hold on to the principle of collective as well as individual responsibility.

3.5 EXECUTIVE IN CHINA

The executive set up in China is theoretically headed by the Premier (Prime Minister) who is head of the Government and also heads the State Council. However, in actual practice it is the President of People's Republic of China, who also heads the Communist Party of China, plays the real role of being the overall Chief. The President and the Vice-President of the People's Republic of China are elected by the National People's Congress. To be elected as the President or Vice-President, the candidate must not be less than 45 years of age and should possess the right to vote in China. The term of office of the President and the Vice-President of the People's Republic of China is the same as that of the National People's Congress, i.e. five years. Though the term of the President is five years, but it is renewable with no term limits-President for life (Constitutional changes-2018).

In pursuant to decision of the National People's Congress and the National People's Congress Standing Committee, the President promulgates laws, appoints or removes the Premier, Vice-Premiers, State Councilors, Ministers of ministries, Ministers of Commissions, the Auditor General and the Secretary General of the State Council. He decides about various national awards, medals and titles of honor, may issue orders of special pardon, may declare a state of emergency or a state of war, and issues various important orders relating to the government affairs.

The President of the People's Republic of China receives foreign diplomatic envoys on behalf of the People's Republic of China and, pursuant to decisions of the National People's Standing Committee, appoints or recalls the Chinese representatives abroad and ratifies or abrogates treaties and important agreements done with other countries.

Vice President

The Vice President (VP) of the People's Republic of China is elected under the same rules as that of the President and has same term of office with the President. The VP may, when so entrusted by the President, exercises part of the functions and powers of the President on his or her behalf. In the event of falling vacant the office of President of the People's Republic of China, the Vice President succeeds to the office of President.

The State Council of the People's Republic of China (the Central People's Government), is technically the executive organ and the organ of state powers, it is the highest state administrative body. The State Council is composed of the following authorities:

- i) The Premier (Prime Minister),
- ii) Vice Premiers,
- iii) State Councilors,
- iv) Ministers of ministries,
- v) Ministers of Commissions,
- vi) An Auditor General, and
- vii) A Secretary General.

It is expected of the State Council to work with a premier responsibility system. The ministries as well as the commissions are required to follow a ministerial responsibility system. The organisation of the State Council is prescribed by law, from time to time. The State Council has the same term of office as that of the National People's Congress. The Premier, Vice Premiers and State Councilors can serve not more than two consecutive terms. The Premier controls and directs the work of the State Council. The Vice-Premier and State Councilors assist the Premier in his work.

The Premier, Vice-Premier, State Councilors, and the Secretary General are required to attend all the executive meetings of State Council. The State Council exercises the following functions and powers:

- i) Carrying out appropriate administrative measures, preparing administrative regulations and issuing decisions and orders in accordance with the Constitution and the law;
- ii) Preparing and submitting proposals to the National People's Congress or the National People's Congress Standing Committee;
- iii) Strictly following the missions and responsibilities of the ministries and commissions, indicating unified leadership over their work, and also taking care of national administrative work that does not fall within the responsibilities of any Ministry or Commission.
- iv) Directing and reviewing the work of local and state administrative agencies at various levels and allocating/reviewing the detailed division of functions and powers between the Central government and State administrative organs in provinces, autonomous regions and cities directly under the jurisdiction of the Central Government;

- v) Formulation and implementation of plans for national economic and social development and state budgets;
- vi) Guiding, directing and managing economic activities, urban and rural development and ecological conservations;
- vii) Managing and controlling the activities relating to education, science, culture, health, sports, family planning and social work;
- viii) Managing and reviewing the works relating to public security, judicial administration, civic affairs, etc.
- ix) Directing and managing the essential activities relating to foreign affairs international treaties and agreements with foreign countries;
- x) Tasks relating to the development of national defense;
- xi) Managing and guiding works concerning ethnic affairs and protecting the equal rights of ethnic minorities and the ethnic autonomous areas;
- xii) Protecting the legitimate rights and interests of Chinese nationals overseas and protecting the lawful rights and interests of returned overseas Chinese nationals and the family members of Chinese nationals overseas;
- xiii) Considering and changing inappropriate orders, directives and regulations issued by ministries, commissions or other administrative bodies; and
- xiv) Reviewing and approving the geographic division of provinces; autonomous regions and cities directly under the Central government jurisdiction; and approving the establishment and geographic division of autonomous prefectures, counties, autonomous counties and cities.

Uniqueness of the Chinese Government system vis-à-vis the Chinese Communist Party

The President is the most powerful person as he drives his influence from his position as the General Secretary of the Chinese Communist Party, which is the biggest political party. The Chinese Communist Party is the power center that controls every government department. The decisions of Chinese Communist Party's Politburo Standing Committee and Politburo, affect every facet of life in China.

3.6 EXECUTIVE IN SOUTH AFRICA

South Africa is a Constitutional democracy and its system of government is based on the Parliamentary republic. There is a three-tier system of national, provincial and local levels of government, based on their Constitution. One stated mission of the Constitution is that the country be run on the system of "Cooperative Governance". The executive authority is vested in the President, Deputy President and the Ministries (Cabinet). The President is the head of the State as well as the head of Government.

The President of South Africa is elected by the members of the National Assembly (the lower house of the Parliament) from among themselves. Once elected as the President, that person has to resign as the member of the National Assembly. The President is elected for 5 years term, which is renewable once. South African President is head of the State, head of the Government and the Commander-in-Chief. As per the Constitution, it is the first and foremost responsibility of the President to work for the nation and upholding the respect and dignity of the Constitution. He has the power to appoint members of the Cabinet, distribute portfolios to them, call for the meetings of the Cabinet, make other important appointments, appoint the commanders of armed forces, issue directions, direct and control the central administration, look after the foreign affairs, appoint the ambassadors and designate the South African representatives in other countries, receive foreign dignitaries, and so on. He also enjoys certain legislative and judicial powers, for instance his signatures are required on the bills passed by the National Assembly, and he has the power to refer back certain bills to the legislature for reconsideration or may forward a bill to the Constitutional Court for the verdict. He also has the power to appoint Judges in consultation with Judicial Service Commission. He summons Parliament to apprise them of his/her objectives and agenda. Through the Cabinet, the President enforces the Constitution and laws.

Deputy President

The Deputy President of South Africa is the deputy head of the Government of South Africa and also represents the National Assembly and Cabinet. His term of the office is not fixed by law; therefore, his term begins once he is appointed by the President from amongst the members of National Assembly and takes the oath as prescribed. He can be removed from office in four ways; dismissal by the President, passing of no confidence motion by the National Assembly in the president, no confidence motion against the Deputy President and statement of resignation from him. The Deputy President is Constitutionally required to assist the President in execution of the government functions. He officiates as the President when the President is abroad or unwell. He is the advisor to the President, and often acts as spokesperson for the administration.

Cabinet

The Cabinet is an integral part of the South African executive, which consists of the President, as head, the Deputy President and the Ministers. As noted above, the President appoints the Deputy President, Ministers and Deputy Ministers, assigns those powers and functions, and may dismiss them. In this regard, he may even consult the national party leaders. The President may select any number of Ministers out of the members of the National Assembly and may also select not more than two Ministers from outside the Assembly. The President appoints a member of the Cabinet to be the leader of the routine government work in the National Assembly. The decisions by the Cabinet are generally reached by consensus, however in certain matters of utmost importance; the President requires the approval of at least two-thirds of the members. The Ministers are

answerable to the legislature for their decisions and actions and also for the activities of their respective departments. They are required to furnish annual report of their concerned department to the National Assembly from time to time.

There are about sixty ministries, covering all the important sectors of the government activities.

The Presidency

As noted above, the executive head of government, the President is at the apex of South Africa's government system.

As per the official year book of South Africa, the Presidency comprises of following political Principles:

- a) The President, who is the Head of the State and Government.
- b) The Deputy President, who is the Leader of Government Business (in Parliament).
- c) The Minister in the Presidency.
- d) The Minister in the Presidency for Women, Youth and persons with disabilities.
- e) The Deputy Minister in the Presidency.

The Presidency has three structures that support governance operations directly. These are:

- i) Cabinet office, which provides, administrative support to the Cabinet. It implements administrative system and processes to ensure the overall optimal functioning of the Cabinet and its committees. It also facilitates the management of decision-making processing of the Cabinet and its committees.
- ii) Policy Coordination Advisory Services comprises a Deputy Director General and five Chief Directorates, which support policy processes developed by respective clusters of the Directors General.
- iii) Legal and Executive Services provide legal advice to the President, Deputy President, the Minister, as well as the Presidency as a whole, and is responsible for all litigation involving the political principals.

At the provincial level, there is an Executive Council in each province, which is headed by a Premier. The Premier is elected by the members of the Provincial Legislature at the Union level. The premier appoints the members of the Executive Council out of the members of legislature. The Executive Council is the body responsible to look after the executive tasks at the Provincial level. It is, however, generally pointed out that there is a poor or undefined mechanism of

coordination between the Union and provincial bodies. The meetings between the Union Ministers and the Executive Council members are generally few and informal.

Above discussion, establishes that South African President is the Head of State and head of the government, leads the Cabinet and the whole executive machinery. S/he is expected to lead the country to maintain integrity, progress and unity of the Nation as per the Constitution and laws of the country.

Check Your Progress 2

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) Discuss the executive set up of India.

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2) What is the basic structure of Executive in China?

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3) What is the position of South African President?

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3.7 CONCLUSION

In this Unit, we have examined the executive wings of the Governments in BRICS countries. Every executive is basically responsible for the implementation of the government policies and programmes. In fact, there are not many variations as far as the functions and powers of the executive are concerned. However, we can notice some variations in their set up depending upon the system of government followed by each country. In the Parliamentary system, such as India, President is the titular head of the state (nominal executive head) and the Prime Minister (Council of Ministers) is the real head of the government (real executive head), whereas Russian system is having a powerful President and a less powerful Prime Minister. This system is regarded as Semi-Presidential

system. Brazil has a Presidential system, and Chinese system is based on the authoritative system of a strong President who is the head of party and the state with all pervasive powers. In South African parliamentary republic, the President is both, head of the State as well as head of the Government.

3.8 GLOSSARY

NITI Aayog: It refers to the National Institution for Transforming India (NITI Aayog) was formed on 1st January 2015. It acts as the quintessential platform of the Government to bring the states to act together in national interest, and thereby fosters cooperative federalism. It is the premier policy think tank of the Government, providing directional and policy inputs. In addition to designing strategic and long-term policies and programmes, Aayog provides relevant technical advice to the Centre, States and Union Territories. The Governing Council of NITI Aayog is chaired by the Prime Minister of India.

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3.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

BRICS : Executive

Check Your Progress 1

- 1) Your answer should include the following points:
 - The Brazilian President, being the head of state and also being the head of government enjoys total control over the executive activities, enjoys certain controls over the legislature, have emergency powers and looks after all the foreign relating affairs.
- 2) Your answer should include the following points:
 - Russian President is the central figure in the government and enjoys all the important powers including military power, foreign affairs and control over executive.

Check Your Progress 2

- 1) Your answer should include the following points:
 - India has a parliamentary form of government, patterned on the British system with a nominal head, the President; and the real head, the PM as the head of Council of Ministers.
- 2) Your answer should include the following points:
 - Chinese executive set up is headed by the President and the State Council. The State Council includes Premier (Prime Minister), certain Councilors, Ministers and Auditor General.
- 3) Your answer should include the following points:
 - South African President is both the head of State and the head of Government. He is therefore, the Executive head.

UNIT 4 BRICS: JUDICIARY*

Structure

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Judiciary in Brazil
- 4.3 Judiciary in Russia
- 4.4 Judiciary in India
- 4.5 Judiciary in China
- 4.6 Judiciary in South Africa
- 4.7 Conclusion
- 4.8 Glossary
- 4.9 References
- 4.10 Answers to Check Your Progress Exercises

4.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the judicial set up of Brazil;
- Explain the judicial system in Russian Federation;
- Highlight the judiciary in India;
- Describe the judicial set up in China; and
- Illustrate the judicial system of South Africa.

4.1 INTRODUCTION

Judiciary originates from Latin word Judex, which means “to guess or judge”. The Judiciary represents the judicial system of a nation. Of the three branches of the government, Judiciary is that branch of the government, which interprets law of the land and acts as guardian of citizens’ rights. Lord Bryce has rightly pointed out that there is no better test of the excellence of a government than the efficiency and independence of the judicial system. In all the countries, we may find a well-developed judicial set-up with some variations depending upon the

governmental set up and the ideological foundation of that country. In most of the countries, some form of hierarchical set up of courts exists, which facilitates the system of appeals and reviews. In this Unit, we will explain the judicial set up in BRICS.

4.2 JUDICIARY IN BRAZIL

Brazil's judiciary is multi-faceted system that operates on the state and federal levels almost like US judicial system. Brazil has adopted a well-developed judicial system. Going by the civil law traditions, this system divides cases into different jurisdictions. The major judicial jurisdictions involve various organs to dispense justice in Brazil, which are:

- The Supremo Tribunal Federal (Supreme Court of Justice)
- The Superior Tribunal de Justica (Superior Court of Justice)
- Tribunais Regionais Federais (Regional Federal Courts)

Beside these, there are Labor Courts, the Electoral Courts, the Military Courts and also the State, Federal District and Territory Courts.

- 1) **The Supremo Tribunal Federal (STF)** is the highest court in the judicial system of Brazil, which is mainly responsible for ensuring the supremacy of the Constitution and interpreting it in case of any question or dispute. Besides, the STF extradition requests from foreign countries and habeas corpus requests from the natives. The STF is comprised of 11 members (Judges) who are nominated by the President of Brazil following the approval of federal Senate. The Judges are selected among the citizens of the age between 35 to 65 years with flawless reputation and outstanding legal expertise.
- 2) **The Superior Tribunal de Justica (STJ)** is next in line, which is composed of thirty three Judges appointed by the President and approved by the Senate. The STJ is mainly concerned with the interpretation of federal legislation and ensuring a uniform interpretation of these laws. This court also undertakes the important criminal cases that involve State Governors, Judges of Tribunais Regionais Federais (Regional Federal Courts), Electoral and Labor Courts as well as other public authorities.
- 3) Besides these two apex courts, there are Federal, Labor, Electoral, Military and State Courts. The Tribunais Regionais Federais (TRF) deal with the cases in which Union or Federal Public companies are involved except for those that are related to bankruptcy, work accidents, or those that are covered by other courts. Labor courts deal with matters relating to employer-employee relations/conflicts. Electoral courts regenerate the electoral procedures in Brazil, such as organising pervading and regulating the entire electoral process. The Military courts deal with matters relating to disputes and crimes in Military and are composed of

military Judges. Further, above these Courts, there are higher courts such as Superior Labour Court, Superior Electoral Court, Superior Military Court in addition to Superior Court of Justice and Supreme Federal Court.

The State Courts are organised in each state and Federal District. They deal with the appeals in reference to civil and criminal matters, which do not fall under the jurisdiction of Federal, Labor, Electoral or Military Courts.

Thus, in general, there are three levels of appeal at Regional, State and Federal. There are two broad sets of courts -- legal courts or ordinary courts that deal with matters relating to State, civil and criminal cases; and the second set of special courts, which are related to military, electoral, labour and other specific areas.

4.3 JUDICIARY IN RUSSIA

The existing judicial system of the Russian Federation is the outcome of the judicial reforms carried out in 90's with the purpose to have judicial power in the state as an independent branch of power. These efforts were based on the promise that in democratic set up based on rule of law, it is required to have independent and competent law courts. Thus, judicial reforms of Russia found the place in the Constitution of Russian Federation, 1993. The Russian judicial system comprises of the Constitutional Court and the Supreme Court as the highest judicial bodies. There is also a third apex court, the High Court of Arbitration, which is at the top of arbitration court system. There is a single Constitutional Court, the regular court system is under the Supreme Court. To solve the jurisdictional issues or disputes between business entities, there are courts of Arbitration. Extraordinary courts are prohibited in Russia and the justice dispensed through the courts as provided in the Constitution of the Russian Federation. Therefore, the judicial power in Russia is exercised by the Constitutional Court of Russia, General Supreme Court and Arbitration Courts by means of Constitutional, civil, administrative and criminal judicial proceedings.

The Courts are further divided into Federal Courts and Courts of the Constituent Entities of the Russia. The Federal Courts includes:

- The Constitutional Court of Russian Federation,
- The Constitutional Court of Russia,
- The Supreme Court of Russian Federation,
- The Supreme Courts of Republics,
- The District Courts,
- Military courts, and
- The Arbitration Courts.

- 1) **The Constitutional Court of Russian Federation** comprises of 19 Judges nominated by the President and appointed by the Federal Council for 12 years. The Constitutional Court is composed of two chambers with 10 and 9 Judges respectively. The Chairman presides over one chamber and the Deputy Chairman over the other. The Chairman allocates the cases to the chambers.

As the name suggests, it deals with the matters relating to the Constitution of Russia and resolves, disputes regarding the competence between various bodies of state power at various levels. The main function of the Constitutional Court is to resolve cases regarding the Constitutionality of elementary issues. It examines the issues relating to compliance with the Constitutional issues of the following:

- i) Federal laws, acts of the President, the Federation of Council, the State Duma and the Government;
 - ii) Constitutions of the republics, characters as well as laws and other regulatory acts of the Constituent entities of the Russian Federation;
 - iii) Agreements between state authorities of the Russian Federation, and agreements between state authorities of the regions;
 - iv) International agreements that have not entered into force; and
 - v) Issues relating to violation of citizens' Constitutional rights and freedoms.
- 2) **The Supreme Court of the Russian Federation** is at the apex of ordinary courts and the system of commercial courts. As per the Federal Constitution Law the number of Court's Judges is 170, headed by the Chief Justice. The Chief Justice is appointed by the Council of the Federal Assembly on the proposal of the President for a term of six years.

The Supreme Court is the highest court for civil, criminal, administrative and economic cases. As a "court of first instance" it looks into the cases relating to actions of the President, the Government of Russian Federation, the Central Election Commission, and other Public authorities at the Federation level. It also takes up cases relating to economic and other disputes between federal authorities and other constituent entities. As a Court of second instance (appellate), the Federal Supreme Court looks into the legal validity of the decisions of Supreme Courts of Constituent Entities of Russian Federation, and also reviews the decisions of Military Courts.

As the Court of third instance (cassation) the Supreme Court examines the decisions of the Regional Supreme Courts of Constituent Entities and the presidiums of Military Courts. Finally, as a court of supervision, it may review the Judicial Acts, including its own on various grounds such as violation of human rights and freedoms, interests of general public or violation of uniform interpretation and application of law. The

Federal Supreme Court may also propose certain legislative initiatives or draft laws within its jurisdiction. It may also decide issues of certain international treaties of Russia.

The Supreme Court of Russian Federation is composed of: the Plenary Session; the President; the Appellate Chamber; the Judicial Chamber on Administrative Cases; the Judicial Chamber on Civil Cases; the Judicial Chamber on Criminal Cases; the Judicial Chambers on Economic Disputes; the Judicial Chamber on cases of the Military; and the Disciplinary chamber.

The Plenary Session consists of all the Judges of the Supreme Court, and is presided over by the Chief Justice. In this session, focus remains on giving clarifications on issues regarding judicial practice to the courts; deciding issues of using the right of legislative initiatives; and resolving other issues. By invitation, the plenary session may be attended by the President, Prosecutor General, the Minister of Justice, the Judges of Constitutional Court and other Courts. The decisions of Plenary Session are reached by the majority rule with the requirement of presence of at least two-thirds of Judges.

- 3) **Regional and other Courts:** Below the Supreme Court of Russian Federation, there are Regional Courts, including the Supreme Courts of Republics of Russia, City Courts of the federal cities of Russia (Moscow and St. Petersburg) and Courts of autonomous areas. These courts sit as both courts of first instance and appellate courts.

Below the Regional Courts, there are the District Courts, which provide the basic element of the system of courts of general jurisdiction in Russia and mainly handle most of the civil, criminal and administrative cases. In addition, there are Military Courts and Commercial Courts. The Military Courts work at the levels of garrisons and military fleets (circuits). The Commercial Courts work in the areas of commercial and entrepreneurial activities. The Commercial Courts work at the following levels: Basic Courts (81); Appellate Courts (20); and Commercial Cassational Courts (10). There is also, under the category of Commercial Courts, a specialised Court known as Intellectual Property Rights Court.

The Russian Court system provides for a strong and independent judiciary. It provides for supremacy of judiciary, judicial immunity, inner mobility of judges, equality of law and open and fair trials. Further, a point to be highlighted that law courts are financed only out of federal budget.

Check Your Progress 1

- Note:** i) Use the space given below for your answers.
ii) Check your answers with those given at the end of the Unit.

1) Enumerate the top level courts in Brazil.

BRICS : Judiciary

2) What is the hierarchical set up of Russian Judiciary?

4.4 JUDICIARY IN INDIA

Judiciary is considered as the watchdog of democracy, and guardian of the Constitution. Indian judiciary administers a common law system in which customs, securities and legislation, all codify the law of the land. Judiciary, in India, is free from direct executive and legislative influence to ensure impartial and independent judiciary. The judicial system of India finds its roots in the ancient times and has been shaped by the rulers of different times before independence. With adoption of the Constitution, the foundation of the present Indian judicial system was laid down. India has a single integrated judicial system, which is structured like pyramid and has been classified into three levels with subsidiary parts. The Supreme Court is at the top (national level), followed by the High Courts (state level) and the Lower Courts at the district level and subordinate courts at sub-district level. The lower courts in India include District and Session courts and Metropolitan Courts for the cities with population more than 10 lakhs. The District Courts deal with civil matters and are headed by the District Judge. Under the District Courts for civil matters, there exists Sub-Court (Senior Civil Judge) and Principal Junior Civil Judge Court (Principal Senior Civil Judge). For criminal cases at the district level, there exists Session Court under the Session Judge. Under the Session Court, there are Judicial Magistrate Court - First class (Chief Judicial Magistrate) and Judicial Magistrate Court - Second class (Chief Judicial Magistrate). Besides the ordinary courts, there are large numbers of tribunals operating in different areas/sectors.

1) The Supreme Court

The Supreme Court (SC) of India is at the apex of the Indian Judicial System. It came into being with the commencement of the Constitution of India on 26th January, 1950. Under Article 124 of the Indian Constitution, the Supreme Court has been established. The Parliament has power to make laws regulating the Constitution and organisation of the Supreme Court. The number of Judges was seven in the beginning, which was

raised to 10 in 1956 and number was raised subsequently to meet the increased workload. Presently, Supreme Court consists of one Chief Justice and 33 Judges (as per 2019 Amendment) before the amendment SC had 30 Judges including the Chief Justice.

i) ***Appointment of Judges***

Chief Justice and other Judges are appointed by the President of India. For the appointment of Chief Justice, the President consults other concerned authorities besides taking the advice of Council of Ministers. S/he can consult such other Judges of the Supreme Court and the High Court as s/he deems necessary. For the appointment of other Judges of the Supreme Court, the President consults the Chief Justice of India. The Chief Justice has the power with the previous consent of the President, to request a retired Judge of Supreme Court or a High Court Judge to work as adhoc Judge under Article 127 for some period, if there is a lack of quorum of the permanent Judges.

ii) ***Qualifications***

According to Article 124, a person for appointment as a Judge of the Supreme Court must possess the following qualifications:

- a) He must be a citizen of India.
- b) He should have worked as a Judge in some High Court, for at least 5 years; or

He should have practiced in a High Court, for at least 10 years; or

He, in the opinion of the President, is a distinguished Jurist.

In the case of Chief Justice of India, normally the senior most Judge of the Supreme Court is promoted for that post.

iii) ***Tenure***

No minimum age is prescribed for the appointment of a Judge of the Supreme Court and no fixed period of office has been mentioned. A judge of the Supreme Court ceases to be so, on occurring of anyone of the following circumstances:

- a) On attaining the age of 65 years; or
- b) On his resigning his office by writing, addressed to the President.
- c) On being removed through impeachment.

According to Article 124(4) of the Constitution, the Judges can only be removed by a set of removal regulations (the President

and Parliament are involved in the procedure of removal) that too only on two grounds i.e. “proved misbehavior” and “incapacity”. Somewhat complicated method has been prescribed to ensure that Judges are not removed easily, thereby ensuring the “independence of judiciary”.

The Judges of Supreme Court, once appointed cannot be removed by the executive orders.

iv) ***Jurisdiction of the Supreme Court***

The Supreme Court, as the top organ of the Indian Judiciary, acts as the guardian of our federal structure as well as that of the citizens’ rights provided under the Constitution. It acts as the final interpreter of the public law and discharges certain other important functions. To perform the above mentioned role, the Supreme Court is endowed with following powers:

- a) ***Original Jurisdiction*** : The original jurisdiction of a Court covers the cases, which come to it directly or where it alone has the authority to try the cases. The Supreme Court enjoys exclusive jurisdiction in the following cases:
 - disputes between the Union Government of India and one or more States,
 - disputes between the Union Government and State Government of one or more states on one side and other States on the other side,
 - disputes between two or more states. However, the Supreme Court does not have the power over Inter-State River or Water disputes.
- b) ***Appellate Jurisdiction*** - The Supreme Court is the highest court of appeal in India. It hears the appeal to the judgment, decree or final order of a High Court of the states, in all civil, criminal or other cases.
- v) ***Special Leave to Appeal*** - The Supreme Court has also the power to grant special leave to appeal from any judgment. This means that the Supreme Court can hear even the cases, where a High Court does not award the right to appeal. While the Constitution provides for regular appeals to the Supreme Court from the decisions of the High Courts in Articles 132 to 134, there may still remain some cases where justice might require the interference of Supreme Court.
- vi) ***Advisory Jurisdiction*** - The President has right to ask for the opinion of the Supreme Court on certain matters referred to it on the question of law or fact of public importance. If the President considers that a matter needs the opinion of Supreme Court, s/he refers the matter to

it. But the opinion expressed by the Supreme Court is not binding on the Government and the opinion is not executable as a judgment.

- vii) ***Writ Jurisdiction*** - Under Article 32 of the Indian Constitution, a writ petition can be made before the Supreme Court, which can entertain it for the enforcement of fundamental rights. The writ jurisdiction is sometimes treated as an original jurisdiction as the aggrieved has right to move directly to the Supreme Court instead of coming through High Court. Still it is treated as a separate jurisdiction since the dispute in such cases is not between the units of the Union but between an aggrieved individual and the Government or any of its agencies.
- viii) ***Power to Review its own Decisions*** - Though the Supreme Court is the final judicial authority, but it has power to review or revise its own decisions. The need for such things arises with the change in the circumstances or change in the conditions.
- ix) ***As a Court of Record*** - The Constitution makes the Supreme Court a “Court of Record”. A Court of Record means a court having the records retained for perpetual memory and testimony. All its decisions are taken as precedents and are used for evidentiary purpose. It has an extraordinary power to punish for its contempt.
- x) ***Power of Judicial Review*** - The Supreme Court has the power to make judicial reviews of the laws passed by the Union Parliament or any State Legislature. It can declare any law as null and void, if it contravenes the provisions of the Constitution. If a part of law is unconstitutional, the Court can invalidate the law or a part of it to that extent.
- xi) ***Miscellaneous Powers*** - The Court has power to call for persons, papers or any information or the investigation reports etc. It also exercises the controlling power over the subordinate courts. With the permission of the President it can frame rules for regulating the practice and procedure of the Court. It also has the power to appoint certain officials in the court.

2) The High Courts

A High Court stands at the top of every state’s judicial system, even though it forms a part of the single integrated judicial system headed by the Supreme Court of India. The Constitution provides for the establishment of High Court in all the States. The Parliament, by law may establish common High Court for two or more states. It may also extend the jurisdiction of a High Court to a Union Territory or exclude such jurisdiction. The States of Punjab-Haryana and Assam-Meghalaya have common High Courts. The jurisdiction of the Punjab and Haryana High Court is also extended to Chandigarh. There are 25 High Courts in India.

i) ***Composition***

Every High Court consists of a Chief Justice and such other Judges as the President may, from time to time determine. Since the number of Judges of the High Courts has not been fixed by the Constitution, there is a variation in the strength of the various High Courts. For instance, the Allahabad High Court has a sanctioned strength of 160 Judges as against only three Judges for the Sikkim High Court.

The Chief Justice and other Judges are appointed by the President in consultation with the Chief Justice of Supreme Court. In case of the appointment of a Judge, the Chief Justice of the concerned High Court is also to be consulted.

ii) ***Qualifications***

A person to be appointed as the Judge of the High Court must possess the following qualifications:

- a) He must be a citizen of India;
- b) He must have held a judicial office of India for at least ten years; or
- c) He should be an Advocate of one or more High Courts for at least ten years.

A Judge of the High Court holds office till s/he attains the age of 62 years. Every Judge (permanent, additional or acting) may vacate her/his office in one of the following ways:

- (a) A Judge may resign her/his office.
- (b) A Judge of the High Court may be appointed a Judge of the Supreme Court or transferred to any other High Court by the President.
- (c) He can be removed from service by the President, after an address has been presented to him by each House of the Parliament for his removal. Such an address must be passed by a majority of the total membership of each House; and by a majority of not less than two-thirds of the members present and voting.

A Judge of the High Court can be transferred by the President from one High Court to another with the consultation of the Chief Justice of India. A Judge, after he retires from the High Court cannot appear as Advocate before any Court or authority in India, except the Supreme Court and the High Court other than that of which he had been a Judge.

iii) ***The Jurisdiction of a High Court***

It is the same as the geographical area of the State, but Parliament, by law, can extend its jurisdiction.

- a) ***Ordinary Jurisdiction*** - The Constitution does not specify the jurisdiction of the High Court as has been done in case of the Supreme Court. They are to have the jurisdiction, which they were exercising before the commencement of the Constitution.
- b) ***Original Jurisdiction*** - A High Court possesses original jurisdiction in matters of admiralty, probate, matrimony and contempt of court cases.
- c) ***The Appellate Jurisdiction*** - It extends to both civil and criminal cases. In civil cases, it can be a first appeal or a second appeal. First appeal is against the decision of District Court. This lies directly before the High Court on question of fact as well as of law. When a court subordinate to the High Court decides an appeal from the decision of an inferior court, second appeal lies to the High Court from the decision of an inferior court. Such an appeal is made on question of law and procedure and not on questions of fact.

The criminal appellate Jurisdiction of the High Court lies in appeals against the decision of:

- a) a Session Judge or an Additional Session Judge, where the sentence is of imprisonment exceeding 7 years. If the Session Judge has given death sentence, it must be certified by the High Court.
 - b) an Assistant Session Judge, Metropolitan Magistrate or other Judicial Magistrates in certain specified cases other than 'Petty' cases.
- iv) ***As a Court of Record*** - Like the Supreme Court, it is also a court of record.

To ensure independence of the judiciary in India, the salaries of the Judges and administrative expenses are charged on the Consolidated Fund of India, hence are not voted by the Parliament.

4.5 JUDICIARY IN CHINA

The legal system of People's Republic of China (PRC) is defined by the Government as a "socialist legal system" and is also referred to as "people's court system". The Constitution of PRC is the highest law of the land. The courts in China administer people's justice, i.e. justice in the interest of the socialist aspirations of the people, rather than providing individual justice. The

courts in PRC do not have general power of judicial review. However, under the Administrative Procedure Law of the PRC they do have authority to invalidate any specific Act or its Section thereof. China has no common law, instead, it has Civil Law system, which includes statutes and excludes case law, which means court cases are not law. As per independence of Judiciary, China's judiciary is subject to variety of internal and external controls that significantly limit its ability to take independent decisions. Chinese judicial edifice is a crowded space with layer upon layer of officials, committees, decision-making chains and approval processes. It is sarcastically stated about the court decisions that "those hear the case do not decide it and those deciding the case do not hear it". For instance, a Judge does not sign his own judgment; often this is done by higher official of the court. Politico-legal committees sit behind a Judge or panel of Judges to supervise the proceedings on behalf of the Communist Party of China.

According to the Constitution and the Organic Law of People's Court of 1979 (amended in 1983), there are four levels of judicial authorities in China. These four levels are:

- Basic People's Courts
- Intermediate People's Courts
- Higher People's Courts; and
- The Supreme People's Court

Generally, there are several divisions, within each Court, such as civil, criminal, economic, enforcement and administrative. Every court, has one President and several Vice-Presidents. There are also special courts in the areas of military, railways, maritime and forestry.

1) ***The Supreme Court***

In China the highest court, located in Beijing, is known as the Supreme People's Court (SPC). It is composed of a President, Members (Judges) and its Standing Committee. The President of SPC is elected by the National People's Congress (NPC) for a term of five years and may be elected for only one more term. The SPC is composed of a large number of Judges exceeding the figure of 650 including more than fifty per cent Judges as permanent members. The Standing Committee appoints Vice-Presidents, heads of Division and Judges. The SPC works through various divisions or courts such as civil, criminal, economic and administrative.

This highest Judicial organ (SPC) is responsible to the NPC and its Standing Committee. According to the Constitution and statutes, the SPC performs the following functions:

- i) Trying cases that have the greatest influence in China, hearing appeals against the legal decisions of higher courts (appellate jurisdiction) and as the court of first instance trying the cases within its original jurisdiction;

- ii) Its second responsibility is to supervise the working of all other courts including special courts, overruling doubtful decision made by the courts or reviewing their decisions; and
- iii) It is the function of the SPC to interpret the laws.

2) ***The Higher People's Courts (HPC)***

The Higher People's Courts are created for provinces, autonomous regions, municipalities directly under the control of Central government. Internal structure of the court is almost similar to the structure of SPC. The HPC has both, Appellate and Original Jurisdiction.

3) ***The Intermediate People's Court (IPC)***

These courts are established for capitals or prefecture at the provincial level and in the cities and districts directly under the provinces and the Central Government respectively. The IPC has both Appellate and Original jurisdiction as well. The functions and powers of these courts fall under the following areas:

- i) Original Jurisdiction or the first hearing cases under the law. It may include the cases involving national security; criminal cases, which may lead to life imprisonment or death sentence; crimes involving foreigners; and the cases referred by the Supreme Court. These courts are also authorised to take up the cases relating to the verification of patent rights, customs, suits against administrative actions taken by State Council departments or provincial governments.
- ii) First hearing cases transferred by the grassroots Courts;
- iii) Admitting and taking up the appeals against the decisions of lower courts under their Jurisdiction.
- iv) Exercising general supervision and control over the working of lower courts and guiding them.

The cases of very serious nature may be directly transferred to the higher courts by any intermediate court. The higher courts work at the Provincial level (autonomous regions and municipalities). They take up the following cases relating to:

- i) The cases of major proportion under their Jurisdiction may be of the nature of civil, administrative and judicial;
- ii) First hearing - as transferred by the lower courts;
- iii) Appellate nature - appeals against the decisions of the lower courts;
- iv) Protested cases (as submitted by prosecutors) in accordance with trial-monitoring procedures;
- v) Reviewing of the first hearing cases rules by the intermediate courts - involving death penalty; and

- vi) Besides these judicial functions, the higher courts have the power of supervision of the working of lower courts; and to re-examine the cases with any kind of error.

4) ***Basic People's Courts (LPC)***

The Local People's Courts— grassroots, intermediate and higher, work at various levels. The grassroots level courts, as per the “Law on Organisation of People's Courts”, consist of Tribunals; and they work in counties, cities or administrative districts. These basic courts are responsible for trying of civil, criminal and administrative cases— mostly as the courts of first hearing. They also handle certain civil disputes and misdemeanors (misdeeds) that do not need trials. These courts also supervise and guide the People's Arbitration Committees and also take up the Public relations work in regard to laws and rules.

The Special Courts

As noted earlier there are certain special courts in China, which are mainly for the military, maritime and railways. The Military Courts, too, operate at three levels viz., grassroots level, regional level and the People's Liberation Army (PLA), which is the highest Military Court. The grassroots courts are of the kind of tribunals working at the field level in the army, navy and air force. At the intermediate or regional level are the courts, which have original jurisdiction like the people's Courts. They try cases relating to death penalties.

The Maritime Courts are set up to try first hearing maritime or sea-shipping cases. The maritime cases have been classified into as many as ten categories of maritime torts and disputes, fourteen categories of commercial cases, five categories of maritime enforcement and two categories of preservation and detaining of ships.

The railway relating cases are taken up in the Tribunals, which are established to deal with crimes, disputes and preservation of railways. All cases relating to the railways are classified into twelve categories.

Chinese judicial system is the by-product of many sub-systems but most common are People's courts, People's Procuratorate system and the Public Security system. The Chinese People's procuratorates are the state organ for legal supervision, whereas the Public Securities are for investigations and evidence gatherings.

4.6 JUDICIARY IN SOUTH AFRICA

Judiciary in South Africa (SA) is an independent branch of the Government, subject only to the Constitution of South Africa and the laws of the country. Chapter VIII of the Constitution ensures independence of the courts and also

makes detailed mention of the structure of judicial system in the country. The Judicial authority in South Africa is vested in the courts, through a unified judicial system; and as per Section 166 of the Constitution, there are following courts:

- The Constitutional Court,
- The Supreme Court of Appeal,
- The High Courts (including the High Courts of Appeal),
- The Magistrates' Courts, and
- Any other court, established by the Act of Parliament.

1) ***The Constitutional Court***

As the name suggests, the Constitutional Court deals with the matters directly related to the Constitution of South Africa. As per Section 167 of the Constitution of the Republic, this Court enjoys the exclusive jurisdiction in taking up the cases dealing with powers and Constitutional status by basic branches of the Government. It has the exclusive jurisdiction in regard to the following:

- i) Taking up and deciding disputes about the powers and the status of various authorities and branches of the Government.
- ii) Looking into the issues and disputes between organs at the national and provincial levels, particularly in regard to their Constitutional status, functions, etc.
- iii) Deciding about the Constitutionality of certain legislative bills.
- iv) Issues regarding the amendments to the Constitution.
- v) Taking up the issues concerning the lack of performance or inability to meet Constitutional obligations by the Parliament or the President.

The court does not hear evidence or question witnesses. It only considers the record of the evidence heard in the original court.

2) ***The Supreme Court of Appeal***

The Supreme Court is the highest court dealing with the cases other than those under the jurisdiction of the Constitutional Court. As the title suggests, it deals mainly with the cases reach to it from the High Courts. The Supreme Court of Appeal consists of a President, a Deputy President and the number of Judges, as determined by the Act of Parliament. Decisions by the Court are generally reached by a plural bench and majority rule. No other Court, except the Constitutional Court can overrule the decision of the Supreme Court of Appeal. The Supreme Court of Appeal may makes

an order concerning the Constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President but such order should be confirmed by the Constitutional Court. However, the Supreme Court of Appeal may also amend its own decisions.

3) ***The High Courts***

High Courts operate mostly at the provincial level (division) and also a few specialised areas at the national level. The High Court Division has a Judge President, one or more Deputy Judges President and a number of other Judges as determined by the Act of Parliament. High Courts take up the Constitutional matters and any other matters, which are not assigned to the Constitutional Court or to any other court by the national legislation. The High Courts may also include hearing appeals from lower courts or other courts as per the Act of Parliament. A High Court has jurisdiction in its own area, over the residents of that area. The High Court hears matters of serious nature in which the lower courts are incompetent to take up or decide.

There are thirteen High Courts in various fields of general nature or special categories such as labour, land, electoral etc.

4) ***Magistrates Courts***

Next in line are the Magistrates Courts, which are the lower courts taking up criminal and civil cases of less serious nature. These Courts are divided into Regional Courts and District Courts. The Regional Courts are divided into two categories:

- Regional Magistrates' Courts, which only deal with criminal cases; and
- Ordinary Magistrates Courts (district level) that deal with both criminal and civil cases.

5) As noted earlier, there are also Specialised Courts in South Africa, which work in specific areas. These courts too work in hierarchical pattern. There are basic or lower courts or tribunals in the areas of labour, land claims, taxation, electoral etc. There is a system of high courts in these areas too. The following are the courts in this category, at the national level:

- The Labor Court and Labor Appeal Court
- The Land Claims Court
- The Electoral Court
- The Tax Court
- The Competition Appeal Court.

In South Africa, a peculiar feature of the judicial system is the Heads of Courts Meeting. The heads of Superior Courts, under the Superior Courts Acts, meet thrice a year as judicial leaders. During these meetings, the matters that are generally taken up relate to the effectiveness of judicial administration, efficiency of the court's system, inclusiveness in judiciary, and the independence of judiciary in South Africa.

Check Your Progress 2

Note: i) Use the space given below for your answers.
ii) Check your answers with those given at the end of the Unit.

1) What are the basic features of Supreme Court of India?

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2) Describe the nature of Chinese Judiciary?

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3) Explain the judicial system in South Africa?

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4.7 CONCLUSION

In this Unit, we have discussed the judicial system in BRICS. We have seen that in all these countries, there is a judicial system that is working on hierarchical pattern. There are Courts at the local level, intermediate level, regional level and national level. In this hierarchical set up, there is a system of making appeals against the decisions of lower courts to the next higher courts, while the Supreme Court is having the final say. Among these countries, there is a notable difference as far as the jurisdiction is concerned. Out of these five, three countries namely, Brazil, Russia and South Africa have a system of separate Constitutional Court at the top level for dealing with issues and disputes relating to the Constitution of the country. India and China do not have separate Constitutional courts. In all the BRICS countries, there is prevailing a system of specialised courts and tribunals.

4.8 GLOSSARY

Appellate Jurisdiction: It is the power of an appellate court to review, amend and overrule the decision of a trial court or other lower tribunal.

Tribunal: It refers to a quasi-judicial institution having an authority to judge, adjudicate on, or determine claims or disputes. For example, the Central Administrative Tribunal in India. It performs an important and specialised role in justice mechanism.

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4.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Your answer should include the following points:
 - In Brazil, there are two top courts—The STF (Supreme Court of Justice) and STJ (Superior Court of Justice) followed by regional courts.

- 2) Your answer should include the following points:
- Refer Section 4.3

Check Your Progress 2

- 1) Your answer should include the following points:
- Refer Section 4.4
- 2) Your answer should include the following points:
- Refer Section 4.5
- 3) Your answer should include the following points:
- Refer Section 4.6

