

INDIAN POLITY

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Polity

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Basics Concepts

1. Constitution and Types

What is a Constitution?

- A constitution is a basic law of the land which establishes the relations between various organs of the government and also defines the nature and polity of that country. The polity defines the basic structure of law and the rights and obligations of both the state and the citizens.
- On the other hand, the document containing laws and rules which determine and describe the form of the government, the relationship between the citizens and the government, is called a Constitution.

Importance of Constitution:

- To maintain the smooth functioning of modern welfare state, there is a need of a set of codified rules which determines or will determine the form of government, the relationship between the citizens and government in order to sustain and flourish.
- It is the constitution which establishes these relationships and lays down the objectives of the state which it has to achieve. It also describes the rights and duties of the citizens and also limit the powers of the government(s).
- It facilitates the minimal coordination among the members of a society by specifying who has the power to make decisions in a society and also decides how the government will be constituted.
- Thus, a constitution is considered to be the basis for the governance of the country both in terms of goals and objectives as well as their structures and functions.

Functions of a constitution: The constitution whether written or unwritten, is a political structure having several functions:

- **Expression of Ideology:** It reflects the ideology and philosophy of a nation state.
- **For example:** the ideology of Indian Constitution is based on a socialist and secular social system. On

the other hand, the U.S.A. follows the ideal of a capitalist social order.

- **Expression of Basic Law:** Constitution presents basic laws which could be modified or replaced through a process called extra-ordinary procedure of amendment. There is a special law also which usually focuses upon the rights of the citizens, for instance, rights concerning language, speech, religion, assembly, the press, property and so on.
- **Organizational framework:** It provides organizational framework for the governments. It defines the functions of the legislature, executive and judiciary, their inter-relationship, restrictions on their authority etc.
- **Levels of Government:** Constitution generally explains the levels of different organs of the government.
- Whether it is federal, quasi-federal or unitary, will be described by the constitution. They delineate the power levels of national and provincial governments.
- **Amendment provision:** As it would not be possible to foretell all possibilities in future with great degree of accuracy, there must be sufficient provisions for amendment of the constitution. It should contain a set of directions for its own modifications. The system might collapse if it lacks in scope for modification. An inherent capacity to change according to changing times and needs, help any system to survive and improve.

Types of Constitution:

Broadly speaking, constitution can be of:

Two types based on the nature of document:

- **Written:** Written in the form of a book or a series of documents combined in the form of a book which is consciously framed and enacted. It is formulated and enacted by a constituent assembly or a council or a legislature whose members are elected by the people for whom the constitution is being written.
- **For Example:** Indian Constitution (the longest constitution), Constitution of America etc.
- **Unwritten:** It is not committed to systematic writing by a particular constituent assembly, rather,

evolved or developed due to a number of customs, usages, parliamentary acts and traditions.

- For example, the British constitution has evolved on the basis of all these over a period of many centuries.

Two types based on the nature of polity:

- **Unitary:** Establishes single authority without dividing powers among separate entities. However, there may be other legislative and executive authorities under a unitary constitution but they enjoy only delegated powers and not constitutionally granted powers.
- **For Example:** British Constitution which only recognizes the British Parliament and the central government without having any state type legislatures or government.
- **Federal:** It shares powers between two distinct entities namely, federal or the union government and the state governments without having inferior to each other as both derive its powers directly from the constitution.
- Countries with large population, geographical size, social, cultural and linguistic diversities generally adopt federal form of constitution to allow autonomy of governance to the constituent states. For example, the US, Canadian, Australian Constitutions are federal constitutions.



2. Constitutional Development

- The origin and growth of the Indian Constitution has its roots in Indian history during the British period. The British came to India in the 17th century as traders. From 1773 onwards, various Acts were passed by the British Government for the governance of India. None of them, however satisfied Indian aspirations mainly because they were imposed by the alien rulers.
- **Amending Act, 1781:** (i) Settled the question of jurisdiction of Supreme Court; and (ii) Supreme Court to apply personal law of the defendant.
- **Regulating Act, 1773:** (i) First attempt by the British Parliament to regulate the affairs of the Company; (ii) Provided for centralisation of Administration of Company's territories in India; (iii) Governor of Bengal became Governor General for all British territories in India; (iv) Governor General and Council of 4 members was appointed for Bengal; (v) Court of Directors of 24 members was to be elected for 4 years, with one-fourth members retiring every year; (vi) Bombay (Maharashtra) and Madras (Tamil Nadu) Presidency subordinated to Bengal Presidency; (vii) Supreme Court to be set up at Calcutta; and (viii) Company's Servants forbidden from accepting bribes or doing private trade.
- **Pitt's India Act, 1784:** (i) Transferred the Indian affairs of the Company into the hands of the British Government; (ii) Abolished dual system of governance. Court of Directors consisting of 24 members to look after commercial functions; (iii) Board of Control consisting of 6 Parliamentary Commissioners was constituted to control civil, military and revenue affairs of India; (iv) Court of Directors had to comply with the orders and directions of the Board; (v) Strength of Governor-General's Council reduced to 3; (vi) Control of Governor General-in-Council on Bombay and Madras Presidency enlarged and made effective; and (vii) First effective substitution of Parliamentary Control over East India Company.
- **Act of 1786:** Governor-General to be the Commander-in-Chief of Indian Forces.
- **Charter Act, 1793:** (i) Company given monopoly of trade for 20 more years (ii) Expenses and salaries of the Board of Control to be charged on Indian Revenue; and (iii) Governor-General could over-ride his Council.
- **Charter Act, 1813:** (i) Company deprived of its trade monopoly in India except in tea and opium trade with China; (ii) All Englishmen could trade with India subject to certain restrictions; (iii) Rules and procedures made for use of Indian revenue; and (iv) A sum of Rs. 1 lakh earmarked annually for education.
- **Charter Act, 1833:** (i) End of Company's trade monopoly even in tea and opium with China; (ii) Company was asked to close its business at the earliest; (iii) Governor-General of Bengal to be Governor-General of India; (iv) Govt. of Madras and Bombay deprived of legislative powers; (v) A fourth member, Law Member, added to Council of Governor-General; (vi) Government Service was thrown open to the people of India; (viii) All laws made by Governor General Council, henceforth to be known Acts and not regulations; (viii) Provision made for appointment of Law Commission for codification of laws; and (ix) Slavery was to be abolished.
- **Charter Act, 1853:** (i) Expanded life of the Company for an outspread period; (ii) For the first time a separate legislative machinery consisting of 12-member Legislative Council was created; (iii) Law member was made a full member of the Executive Council of the Governor-General. Six additional members added for legislative purposes; and (iv) recruitment of Civil Services was based on open annual competitive examination.
- **Government of India Act, 1858:** (i) Rule of company in India ended and that of the Crown began; (ii) System of double government ended. Court of Directors and Board of Control abolished; (iii) Secretary of State for India was created. He was assisted by a 15-member Council (India Council). He was to exercise the powers of the Crown; (iv) Secretary of State to be a member of the British Cabinet; (v) Secretary of State governed India through the Governor General; (vi) Governor-General was to be called the Viceroy and was the direct representative of the Crown in India; and (vii) A unitary and highly-centralised administrative structure was created.
- **Indian Councils Act, 1861:** (i) Policy of Association of Indians in legislation started; (ii) Portfolio system was introduced; (iii) For legislation; Executive Council of Viceroy was enlarged by 6 to 12 members composed of half non-official members. Thus foundations of Indian Legislature was laid down; (iv) Legislative powers of the Presidency Government deprived in 1833 were restored; and (v) Viceroy could issue ordinances in case of emergency.
- **Indian Councils Act, 1892:** (i) Though the majority of official members was retained, the non-official members of the Indian Legislative Council were henceforth to be nominated by the Bengal Chamber of Commerce and the Provincial Legislative Councils, while the non-official members of the Provin-

cial Council were to be nominated by certain local bodies such as universities, district boards, municipalities. Beginning of representative system in India; and (ii) Council to have the power to discuss budget and of addressing questions to the Executive.

- **Indian Councils Act, 1909:** Also known as the Morley-Minto Reforms (i) Introduced for the first time, an element of elections to the Legislative Councils; (ii) At the Provincial Legislative Councils, non-official members to be in majority; and (iii) Introduction of separate electorates (for Muslims).
- **Government of India Act, 1919:** Popularly known as Montague-Chelmsford Reforms (i) The idea of "Responsible Government" stressed; (ii) Office of the High Commissioner of India was created in London; (iii) Indian Legislature became "bicameral" for the first time; (iv) communal representation extended to Sikhs; (v) Secretary of State for India now to be paid from British revenue; and (vi) Dyarchy in provinces by dividing subjects of administration between official members and elected members.
- **Dyarchy:** It meant Dual Government. The Provincial subject of administration were to be divided into two categories "Transferred" and "Reserved" subjects. The transferred subjects were to be administered by the Governor with the aid of Ministers responsible to the Legislative Council. The reserved subjects were to be administered by the Governor and his Executive Council without any responsibility to the Legislature.
- **Devolution Rules:** Subjects of administration were divided into two categories "Central" and "Provincial". Subjects of all-India importance (like Railways, Finance) were brought under the category of Central, while matters relating to the administration of the provinces were classified as provincial.
- **Government of India Act, 1935:** (i) Provided for the establishment of an All-India Federation consisting of the British Provinces and the Princely States. The joining of Princely States was voluntary. The Federation part of the scheme could not be implemented; (ii) Dyarchy was introduced at the Centre. Provincial autonomy replaced Dyarchy in Provinces. They were granted separate legal identity. Responsible governments were set up in States under Prime (Chief) Ministers elected by Legislatures; (iii) Governor had special responsibilities (or discretion) in several matters; (iv) It made a three-fold division of powers Federal, Provincial and Concurrent Lists. Residuary powers were to be with the Governor-General; (v) The India Council of Secretary of State for India was abol-

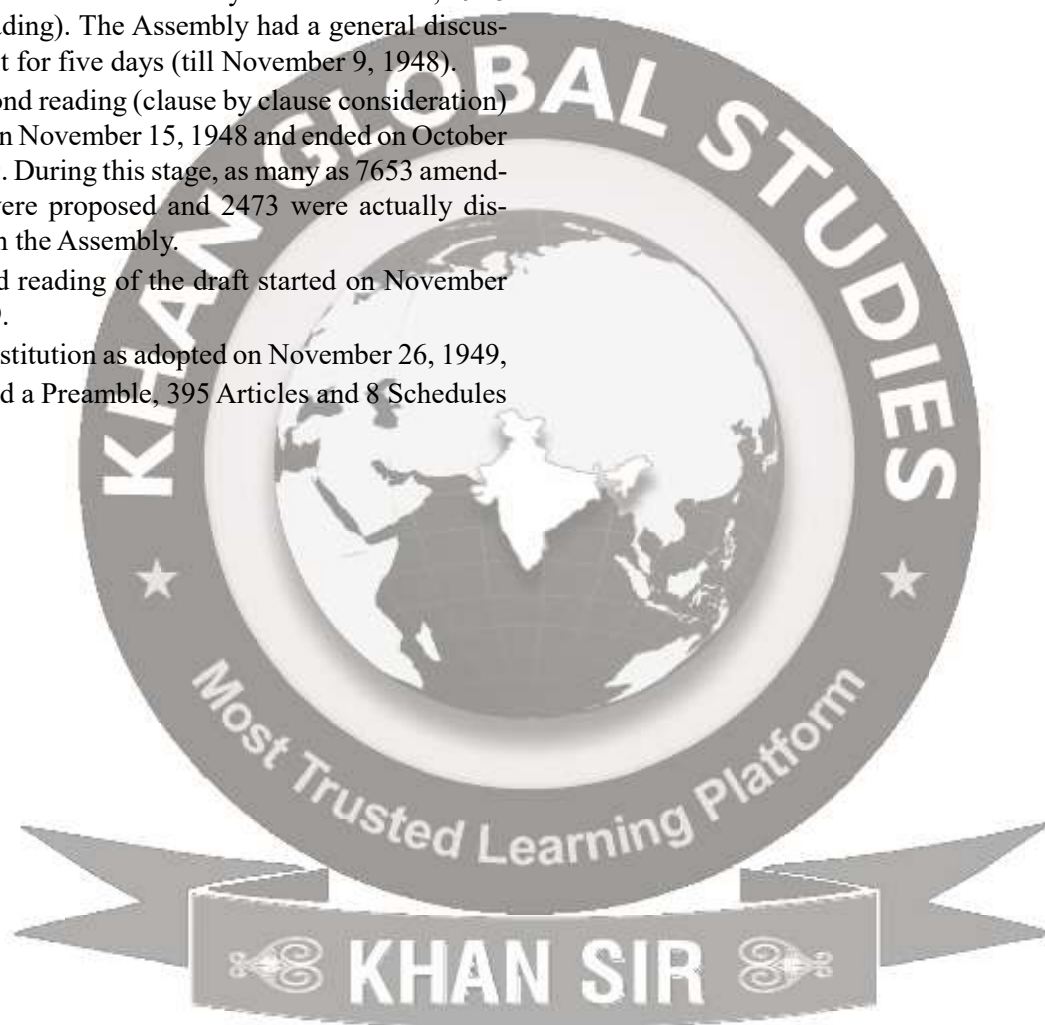
ished; (vi) Principle of separate electorate was extended further to include Anglo-Indians Indian Christians and Europeans also; and (vii) A Federal Court was to be constituted with a Chief Justice and 10 other Judges. This was set up in 1937.

- **Indian Independence Act, 1947:** This Act did not lay down any provision for the administration of India but merely stated that from the "appointed date" (Aug. 15, 1947), in place of India as defined in the Government of India Act, 1935, there would be two independent Dominions to be known as "India" and "Pakistan", and the Constituent Assembly of each Dominion would have unlimited powers to frame and adopt any Constitution, and to repeal any Act of the British Parliament.

MAKING OF THE CONSTITUTION

- The idea of a Constituent Assembly for India was put forward for the first time by M. N. Roy.
 - The Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan.
 - The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States. Out of 296 seats allotted to the British India, 292 members were to be drawn from the eleven governors' provinces and four from the four chief commissioners' provinces, one from each.
 - Each province or princely state (or group of states in case of small states) were to be allocated seats in proportion to their respective population. Roughly, one seat was to be, allotted for every million population.
 - Seats allocated to each British province were to be decided among the three principal communities-Muslims, Sikhs and The representatives of each commune general (all except Muslims and Sikhs), in proportion to their population.
 - The representative of each community were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferable vote.
 - The representatives of princely states were to be nominated by the heads of the princely states.
 - It is thus clear that the Constituent Assembly was to be a partly elected and partly nominated body. Moreover, the members were to be indirectly elected by the members of the provincial assemblies, who themselves were elected on a limited franchise.
- Drafting Committee**
- It consisted of seven members. They were:

1. Dr B R Ambedkar (Chairman)
 2. N Gopalaswamy Ayyangar
 3. Alladi Krishnaswamy Ayyar
 4. Dr. K M Munshi
 5. Syed Mohammad Saadullah
 6. N Madhava Rau (He replaced B L Mitter who resigned due to ill-health)
 7. T T Krishnamachari (He replaced D P Khaitan who died in 1948)
- Dr B R Ambedkar introduced the final draft of the Constitution in the Assembly on November 4, 1948 (first reading). The Assembly had a general discussion on it for five days (till November 9, 1948).
 - The second reading (clause by clause consideration) started on November 15, 1948 and ended on October 17, 1949. During this stage, as many as 7653 amendments were proposed and 2473 were actually discussed in the Assembly.
 - The third reading of the draft started on November 14, 1949.
 - The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules



3. Types of Political System

- A political system is the set of formal legal institutions that constitute a “state.” There are seven types of political systems namely as follows:

1. Democracy : Democracy is a system of government in which the citizens exercise power directly or elect representatives from among themselves to form a governing body, such as a parliament. Democracy is sometimes referred to as rule of the majority. India, the US, the UK, France, Australia, Brazil, South Africa, Japan etc. are the democratic countries.

Features :–

- The democracy consists of four key elements (a) A political system choosing and replacing the government through free and fair elections; (b) The active participation of the people, as citizens, in politics and civic life; (c) Protection of the human rights of all citizens, and (d) A rule of law, in which the laws and procedures apply equally to all citizens.
- Other features of democracy are as follows:
 - (a) Popular sovereignty
 - (b) Political freedom & equality
 - (c) Protection of minority rights
 - (d) Independence of judiciary
 - (e) Presence of civil & socio-economic rights
 - (f) Legal equality & rule of law etc.
- 2. Dictatorship :** Dictatorship is a form of government where a country is ruled by one person or political entity, and exercised through various mechanisms to ensure that the entity's power remains strong. Nazi Germany, Soviet Union under Stalin's rule, Napoleonic France, Pol Pot regime in Cambodia, North Korea under Kim Jong-Il & Kim Il Sung, Zimbabwe under Robert Mugabe, Uganda under Idi Amin etc. are examples of the dictatorship.

Features :–

- It comes into existence by force.
- Nearly every aspect of the public and private behaviour of citizens is regulated.
- Such systems generally employ political propaganda to decrease the influence of proponents of alternative governing systems.
- It is characterized by arbitrary, unaccountable & irresponsible role of the dictator.
- The distinction between the state & the government is absent.
- 3. Monarchy :** A monarchy is a form of government in which a group, usually a family called the dynasty, embodies the country's national identity and one of

its members, called the monarch, exercises a role of Sovereignty. Saudi Arabia, Brunei, Denmark, Sweden, the UK, Morocco etc. have Monarchical form of political system.

Features :–

- The actual power of the monarch may vary from purely symbolic (crowned republic), to partial and restricted (constitutional monarchy), to completely autocratic (absolute monarchy). The UK is a Constitutional Monarchy; whereas the King of Saudi Arabia is an absolute Monarch. The monarchs of Cambodia, Japan, and Malaysia “reign, but do not rule” although there is considerable variation in the degree of authority they wield.
- Traditionally and in most cases, the monarch's post is inherited and lasts until death or abdication, but there are also elective monarchies where the monarch is elected.
- 4. Theocracy :** It is a form of government in which God or a deity is recognized as the king or immediate ruler, and his laws are taken as the statute-book of the kingdom, these laws being usually administered by a priestly order as his ministers and agents. Hence, it is a system of government by a sacerdotal order, claiming a divine commission; also, a state so governed. The Holy See (Vatican City), Iran, Saudi Arabia, Central Tibetan Administration etc. are the examples of theocracies.

Features :–

- In a pure theocracy, the civil leader is believed to have a personal connection with the civilization's religion or belief. For example, Moses led the Israelites, and Muhammad led the early Muslims.
- An ecclesiocracy is a situation where the religious leaders assume a leading role in the state, but do not claim that they are instruments of divine revelation. The papacy in the Papal States occupied a middle ground between theocracy and ecclesiocracy, since the pope did not claim he was a prophet who received revelation from God and translated it into civil law.
- While secular governments have some aspects of life that are not influenced by religion, theocratic governments seek guidance from higher powers to cover all aspects of life, including law, punishment, education and marriage.
- 5. Totalitarian :** Totalitarianism is a political system in which the state recognizes no limits to its authority and strives to regulate every aspect of public and private life wherever feasible, without any respect for human rights.

- In an authoritarian regime a single power holder an individual dictator, a committee or a small group of political elite monopolizes political power. The authoritarian state is only concerned with political power and as long as that is not contested it gives society a certain degree of liberty. In contrast, a totalitarian regime attempts to control virtually all aspects of the social life, including the economy, education, art, science, private life, and morals of citizens. The totalitarian government seeks to completely control the thoughts and actions of its citizens. It also mobilizes the whole population in pursuit of its goals. The Nazi Germany, USSR under Joseph Stalin, China under Mao, North Korea are examples of the totalitarian states.

Features :-

- A distinctive feature of totalitarian governments is an elaborate ideology, a set of ideas that gives meaning and direction to the whole society, often involving a one-party state, a dictator and a personality cult.
- Totalitarian regimes stay in political power through such techniques as propaganda, state control of the mass media, educational system, economy, political repression, capital punishment, restriction of speech, and. Mass surveillance.

6. **Republic** : A republic is a sovereign state or country which is organized with a form of government in which power resides in elected individuals representing the citizen body and government leaders exercise power according to the rule of law. In modern sense, the term republic is commonly referred to a government which excludes a monarch. The term “republic” in our Constitution indicates that India has an elected head called the President. He is elected indirectly for a fixed period of five years. Ancient Athens, Sparta, Roman Republic, Mahajanpadas in Ancient India, the US, France, Islamic Republic of Iran are some of the examples of the republic states.

Features :-

- In the republican form of government, the political sovereignty is vested in the people and not in a single individual like a king.
 - All the public offices are open to every citizen without any discrimination & there is absence of any privileged class.
7. **Anarchism** : Anarchism advocates self-governed societies based on voluntary institutions. These are often described as stateless societies. It can be taken as institutions based on non-hierarchical free associations. Anarchism holds the state to be undesirable, unnecessary, and harmful



4. Types of Government

- Modern democratic governments can be classified into parliamentary, presidential & semi-presidential forms on the basis of nature of relations between the executive and the legislative organs of the government.

1. Parliamentary system : It is the form of government in which the executive is responsible to the legislature for its policies and acts. Cabinet is the nucleus of this system hence it is also called as the “Cabinet system”. The Cabinet (the real executive) is responsible to the legislature & stays in office so long as it enjoys its confidence hence it is also called as the responsible government. It is described as “Westminster model” of government after the location of the British Parliament. This system is present in the UK, Germany, Denmark, Sweden, Japan, India etc.

2. Presidential system : In this form, the executive is not responsible to the legislature for its policies and acts. The executive is constitutionally independent of the legislature in respect of its term of office. Hence, the Presidential system is also known as non-executive or non-responsible or fixed executive system of government. Such system is present in the USA, Brazil, Russia, Sri Lanka etc.

3. Semi-presidential system : In a semi-presidential the President exists alongside a Prime Minister & a cabinet. It differs from a parliamentary republic in that it has a popularly elected head of state, who is more than a purely ceremonial figurehead. In contrast to the presidential system, the cabinet is responsible to the legislature, which may force the cabinet to resign through a motion of no confidence. There are two separate subtypes of semi-presidential system, namely premier-presidential system and president parliamentary system. France, Russia, Mongolia, Madagascar etc. have the semi-presidential system.

1. Features of the Parliamentary System

- (a) In the Parliamentary system, the political party which secures majority seats in the Lower House forms the government. The leader of that party is appointed as the Prime Minister & other ministers are appointed on the advice of the Prime Minister.
- (b) The nominal and real executives are different. The President is the nominal executive (titular executive) while the Prime Minister is the real executive. The President is head of the State, while the Prime Minister is head of the government.

- (c) The principle of collective Responsibility is the bedrock principle of parliamentary government. The ministers are collectively responsible to the Parliament.
- (d) The ministers operate on the principle of secrecy of procedure and cannot divulge information about their proceedings, policies and decisions. They take the oath of secrecy before entering their office.
- (e) The ministers are members of both the legislature and the executive. Hence there is a double membership. This means that a person cannot be a minister without being a member of the Parliament.
- (f) The lower house of the Parliament (Lok Sabha) can be dissolved by the President on recommendation of the prime minister and he can advise the President to dissolve the Lok Sabha before the expiry of its term and fresh elections.

Parliamentary System

Merits

1. Harmony between legislature and executive
2. Responsible government
3. Prevents despotism
4. Wide representation

Demerits

- A. Unstable government
- B. No continuity of policies
- C. Against separation of powers
- D. Government by amateurs

2. Features of the Presidential System

- A. The President is both the head of the State and the head of government. As the head of State, he occupies a ceremonial position. As the head of government, he leads the executive organ of government.
- B. The doctrine of separation of powers is the basis of the presidential system. The legislative, executive and judicial powers of the government are separated and vested in the three independent organs of the government.
- C. The President is elected by an electoral college for a fixed tenure. He cannot be removed by the legislature except by impeachment for a grave unconstitutional act.
- D. President governs with the help of a cabinet. It is only an advisory body and consists of non-elected departmental secretaries. They are selected and appointed by him, are responsible only to him & not to the legislature.
- E. President and his secretaries are not responsible to the legislature for their acts. They neither possess membership in the legislature nor attend its sessions.

F. The President cannot dissolve the Lower House of the legislature.

Presidential System

Merits

1. Stable government

2. Definiteness in policies

3. Based on separation of powers

4. Government by experts

Demerits

A. Conflict between legislature and executive

B. Non-responsible government

C. May lead to autocracy

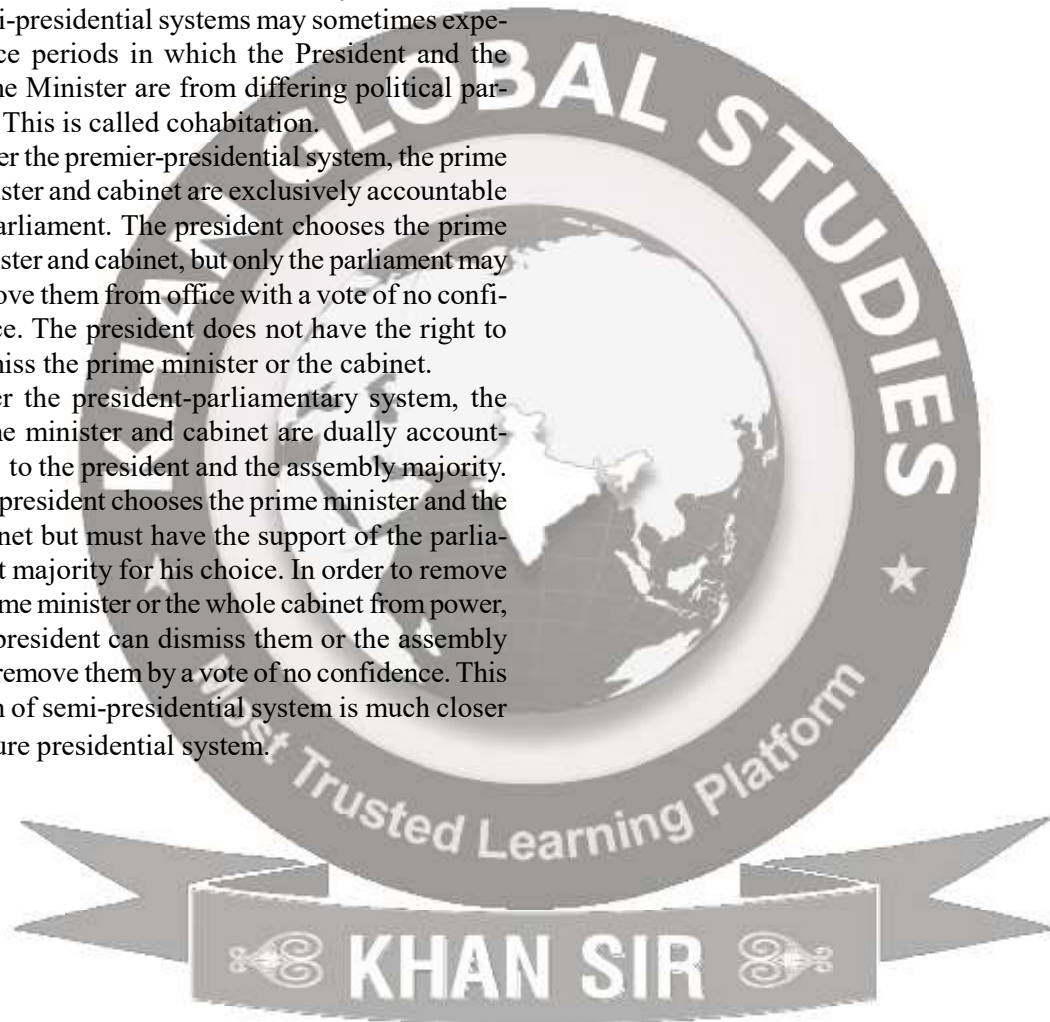
D. Narrow representation

3. Features of the Semi-Presidential System

A. Semi-presidential systems may sometimes experience periods in which the President and the Prime Minister are from differing political parties. This is called cohabitation.

B. Under the premier-presidential system, the prime minister and cabinet are exclusively accountable to parliament. The president chooses the prime minister and cabinet, but only the parliament may remove them from office with a vote of no confidence. The president does not have the right to dismiss the prime minister or the cabinet.

C. Under the president-parliamentary system, the prime minister and cabinet are dually accountable to the president and the assembly majority. The president chooses the prime minister and the cabinet but must have the support of the parliament majority for his choice. In order to remove a prime minister or the whole cabinet from power, the president can dismiss them or the assembly can remove them by a vote of no confidence. This form of semi-presidential system is much closer to pure presidential system.



5. Types of Electoral System

- A voting system or electoral system consists of the set of rules followed for a vote to be considered valid, and sets out how votes are cast, counted and aggregated to yield a final result of an election or a referendum. Adoption of a particular system by a country depends on various factors including historical evolution, size, type of voters, considerations of stability, nature of population, etc. Some of the most common electoral systems are as follows:

A. Plurality System (First-Past-the-Post System)

- In this system country is divided into single member territorial constituencies, usually of equal size. Voters select a single candidate, usually marking against the candidates' name. A candidate who receives the highest number of votes, may be less than even half the votes polled, is declared the winner.
- This system is easy to operate and establishes a clear link between representatives and constituencies. It also allows governments to be formed that have a clear mandate from the electorate, of course, on the basis of plurality of support amongst the electorate.
- However, a number of shortcomings are pointed out in this system. The system wastes many votes, those cast for losing candidates. It undermines the legitimacy of government in so far as governments often enjoy only minority support. In this system some social groups like minorities may remain under represented.
- In spite of these limitations this system is quite popular in a number of countries including the UK and India.

B. The Majority System

- The majority system requires that a person declared winner in a single member constituency wins by a clear majority that is getting more than 50 per cent votes. This can be obtained by two methods:

1. Second Ballot System:

- In this system there are single candidate constituencies and single choice voting, as in the first past the post system. To win on the first ballot, a candidate needs an overall majority of the votes cast. If no candidate gains a first ballot majority, a second runoff ballot is held between the leading two candidates. This system is popular in France.

2. Alternative Vote System:

- In this system there are single member constituencies. There is preferential voting. Voters rank the candidates in order of preference i.e. 1 for their first preference, 2 for their second preference, and so on. Winning candidates must gain minimum 50 per cent of

all the votes cast. Votes are counted according to the first preference.

- If no candidate secures 50 per cent in first preference, the candidate with least number of votes is eliminated and her votes are redistributed according to the second (or subsequent) preferences. This continues until one candidate has a majority. This method is used in Australia and some other countries and for elections of President and Vice-President in India.

C. The Proportional Representation System

- The term proportional representation is used to designate various electoral devices based on the principle that parties should be represented in an Assembly or Parliament in direct proportion to their overall electoral strength, their percentage of seats equalling their percentage of votes.
- It is claimed that under this system any party, interest or group would secure representation in proportion to the support, it has among the electors. This is achieved by two systems:

1. Single Transferable Vote System:

- In this system there are multi member constituencies. Parties may put forward as many candidates as there are seats to fill in each constituency. Electors vote preferentially, as in the alternative vote system. Candidates are elected if they achieve a quota. This is the minimum number of votes needed to elect, the stipulated number of candidates, calculated according to the following formula as explained below:

$$\text{Quota} = \frac{\text{Total Number of Votes Polled}}{\text{Total Number of Seats to be filledup} + 1} + 1$$

- The votes are counted according to first preference. If not all the seats are filled, the candidate securing least number of votes is eliminated and the votes are redistributed according to second preference, and so on, until all the seats have been filled. This system is used to elect members of Rajya Sabha and Legislative Councils in India.

2. Party List system:

- In this system either the entire country is treated as a single constituency, or, it is divided into a number of large multimember constituencies. Parties compile lists of candidates in descending order of preference and the list is presented to voters. Electors vote for parties, not for candidates.
- Parties are allocated seats in direct proportion to the votes they gain in the election. They fill these seats from the party list. A minimum percentage (for example 5 per cent fixed in Germany) can be fixed to exclude small parties. This is the only potentially pure system of proportional representation, and is there-

fore, fair to all parties. However, its operation in big countries is very difficult.

- Since framers of the Constitution in general followed the British model, they preferred the plurality or first past the post system for elections to both Lok Sabha and State Legislative Assemblies. To make the office of President a real representative of national opinion majority system with transferable vote was adopted. As the Rajya Sabha was meant to be a representative House of States and not of people or constituencies, system of proportional representation was favoured.
- While in general, these systems have been working well, there is a view that first past the post system has shortcomings which need to be looked into. It is pointed out that in India not only various parties and groups either remain unrepresented or under-represented in spite of significant support among voters as a whole but also parties getting just 30 per cent or so of the polled votes are able to emerge as majority parties and form government.



6. Salient Features of Indian Constitution

- Originally having 395 Articles divided into 22 parts and 8 schedules, a lengthiest constitution of the world with systematic elaboration on every topic. At present, it contains 448 Articles with 12 schedules as a result of various amendments (101 till so far, GST Amendment).
- A. **Longest written constitution:** The constitution of India is said to be the longest written constitution in the world because, it contains:
 - Separate provisions for states and centre and their inter-relationship.
 - The borrowed provisions from several sources and several other constitutions of the world.
 - The separate provisions for scheduled castes, scheduled tribes, women, children, and backward regions.
 - It contains the detailed list of individual rights, directive principles of state policy and details of administration procedures which were laid down to make the constitution an easy handy.
- B. **Unique blend of rigidity and flexibility:** A Constitution may be called rigid or flexible on the basis of its amending procedure.
 - Some parts can be amended by ordinary law making procedure while certain provisions can be amended only when a Bill for that purpose is passed in each house of Parliament by a majority of the total membership of that house and by a majority of not less than two-third of the members of that house present and voting.
 - Some amendments are also required to be ratified by the legislatures of not less than one-half of the states before being presented to the President for assent.
- C. **India as a sovereign, socialist, secular, democratic and republic:** India is governed by its people through their representatives elected on the basis of universal adult franchise (Government of the people, by the people and for the people).
 - India as a sovereign means it manages its internal and external affairs freely without any external forces. However, it continues to be a member of the commonwealth of Nation with the British Monarch as its head.
 - The term socialist is added by the 42nd Amendment in 1976, means achievement of socialist goals through democratic, evolutionary and non-violent means. However, India follows the mixed model of socialist and capitalist economy.
 - By secular means it recognizes all religions equally without having any state religion which is a part of the basic structure.
- By republic means head of the state (President) is elected one and not the monarch.
- D. **Parliamentary System of Government:** Theoretically, Parliament controls the functioning of the Council of Ministers; hence it is called Parliamentary system.
 - Here executive is responsible to the legislature and remains in power as long as it enjoys the confidence of the legislature.
 - The President of India, who remains in office for five years, is the nominal, titular or constitutional head (Executive).
 - The Prime Minister is the real executive and head of the Council of Ministers who is collectively responsible to the lower house (Lok Sabha).
- E. **Single Citizenship:** Unlike Federation, where citizen enjoys dual citizenship of both State and Union, India has a single citizenship provided by the union and recognized by all the states across India.
- F. **Universal Adult Franchise:** The Indian Constitution establishes political equality in India through the method of universal adult franchise which functions on the basis of 'one person one vote'. Every Indian who is 18 years of age or above is entitled to vote in the elections, irrespective of caste, sex, race, religion or status.
- G. **Independent and Integrated Judicial System:** The judiciary system is kept free from the influence of the executive and the legislature. As an integrated system, India has the Supreme Court as the apex court below which High Courts come. The High Courts in turn supervise the lower courts.
- H. **Fundamental Rights, Fundamental Duties and Directive Principles of State Policy:** Fundamental Rights are not absolute but are subject to the limitations which are expressly defined by the constitution itself and are enforceable in the court of law.
 - The DPSPs are the guidelines to be followed by the states regarding governance and are not enforceable in the court of law.
 - The Fundamental Duties, added by the 42nd Amendment are moral conscience which ought to be followed by the Citizens.
- I. **A Federation with a strong centralizing tendency:** India is an indestructible Union with destructible states means it acquires a unitary character during the time of emergency. Hence, some experts say it as a quasi federal in nature.
- J. **Balancing Parliamentary supremacy with Judicial Review:** An independent judiciary with the power of judicial review is a prominent feature of our constitution. The harmonization which our Con-

stitution has effected between Parliamentary Sovereignty and a written Constitution with a provision for Judicial Review is an important achievement of the framers of our Constitution.

7. Sources of the Indian Constitution

- The sources of Indian Constitution include the imaginative aspirations of the nationalist leaders, the actual working of the Government of India Act, 1935, and the experience gained from the actual working of some of the Constitutions of important countries of the world.

Seminal Sources

- Constituent Assembly Debate:** Drawn from the Cabinet Mission Plan, having members including distinguished lawyers, intellectuals and patriots who took 2 years, 11 months and 18 days to prepare the constitution.
- Nehru Report:** Formed under the leadership of Motilal Nehru to boycott the Simon Commission and made recommendations for the desired constitutional setup for India. Such recommendations include:
 - (i) Grant of Empire;
 - (ii) Creation of a federal structure for India;
 - (iii) Bicameralism at the Centre;
 - (iv) Parliamentary and responsible Government in Provinces;
 - (v) Guarantee of Fundamental Right; and
 - (vi) Establishment of Supreme Court as the final court of appeal.
- Objective Resolutions:** Moved by J.L. Nehru, spelled out making India a sovereign republic where the ultimate supreme power is vested with the people. It stated that the people would get social, economic and political justice, liberties of all types and equality. This objective resolution acquired the place of Preamble in Indian Constitution.
- Government of India Act 1935:** India was governed by the GOI Act 1935 at the time when our constitution was in the process of framing, hence, has been influenced by the same such as:
 - Federal set-up;
 - Distribution of powers in three lists;
 - Provincial autonomy;
 - Office of the Governor;
 - Bicameral legislature;
 - President's or Governor's power to issue ordinances; and
 - Structure of the Supreme Court.

External Sources

- **Irish Constitution:** Directive Principles.
- **British Constitution:** Parliamentary form of government and Parliamentary Privileges.
- **US Constitution:** Fundamental Rights, the Supreme Court, the post of Vice President.
- **Canadian Constitution:** The Federal system, Union-State Relations and Distribution of Powers.
- **Australian Constitution:** The concurrent list, Provisions of trade and commerce.
- **German (Weimar) Constitution:** The emergency provisions

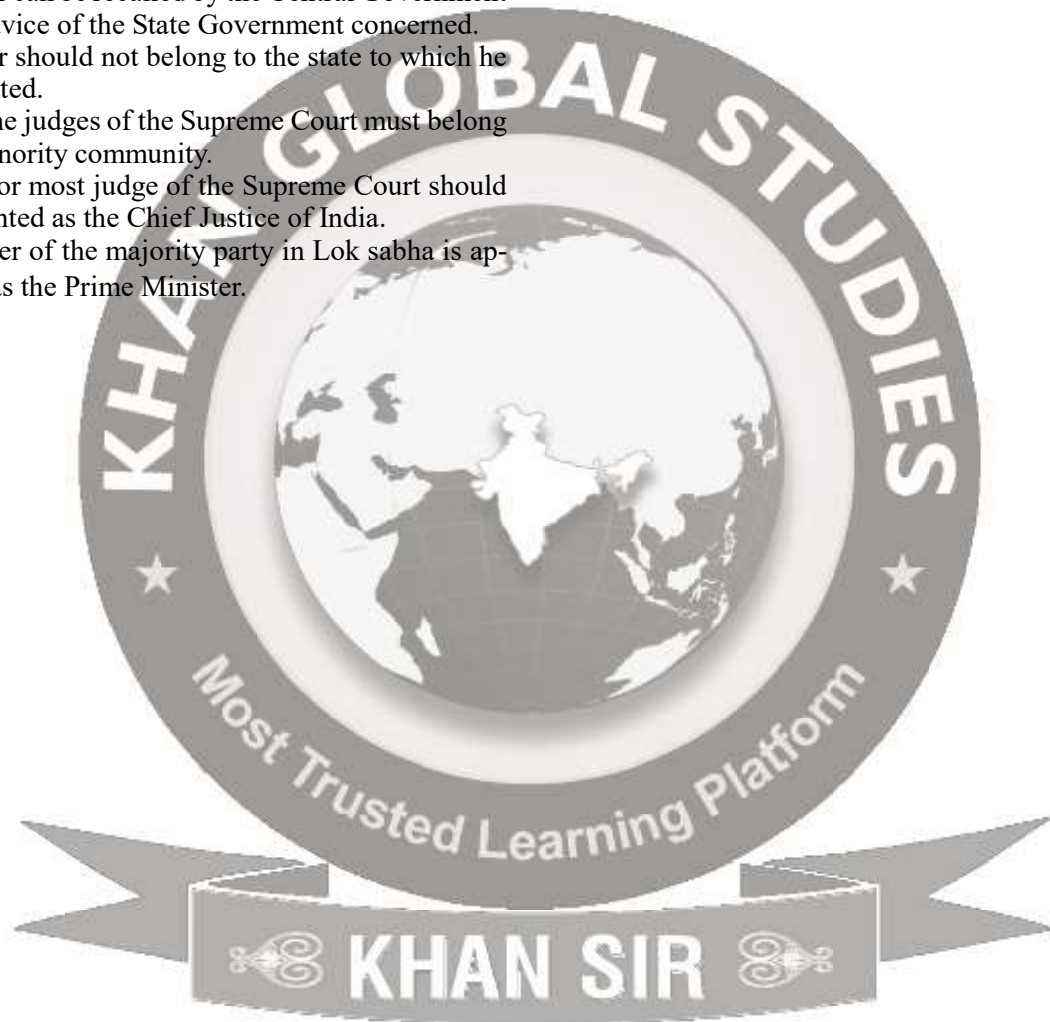
Developmental Sources

- Indian Constitution is dynamic which has grown with the changing needs. Thus, amendments, judicial reviews/decisions, political practices, parliamentary statutes, rules, regulations and ordinances are the developmental sources of the constitution.
- **Amendment(s):** Till September 8, 2016, there have been 101 Amendments (Goods and Services Tax Bill) shaping the Constitution in quite different from the original document. The 42nd Amendment termed as Mini Constitution clearly proves the dynamism of it due to enormous changes it effected to the Indian Constitution.
- **Judicial Decisions:** The Judicial Decisions by the Supreme Court on various important issues have paved the new dimensions such as the Basic Structure which shows the directions for further amendments:
 - Gopalan vs. State of Madras;
 - State of Madras vs. Champakam;
 - Golak Nath vs. State of Punjab; and
 - Keshavanand Bharti vs. Kerala State.
- **Parliamentary Statutes:** Parliament, time to time through the process mentioned in the constitution furnishes details of the various articles which are considered as constitutional laws. It provides the details information of the constitution.
- **Commentaries of Constitutional Experts:** While interpreting the Constitution, the views of the distinguished constitutional experts, whether Indian or foreign, enjoy special importance.
- The most notable constitutional experts are Jennings, Gledhill, Alexandrowit, D.D. Basu, Palkhiwala, V.N. Shukla, etc. Their views are not given legal recognition but due regard is paid to them by the judges.
- Moreover, true significance of any provision of the Constitution can be understood in the light of their views.
- **Rules, Regulations, Ordinances etc.:** Each house of the parliament is empowered to make rules for its efficient working. The President has the right to make rules for fixing the constitutional subjects.
- President of India is also empowered to make rules with respect to the condition of services of the members of the Union Public Service Commission.
- President can also frame rules to establish peace and efficient administration of the Union Territories. Above all, the President has also the power to issue

ordinances when Parliament is not in session. All these rules, regulations and ordinances serve as sources of the Constitution.

Constitutional Practices

- Although the Constitution of India is the most detailed in the world, still certain practices independent of the Constitution have developed in India.
- A few examples of such a practice can be enumerated as follows:
- The Central Government takes beforehand the advice of the State Government in the appointment of its Governor.
- Governor can be recalled by the Central Government on the advice of the State Government concerned.
- Governor should not belong to the state to which he is appointed.
- One of the judges of the Supreme Court must belong to the minority community.
- The senior most judge of the Supreme Court should be appointed as the Chief Justice of India.
- The leader of the majority party in Lok sabha is appointed as the Prime Minister.



8. Preamble and Values in the Constitution

- The Preamble to the constitution embodies the essence of the entire constitution and is like an introduction and preface of a book. It explains the purposes and objectives with which the constitution has been written and hence provides the guideline to the constitution.
- The Objective Resolution, proposed by Pandit Nehru and passed by the Constituent Assembly, ultimately became the Preamble to the Constitution of India.

THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a '[SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC]' and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the

²[unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

- The Preamble, in brief, explains the objectives of the Constitution in two ways: one, about the structure of the governance and the other, about the ideals to be achieved in independent India. It is because of this, the Preamble is considered to be the key of the Constitution.

The objectives which are laid down in the Preamble are:

- Description of Indian State as Sovereign, Socialist, Secular, Democratic Republic. (Socialist, Secular is added by the 42nd Amendment Act, 1976)
- Provision to all the citizens of India i.e.,
 - Justice - social, economic and political.
 - Liberty - of thought, expression, belief, faith and worship.
 - Equality - of status and of opportunity.
 - Fraternity - assuring dignity of the individual and unity and integrity of the nation.

Usefulness of the Preamble:

- The Preamble sets out the objectives which the constituent assembly intended to achieve. As Supreme Court has observed, the Preamble is a key to unravel the minds of the makers of the Constitution. It also

embodies the ideals and aspirations of the people of India.

- The Preamble is non-justiciable in nature, like the DPSPs and cannot be enforced in a court of law. The Preamble cannot override the specific provisions of the constitution. In case of any conflict between the two, the latter shall prevail.
- The Preamble can neither provide substantive power (definite or real) to the three organs of the State, nor limit their powers under the provisions of the constitution.
- As observed by the Supreme Court, the Preamble plays a limited and yet vital role in removing the ambiguity surrounding the provisions of the Constitution.

Whether the Preamble is a part of the Constitution or not?

- The Supreme Court in the Keshvananda Bharti v/s State of Kerala (1973) case overruled its earlier decision (Berubari Case 1965) and made it clear that the Preamble is a part of the constitution and is subject to the amending power of the Parliament as any other constitutional provisions, subject to basic structure of the constitution.
- However, it is not an essential part of the constitution; still it serves as an important guide to interpret the true spirit of the Constitution.

Whether Preamble can be amended or not?

- The Supreme Court in Keshvananda Bharti (1973) case has held that, Preamble may be amended subject to basic structure of the constitution. In other words the amendment should not destroy the basic features of it.
- In fact, Preamble has been amended by 42nd Amendment 1976 whereby three words viz, socialist, secular and integrity were added.

Significance of the Preamble:

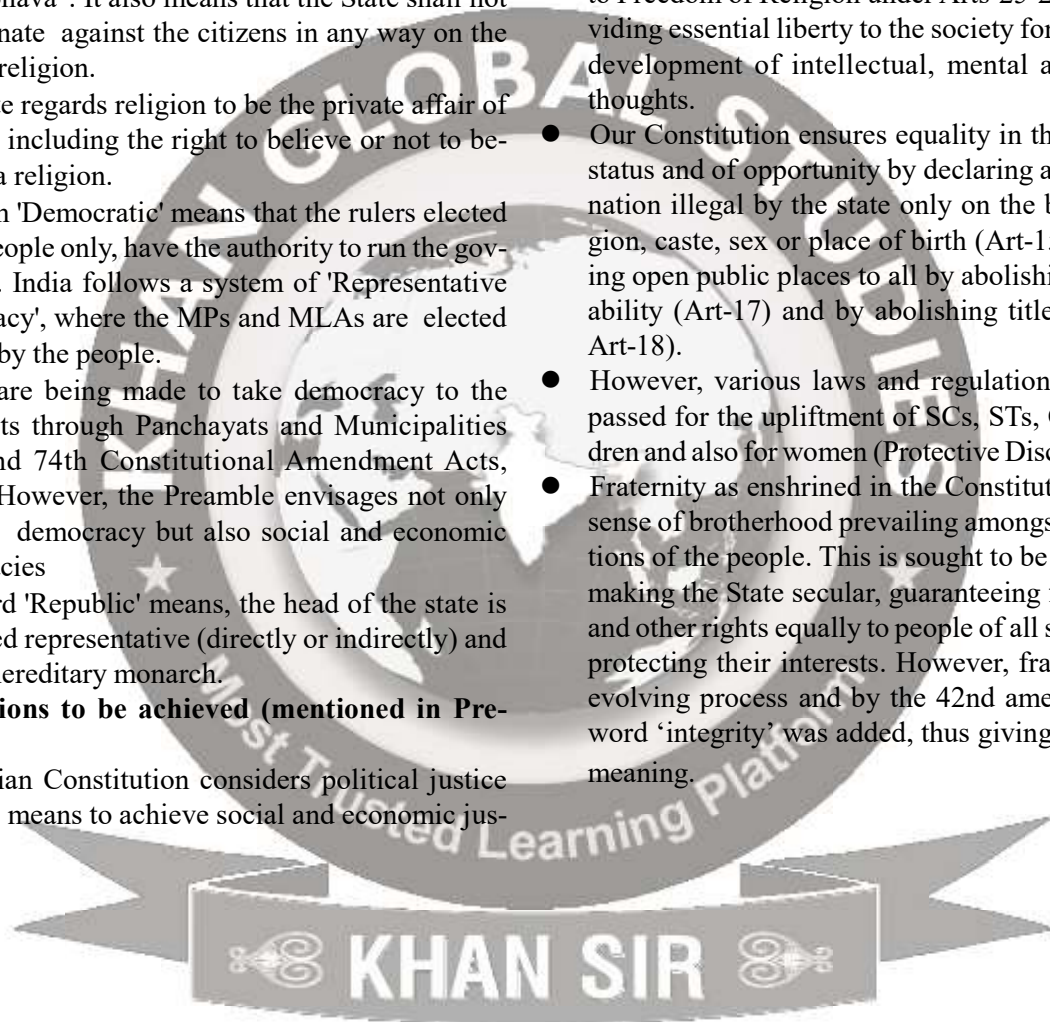
- The Preamble declares that it is the people of India who had enacted, adopted and given the Constitution to themselves. Thus, sovereignty lies ultimately with the people.
- It also declares the ideals and aspirations of the people that need to be achieved.
- Ideals are different from aspirations. While ideals have been achieved with the Constitution proclaiming India as 'Sovereign, Socialist, Secular, Democratic Republic', the aspirations include justice, liberty, equality and fraternity, which are yet to be achieved. The ideals are the means to achieve aspirations.
- **Ideals (mentioned in Preamble):**
 - The word 'Sovereign' emphasizes that there is no au-

thority outside India on which the country is in any way dependent

- By the word 'Socialist'(added by the 42nd Amendment Act 1976), the Constitution means that the achievement of socialistic pattern of society through democratic means.
 - India is a 'Secular (added by the 42nd Amendment Act 1976) state' does not mean that India is non religious or irreligious, or anti-religious, but simply that the State in itself is not religious and follows the age-old Indian principle of "Sarva Dharma Sammabhava". It also means that the State shall not discriminate against the citizens in any way on the basis of religion.
 - The State regards religion to be the private affair of a person including the right to believe or not to believe in a religion.
 - The term 'Democratic' means that the rulers elected by the people only, have the authority to run the government. India follows a system of 'Representative Democracy', where the MPs and MLAs are elected directly by the people.
 - Efforts are being made to take democracy to the grassroots through Panchayats and Municipalities (73rd and 74th Constitutional Amendment Acts, (1992). However, the Preamble envisages not only political democracy but also social and economic democracies
 - The word 'Republic' means, the head of the state is an elected representative (directly or indirectly) and not the hereditary monarch.
- Aspirations to be achieved (mentioned in Preamble):**
- The Indian Constitution considers political justice to be the means to achieve social and economic justice

tice by making the state more and more welfare oriented in nature.

- Political Justice in India is guaranteed by universal adult suffrage without any sort of qualification, e.g. education, property, social status and tax return.
- While social justice is ensured by abolishing any title of honour (Art. 18) and untouchability (Art.17), economic justice is guaranteed primarily through the Directive Principles.
- The Indian Constitution guarantees six democratic freedoms to the individuals under Art-19 and Right to Freedom of Religion under Arts-25-28. Thus providing essential liberty to the society for their fullest development of intellectual, mental and spiritual thoughts.
- Our Constitution ensures equality in the matters of status and of opportunity by declaring any discrimination illegal by the state only on the basis of religion, caste, sex or place of birth (Art-15) by throwing open public places to all by abolishing untouchability (Art-17) and by abolishing titles of honour Art-18).
- However, various laws and regulations have been passed for the upliftment of SCs, STs, OBCs, Children and also for women (Protective Discrimination).
- Fraternity as enshrined in the Constitution means a sense of brotherhood prevailing amongst all the sections of the people. This is sought to be achieved by making the State secular, guaranteeing fundamental and other rights equally to people of all sections, and protecting their interests. However, fraternity is an evolving process and by the 42nd amendment, the word 'integrity' was added, thus giving it a broader meaning.



9. Union & its Territory

Part-1 of the Constitution deals with the union and its territories from Article-1 to 4

Article 1 (1) describes that; "India that is Bharat shall be the Union of States".

Why Union and not Federation?

- This was deliberately done by the drafting committee to make it clear that the Union is not the result from an agreement with the states rather it is the union which created the states. The states have no right to secede under the constitution.
- Though the union is indestructible but the states are destructible in the sense that Parliament can change their name, boundary or create new states.
- The Constitutional provision in 1949, established a three-tier state system under which the constituent units of the Union had no uniform status. They were recognized under four separate categories: Part A, B, C and D of the first schedule.
- Part-A states comprised governor's provinces of British India.
- Part-B states consisted to nine princely states with legislatures.
- Part-C states comprised chief commissioner's provinces of British India and some princely states.
- Part-D states consisted of the Andaman & Nicobar Island.
- The Union of India consists of all the states excluding the Union Territories and the Territories of India consists of states as well as union territories.
- Dhar Commission (1948): During this period (1948-49) the southern states were particular on re-organisation of states on linguistic basis. SK Dhar committee was constituted in 1948 that recommended that the rationale for re-organisation of the states should be on the basis of administrative conveniences rather linguistic factors.
- JVP Commission (1949): The Dhar committee recommendation was not accepted by all and to reconsider the recommendation JVP committee was constituted with the Prime Minister Jawaharlal Nehru as a member and Vallabhbhai Patel and Pattabhi Sitaramayya as other two members.
- However, JVP Committee also did not favour the linguistic ground. The only exclusion was creation of Andhra Pradesh which had a fair share of geographical area that was dominated by Telugu speaking people from Madras Constituency.
- It suggested that the security, unity, and economic prosperity of the nation as the criteria of reorganisation.

Formation of new states and alteration of boundaries: The Procedure (Art - 2, 3 and 4):

- **Article 2:** says that the Parliament may by law admit into the Union or establish new states on such terms and conditions as it thinks fit.
 - **Article 3:** empowers Parliament to form new states and can alter the area, boundaries or names of the existing states by a law passed by a simple majority. The bill to the same effect requires prior president's recommendations.
 - The President before introducing the Bill shall refer it to the State Legislature concerned for its opinion within a specified time limit which can be extended.
 - The Bill may be introduced even if the opinion has not come. The Parliament is not bound to accept or act upon the views of the State Legislature.
 - If the original Bill is intended to be amended it is not necessary to refer the amendments to the State legislature again.
 - **Article 4:** deals with the supplemental, incidental and consequential provisions as may be deemed necessary. By this Parliament may reduce the total number of members of Legislative Assembly even below the limit prescribed in Art 170 (60 members) as done in Goa and Uttarakhand.
 - Article 4 also says that the changes made under Art 2 and 3 shall not be deemed to be an amendment of this Constitution for the purpose of Article 368.
- The State Reorganisation Commission (SRC) 1953:**
- The recommendation of JVP Committee further accelerated the demand for new states on linguistic basis particularly in Telugu speaking area under the leadership of Potti Sriramalu. The agitation took a violent turn with the death of Potti Sriramalu. The Congress ceded the reorganisation of Telugu speaking area in the State of Andhra Pradesh in 1953.
 - To make an exhaustive study of the problem, the Government of India set-up the State Reorganisation Commission in 1953 headed by Fazal Ali (with members K M Pannikar and H N Kunzru) which submitted its report in 1955 and suggested linguistic reorganisation of the states.
 - This resulted into 7th Amendment to the constitution and passing up of The State Reorganisation Act in 1956 to give effect to the recommendations of the commission.

The recommendations of SRC:

- It suggested the reorganisation of 27 states of vari-

ous categories into 16 states and 3 union territories abolishing the categories Part-A, B, C and D.

- The general control vested in Government of India by Article 371 (Special provision with respect to the States of Maharashtra and Gujarat)) should be abolished.
- The Present Structure of the Union: At present India consists of 27 States and 7 Union Territories with Delhi as National Capital Region (NCR).



10. Citizenship

Part-II of the Constitution from Article 5 to 11 deals with citizenship.

The population of a state is divided into: Citizens, Aliens and Stateless Persons.

- **Citizens:** Who are full members of the State and owe allegiance to it. These citizens enjoy full civil and political rights.
- **Aliens:** Who are citizens of some other states and are not entitled to all constitutional and other rights.
- Aliens are of two types: Friendly Aliens and Enemy Aliens.
- **Friendly Aliens:** They have the right to life and personal liberty (Art 21) but not the freedoms enumerated in Art 19.
- **Enemy Aliens:** Are those people whose country is at war with India and also the Indian Citizens who voluntarily reside in or trade with such a State. Such Aliens suffer special disabilities. They are not even entitled to the benefits of Art 22.
- Following are the rights and advantages not enjoyed by the aliens but certainly enjoyed by the citizens:
- Articles 15, 16, 19, 29 and 30 are denied to aliens.
- Some higher offices like President, Vice-President, Judges of SC and HCs, Attorney General, Governor of State, Advocate General etc. are not entitled for the aliens.
- Right of suffrage for election to Lok Sabha and Legislative Assembly and right to become a Member of Parliament and of the Legislature of a State are confined only to Citizens.
- **Stateless Persons:** They are not the citizens of any country rather their citizenship is not recognised by any state. They have only those rights which aliens have. This category is very small and may not exist in some countries. For example, in Sri Lanka a number of Tamilians are treated as stateless persons.
- **Nature of Citizenship:** Single Citizenship and no separate citizenship for states, thereby, at the commencement of the Constitution every person domiciled in the territory of India, born in the territory of India, or who has been a resident of India for not less than 5 years immediately preceding the commencement of the Constitution (26th Jan 1950) is a citizen of India.
- The framers of the Constitution did not lay down a comprehensive law relating to citizenship in India. They simply described the classes of persons who would be deemed to be the citizens of India at the commencement of the Constitution on 26th January 1950 (Article 5) and left the entire issues to be dealt by law(s) made by the Parliament.
- **Article 5:** citizenship at the commencement of the constitution - At the commencement of this Constitution every person who has his domicile in the territory of India and :
 - Who was born in the territory of India; or
 - Either of whose parents was born in the territory of India; or
 - Who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.
- **Articles 6 and 7** deal with two categories of persons, those who were residing in India but had migrated to Pakistan and those who were residing in Pakistan but had migrated to India. Those who migrated from Pakistan to India were divided into two categories:
 - Who came before July 19, 1948 and
 - Who came after July 19, 1948.
- As per **Article 6** those who came before 19th July 1948, would automatically become citizens on the commencement of the Constitution and those who came after July 19th would need to be registered in the form and manner prescribed for this purpose by the Government of India.
- **Article 7** provides for those who had migrated to Pakistan but who had returned to India from Pakistan with the intention of permanently residing in India.
- In dealing with persons who left India for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under what is called a 'permit system'. This permit system was introduced from July 19, 1948.
- **Article 8** provides citizenship to Indians who are in abroad.
- **Article 9** deals with the Persons voluntarily acquiring citizenship of a foreign State not to be Indian citizens.
- **Article 10:** Continuance of the rights of citizenship as per the law made by the Parliament.
- **Article 11** expressly confers power on the Parliament to make laws to provide for such matters regarding citizenship. Consequently, Parliament enacted the Citizenship Act of 1955 which was later modified several times (1986, 1992, 2003, 2015 etc.).
- The Act provides for the acquisition and termination of citizenship "subsequent" to the commencement of the Constitution.

- However, provisions made in the Citizenship Act of 1955 must be read together with Part II of the Constitution in order to get a comprehensive picture.

An illegal Migrant as defined in section 2 (1) (b) of the Act is a foreigner who entered in India:

- Without a valid passport or other prescribed travel documents
- With a valid passport or other prescribed travel documents but remains in India beyond the permitted period of time.

ACQUISITION OF INDIAN CITIZENSHIP

- The Citizenship Act of 1955 provides for the acquisition of Indian Citizenship after the commencement of the Constitution in five ways, i.e. **Birth, Descent, Registration, Naturalisation and incorporation of territory.**

By Birth: (Jus Soli):

- A person born in India on or after 26th January 1950 but before 1st July 1987 is citizen of India by Birth irrespective of the nationality of his parents.
- A person born in India on or after 1st July, 1987 but before 3rd December, 2004 is considered Indian Citizens by birth if either of his parents is a citizen of India at the time of his birth.
- A person born in India on or after 3rd December, 2004 is a citizen of India by birth if
- Both the parents are citizens of India or
- One of the parents is a citizen of India and the other is not an illegal migrant at the time of his birth.

By Descent: (Jus Sanguine):

- A person born outside India on or after Jan 26, 1950, is a citizen of India by descent if his/her either of the parents is a citizen of India at the time of that person's birth, i.e. law of blood.
- A person born outside India on or after 3rd December, 2004 shall not be an Indian citizen unless the parents declare that the minor does not hold passport of another country and his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period.
- Children of those who are citizens of India by descent, as also children of non-citizens who are in service under a government in India, may also take advantage of this provision and become Indian citizens by descent, if they so desire, through registration.

By Registration:

- Under the Act, any person who is not an illegal migrant and any person who is not already a citizen of India can make an application to the Central Government to register as a citizen of India, if the applicant fulfils certain criteria:

- Being a person of India origin and ordinarily resident in India for 7 (seven) years before making application under section 5 (1) (a). Being a PIO resident elsewhere.

- Persons who are married to an Indian Citizen and are ordinarily resident in India for 7 (seven) years before making application under section 5(1) (c).

- Minor children whose parents are Indian citizens under section 5(1) (d).

- Persons of full age whose parents are registered as citizens of India (as PIO) under section 5 (1) (a) or section 6 (1) can acquire Indian citizenship under section 5 (1) (a).

- Person of full age and capacity who or either of his parents were earlier citizens of Independent India and are residing ordinarily in India for twelve months before making the application.

By Naturalization:

- By naturalization citizenship can be acquired by a foreigner (not illegal migrant) who is ordinarily resident in India for Twelve Years (throughout the period of twelve months immediately preceding the date of application and for Eleven Years in the aggregate in the Fourteen Years preceding the twelve months) and other qualifications as specified in Third Schedule to the Act.

By Incorporation of Territory:

- If any territory becomes part of India, the Government of India shall specify the person of that territory to be the citizen of India.

- Every person to whom a certificate of naturalization is granted has to take an oath of allegiance solemnly affirming that he will bear true faith and allegiance to the Constitution of India as established by the law, and that he will faithfully observe the laws of India and fulfill his duties as a citizen of India

Difference between a citizen by birth and a naturalized citizen:

- The only difference between a citizen by birth and a naturalized citizen is that the former can never be deprived of his citizenship while the latter can be. The Constitution makes no distinction between the two classes of citizens with regard to qualification or eligibility to contest an election to the state legislature or Parliament.
- The Constitution does not bar naturalized citizens from being a candidate at an election (of otherwise qualified). They are eligible for all offices under the Constitution, e.g., President, Vice-President, Prime Minister, Governor, etc. For example, Sonia Gandhi who is a naturalized citizen of India is eligible to be the Prime Minister of India.

- But in the U.S.A, the Constitution permits naturalized citizens to become members of the Senate. They may hold any minister level post, e.g., Secretary of State, Attorney General etc. but not that of President of the U.S.A Only a U.S.A citizen by birth can be the President.

Termination of Citizenship

- The Act envisages three situations under which a citizen of India may lose his Indian nationality:
- When a male person ceases to be a citizen of India, every minor child of his also ceases to be a citizen of India. However, such a child may resume their citizenship within one year after attaining full age, by making declaration.
- **By Renunciation:** Any citizen of India who is a national of another country renounces his Indian citizenship through a declaration in the prescribed manner.
- **By Termination:** Indian Citizenship acquired by naturalization, registration or otherwise and if he or she voluntarily acquired the citizenship of another country at any time shall cease to be a citizen of India from the date of such acquisition.
- **By Deprivation:** The Central Government is empowered to deprive a citizen of his citizenship by issuing an order under section 10 of the Act. If the person:
 - Acquires the citizenship by fraud, false representation, concealment of any material fact;
 - Shows disloyalty or disaffection towards the constitution by his act or speech;
 - Assisting an enemy with whom India is at war;
 - Sentence to imprisonment in any country for a term of not less than two years within the first five years after the acquisition of Indian citizenship and
 - Continuous residence outside India for a period of seven years without expressing in a prescribed manner his intention to retain his Indian citizenship.

Dual Citizenship

- Article 9 of Indian Constitution says that citizenship means full citizenship. The Constitution does not recognize divided allegiance. Section 10 of the Citizenship Act says that a person cannot be allegiance to two country's constitution at the same time. Hence, the Indian Courts have consistently ruled against dual citizenship.
- The reason for denial of Dual Citizenship is that, citizenship entails certain duties like serving in the army, if the need be.
- Based on the recommendations of High Level Committee headed by Dr. L. M. Singhvi, the Government of India accepted the issuance of dual citizenship

which would facilitate India settled abroad to make their contribution in the progress of India

- **NRI (Non Resident Indian)** is a citizen of India who holds an Indian passport and has temporarily emigrated to another country for six months or more for work, study, medical treatment, residence or any other purposes.
- **PIO (Person of Indian Origin)** is a citizen of any other country but whose any of ancestors were an Indian national (at least four generations away) and who is presently holding another country's citizenship/nationality i.e. s/he is holding foreign passport.
- **OCI (Overseas Citizenship of India)** is provided to a foreign national, who was eligible to become a citizen of India on 26 Jan 1950 or was a citizen of India on or at any time after 26 Jan 1950 or belonged to a territory that became part of India after 15 Aug 1947.

A. Overseas Citizenship of India (OCI) is commonly known as 'Dual Citizenship'.

- Their Grand Children (be it minor or not) are also eligible for registration as an Overseas Citizen of India.

However, if the applicant had ever been a citizen of Pakistan or Bangladesh s/he will not be eligible for OCI.

- Persons registered as OCI have not been given any voting rights, election to Lok Sabha, Rajya Sabha, Legislative Assembly/Council, holding constitutional posts such as President, Vice President, Judge of Supreme Court/High Court etc.

Following benefits will be given to an OCI:

- Multi-purpose, multiple entries, lifelong visa for visiting India.
- Exemption from registration with local police authority for any length of stay in India.
- Parity with NRIs in respect of economic, financial and education fields except in matters relating to the acquisition of agricultural/plantation properties.

- **B. Person of Indian Origin (PIO)** is issued a **PIO Card** (other than Bangladeshi and Pakistani Nationals) after verification of his/her origin or ancestry.

Following benefits will be given to a PIO Card Holder:

- It entitles a PIO to enter India without a visa.
- Spouse of a PIO can also be issued a PIO card though the spouse might not be a PIO. This latter category includes foreign spouses of Indian nationals, regardless of ethnic origin, as long as they were not born in, or ever nationals of Bangladesh and Pakistan.
- PIO Cards exempt holders from many restrictions that apply to foreign nationals, such as visa and work

permit requirements, along with certain other economic limitations.

- PIOs can acquire non-agricultural and plantation property in India; can admit children to all educational institutes in India under NRI quota and can apply for various housing schemes of LIC, state governments and other government agencies.
- They are also exempted from registration at Foreigners Registration office at District Headquarters if stay in India does not exceed 180 days.
- At present the validity of PIO Card is 15 Years from the date of issue subject to the validity of the passport of the applicant.

C. Non Resident Indian (NRI) is an economic concept refers only to the tax status. The rates of income tax are different for persons who are resident of India and for NRIs

- For the purposes of the Income-tax Act, “residence in India” requires stay in India of at least 182 days in a calendar year or 365 days spread out over four consecutive years.
- According to the act, any Indian citizen who does not meet the criteria as a “resident of India” is a non resident of India and is treated as NRI for paying income tax.

OCI and PIO Card Merged

- Indian Prime Minister while inaugurating the 9th Pravasi Bharatiya Divas on January 2011 announced to merge the OCI Card and PIO Card to facilitate visa free travel to India, rights of residency and participation in business and education activities in the country.

Citizenship Amendment Act, 2016:

- The Act makes illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for Indian Citizenship

- months an Under 1955 Act, citizenship by naturalization was required to have resided in India during the last 12 d for 11 of the previous 14 years. The new Act relaxes this 11 years requirement to six years for persons belonging to the above mentioned religion and country.

- The Bill is deemed to have come into force on January 6th 2015.

- The new amendment introduced the concept of an Overseas Citizen of India Cardholder (OCC) that essentially replaces and merges together OCIs and PIOs.

Pursuant to section 7A of the Amendment Act, a person shall be eligible to register as an OCC if any of the following conditions are satisfied:

- A Person of full age and capacity, who is a citizen of another country, but:
- Was an Indian Citizen at the time or any time after the commencement of the constitution or belong to a territory that became part of India after Independence.
- A child or a grand-child or a great grand-child of a citizen of another country and
- A minor child whose both or one parent is an Indian citizen.
- Spouse of an Indian Citizen or an OCC, the spouse being of foreign origin and marriage should be registered and subsisted for a continuous period of not less than 2 (two) years immediately preceding the presentation of the application and prior security clearance.
- Citizens of Pakistan or Bangladesh (and other countries that may be notified by the Central Government) are not permitted to register as OCCs and the restrictions applying to those nationals have been extended to cover such person's parents, grandparents or great grandparents under the Amendment Act

KHAN SIR

Rights and Duties

11. Fundamental Rights

- Fundamental Rights are basic rights as they are most essential for the attainment of full intellectual, moral and spiritual stature by an individual. These are known as the Magna Carta of India.
- Part III of the Constitution is called the Cornerstone of the Constitution (Sajjan Singh V/s State of Rajasthan) and together with Part IV (Directive Principles of State Policy) it constitutes the 'Conscience of the Constitution'.
- The 44th amendment has abolished right to property as fundamental right as guaranteed by Article 19(1)(f) and article 31 of the constitution and hence Article 19(1)(f) and article 31 omitted.
- **Classification of Fundamental Rights:** All the fundamental rights have been classified under the following six categories:
 - Right to be Equality (Art.14-18)
 - Right to Freedom (Art.19-22)
 - Right against Exploitation (23-24)
 - Right to Freedom of Religion (Art.25-28)
 - Cultural and Educational Rights (Art.29-30)
 - Right to Constitutional Remedies (Art.32)
- **Article 12:** Defines state (As used in FRs) which includes:
 - The Government and Parliament of India,
 - The Government and legislatures of the states,
 - All local authorities and
 - Other authorities in India or under the control of the Government of India.
- **Article 13:** Laws inconsistent with FRs:
 - Provides shield to FRs by declaring that all laws, which are inconsistent with or in derogation of any of the Fundamental Rights, shall be void to the extent of their inconsistency.
 - Here the terms law includes ordinance, order, bye-law, rule, regulation, notification, custom or usage.
 - Thus, Article 13 imposes an obligation on the State to respect and implement the Fundamental Rights and provides the Judiciary the Judicial Review power.
- **Right to Equality: Article 14 to 18:**
 - **Article 14:** says that state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Two aspects are there:
 - **Equality Before Law:** A negative concept, where no man is above law. It ensures juristic equality under the constitution. Equality is antithetic to arbitrariness. Equality and arbitrariness are sworn enemies.
 - But certain exceptions to it are, the president of India, state governors, Public servants, Judges, Foreign diplomats, etc., who enjoy immunities, protections, and special privileges.
 - **Equal Protection of Law:** A positive concept, which says that law(s) shall be applied equally among individuals who are placed equally. It means like should be treated alike.
 - **Rule of Law:** The guarantee of Equality before Law is an aspect of, what Lord Dicey calls, the Rule of Law that originated in England. It means no man is above law and that every person, whatever be his rank or status is subject to the jurisdiction of ordinary Courts. It also says that no person shall be subject to harsh, uncivilized or discriminatory treatment even for the sake of maintaining law and order.

There are three basic meaning of Rule of Law:

 - Absence of Arbitrary power or supremacy of law.
 - Equality before law - No one is above law
 - The Constitution is the Supreme Law of the land and all laws passed by the legislature must be consistent with the provisions of the Constitution.
 - **Article 15:** Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth
 - This says that the state shall not discriminate against only of religion, race, caste, sex, place of birth or any of them.
 - No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, restriction or condition with regard to:
 - (a) Access to shops, public restaurants, hotels and places of public entertainment;
 - (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
 - Under Article 15 (3) and (4), the government can make special provisions for women & children and for a group of citizens who are economically and socially backward.
 - This also brings in the concept of Reservation for socially and economically backward classes.
 - **Article 16: Equality of Opportunity in matters of Public Employment**
 - According to this, the state is prohibited from showing any discrimination against any citizen on grounds of religion, caste, race, sex, descent, place of birth or residence.

The other clauses of this Article are in the nature of exceptions such as:

 - (a) Residence can be a criteria for employment on the basis of historical aspects.

- (b) Special favours in case of backward classes, if they are not adequately represented.
- (c) Religion can be the ground for discrimination for appointment in religious institutions which are taken over by the state.

Article 17: Abolition of Untouchability

- It abolishes "untouchability" and its practice in any form is made an offence punishable under the law.
- The enforcement of any disability arising out of untouchability shall be an offence punishable by law.
- Untouchability: not to be understood in its literary or grammatical sense and to be understood as the practice as it has developed historically.
- Civil Rights: Any right accruing to a person by reason of the abolition of untouchability under Art 17 of the Constitution.
- Article 17 imposes a duty on public servants to investigate such offences.

Article 18: Abolition of Titles

- No title, not being a military or academic distinction, shall be conferred by the State.
- No citizen of India shall accept any title from any foreign state.
- No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
- No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present emolument or office of any kind from or under any foreign State.

Right to Freedom: Art. 19-22:

- **Article 19:** These freedoms are available only to the citizens. The six fundamental freedoms enumerated by **Art.19 are the right to:-**
 - (a) Freedom of speech and expression
 - (b) Assemble peaceably and without arms
 - (c) Form association or unions
 - (d) Move freely throughout the territory of India.
 - (e) Reside and settle in any part of the territory of India and
 - (f) To practice any profession or to carry on any occupation, trade or business.
- However, these rights are not available in real sense and the following restrictions may be imposed on these rights:
 - (a) The state can make a law which imposes reasonable restrictions on the exercise of these rights on the grounds of security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence (Art.19 (2)).

- (b) The state can also make laws imposing reasonable restrictions on the freedom of movement and residence in the interests of general public or for the protection of the interests of STs.

- (c) Although a citizen is free to adopt any profession or occupation under Art.19, the state can make laws relating to professional or technical qualifications necessary for profession. The state can also carry on any trade, business, industry or service to the exclusion of citizens.

- **Freedom of Press:** The expression freedom of press has not been used in Art. 19 but is comprehended within the freedom of speech and expression.

- **Reasonableness is subject to judicial reviews:** The power to determine as to what constitutes a reasonable restriction is given to courts. The court ultimately decides whether a limitation is reasonable or not. If the court finds a restriction to be unreasonable it will declare the law or order containing it to be unconstitutional and void. Thus the reasonableness of a restriction is subject to judicial review.

- **Article 19 and Judicial Review:** The six basic freedoms under Art 19 are not absolute. The state can impose reasonable restrictions. The expression „Reasonable Restriction" has introduced the doctrine of Judicial Review.

- The determination by the legislature of what constitutes the reasonable restriction is subject to judicial review.

- In determining the reasonableness court looks not only to the surrounding circumstances but also other laws which were passed as a single scheme.

Article 20: (Protection in respect of conviction for offenses):

- Article 20 says that state can impose reasonable restrictions on the groups of security of the state, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation, etc.
- No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
- No person shall be prosecuted and punished for the same offence more than once.
- No person accused of any offence shall be compelled to be a witness against himself.

Article 21: Protection of Life and Personal Liberty

- No person shall be deprived of his life or personal

liberty except according to procedure established by law. Earlier view about liberty: It means a personal right not to be subjected to imprisonment, arrest or other physical coercion without legal justification.

- But now it has widest amplitude and it covers a variety of rights which constitutes personal liberty.
- Giving the widest interpretation to Art 21, the Supreme Court has declared the following rights as fundamental rights within the scope of Art. 21:
- Right to education
- Right to health
- Right to environment
- Right to shelter
- Right to privacy
- Right to speedy trial
- Right of the prisoners
- Right to legal aid
- Right against cruel and unusual punishment
- Right not to be subjected to bonded labour
- Right to travel abroad
- Right against solitary confinement
- Right against handcuffing

Right to education (Art. 21-A):

- By the Constitution (86th Amendment) Act, 2002 a new fundamental right has been provided by inserting Art. 21-A. It casts a duty on the state to provide free and compulsory education to all children between the ages of 6 to 14 years. To implement this right the State will enact appropriate laws. Education being a concurrent subject laws may be enacted either by the Union or the States.
- In the same way, Supreme Court has also held that Freedom of speech and expression guaranteed under Article 19(1) includes the right to know, right to information and right to reply.
- It must be noted here that Right to life does not include Right to Die or Right to get killed i.e. mercy killing.
- Capital Punishment has not been held violative of Article 14, 19 and 21.
- Hanging as a mode of execution is also fair and just as per Supreme Court.
- The Supreme Court has held that right to live also include Right to live with dignity.

Article 22: Protection against arrest and detention

- Art.22 has two parts. The first part deals with Punitive Detention and the second part with Preventive Detention. If a person is arrested after committing a crime, it is called punitive detention. Art. 22 provides

following protection against such detention.

- Right to be informed of the ground of arrest.
- Right to consult and be defended by a lawyer.
- Right to be produced before a magistrate within 24 hours of his arrest (excluding the time of journey).
- Right not to be detained for more than 24 hours without the authority of a magistrate.
- The above rights are not available to an enemy alien and a person detained under a law of prevention detention.
- Preventive Detention: the detention of a person even before he commits a crime so that he can be prevented from committing the crime. These safeguards are available even to enemy aliens. Preventive detention is possible only on limited grounds such as defence, foreign affairs, security of state, and maintenance of public order.
- Since, 1950 the following preventive detention acts have been passed:
- Preventive Detention Act, 1950 (Repealed)
- Maintenance of Internal Security Act, 1971 (MISA) (Repealed)
- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)
- National Security Act, 1980
- Prevention of Terrorism Act, 2002 (POTA) (Repealed)
- Terrorist & Disruptive Activities (Prevention) Act, 1987 (Repealed)
- Essential Services Maintenance Act, (ESMA)

Safeguards against preventive detention:

- If the detention is for more than 3 months the matter must be referred to an advisory board in which there shall be a High Court judge. The detention may be continued only where the advisory board considers that there are sufficient grounds for further detention
- Grounds of detention must be communicated to the detenu.
- The detenu must be given an opportunity to make a representation against the order of detention.

Rights against Exploitation: Article 23 & 24

Article 23: Prohibition of Traffic in human beings and forced labour:

- It prohibits traffic in human beings, beggar and all other forms of forced labour. Selling a human being or pledging the services of human beings for a consideration, living on the earnings of a prostitute are examples of trafficking.
- Parliament has enacted the Immoral Traffic (Prevention) Act, 1956 and the Bonded Labour System (Abolition) Act 1976 to punish for such traffic.
- However, Clause 1 & 2 of Art 23 allows the State to

impose compulsory service for public purposes.

- Conscription of the defence of the country of assisting the police in trying circumstances would be permissible under Art 23(2).

Article 24: Prohibition of employment of children in factories, etc

- It prohibits the employment of children below the age of 14 years in any Factory, Mine or Other Hazardous Employment.
- The Employment of Children Act, 1938, the Child Labour (Prohibition and Regulation) Act, 1986, the Factories Act, 1948, The Mines Act, 1953 and similar other Acts prohibit the employment of children below 14 years of age.
- In *M C Mehta v/s State of Tami Nadu*, the SC held that state authorities should protect economic, social and humanitarian rights of millions of children working illegally in public and private sectors. The SC has laid down exhaustive guidelines for the education of children and for setting up a Child Labour Rehabilitation Welfare Fund.
- Other industries in respect of which the directions were given are Diamond polishing, Precious stone polishing, Glass industry, Brass-ware industry, Carpet industry, Lock-making industry and State industry.

Right to Freedom of Religion: Article 25 - 28

- The Preamble of the Constitution declares Liberty of thought, expression, belief, faith and worship. This read with Articles 25 to 28, guarantees equality in the matters of faith and religion. Secularism means that the State shall observe an attitude of neutrality and impartiality towards all religions. Right to Freedom of Religion
- **Article 25:** Freedom of conscience and free profession, practice and propagation of religion
- It provides Freedom of conscience and right to profession, practice and propagation of religion. However, this right is subject to public order, health and morality.
- Secondly, the State may by law regulate economic, financial, political or other secular activity which may be associated with religious practice but do not constitute an essential part of religion, e.g., right to observe and practice rituals and to manage religious affairs is protected. But the right to manage a temple can be controlled.
- Thirdly, the State may intervene to bring social reform and for throwing open of Hindu temples to all sections of Hindus

Two fold freedom:

- Freedom of Conscience

- Freedom to profess, practice and propagate religion
- (a) **Conscience:** Absolute inner freedom of the citizen to mould his own relation with God in whatever manner he likes.

- (b) **Profess:** To declare freely and openly one's faith and belief.

- (c) **Practice:** To perform the prescribed religious duties, rites and rituals and to exhibit his religious beliefs.

- (d) **Propagate:** Spread and publicise his religious view for edification of others.

- **Religious Conversions:** As per the SC, Right to Propagate does not include the right to convert. Though voluntary conversion is permitted under Art 25 and laws can be made against forced conversion as in the case of *M.P., Orissa, Rajasthan, Chhattisgarh, Himachal Pradesh, Gujarat and Tamil Nadu* which have legislated making forced conversion a penal offence.

Article 26: Freedom to manage religious affairs

- This article allows every religious denomination or a section of it to establish and maintain institutions for religious and charitable purposes and manage their religious affairs.
- They can also acquire and own movable and immovable properties and administer such properties in accordance with law.

Article 27: Freedom from payment of taxes for promotion of any particular religion

- Article 27 prohibits the state to impose a tax proceeds of which are meant for payment of promotion or maintenance of any particular religion.
- It means that the state cannot raise a religious tax and also that the state cannot spend its secular taxes for any particular religion as it would go against its secular character.

Article 28: Freedom from attendance religious instructions or worship in educational institutions:

- Educational institutions wholly maintained by state funds are prohibited from imparting religious instructions.
- However, an institution established by a trust but administered by the state can impart religious instructions. But in these institutions no person can be compelled to attend these instructions.

Educational and Cultural Rights: Article 29 and 30

Article 29: Protection of interest of Minorities

This article has two clauses,

- Clause (1) gives protection to every section of the citizens having a distinct language, script or culture;
- Clause (2) relates to admission into educational in-

stitutions which are maintained or aided by state funds.

- No citizen shall be denied admission in such institutions on grounds only of religion, race, caste, language or any of them.

Article 30: Right of minorities to establish and administer educational institutions

- Clause (1) of this article gives all minorities, i.e., linguistic or religious, the right to establish and administer educational institutions of their choice.
- Article 29 and 30 both confer certain rights on the minorities. Article 30 specifically mentions the right of all minorities to establish and administer educational institutions.

Right to Property and Saving of Certain Laws: Article 31

Article 31: Abolition of right to property

- The Constitution (44th Amendment) Act, 1978 omitted Article 19(1)(f) (Right to acquire, held hold and dispose of property), and shifted the provision in Article 31 (no person shall be deprived of his property except by law) to another article viz. Article 300-A.
- The effect of this change is that the right to property is no more a fundamental right. Thus the Right to

property though still a constitutional right, is not a fundamental right. If this right is infringed the aggrieved person cannot access the Supreme Court directly under Art. 32.

Right to Constitutional Remedies: Article 32

- According to Dr B. R. Ambedkar, It is the very soul of the Constitution and the very heart of it. It is the Right to Constitutional Remedies that makes the Fundamental Rights real.
- According to Article 32, when an individual feels that he has been “unduly deprived” of his fundamental rights, he can move the Supreme Court and seek justice.
- Supreme Court has included it in basic structure doctrine.
- The right to move to the Supreme Court where a fundamental right has been infringed is itself a fundamental right. It is a constitutional remedy which has been guaranteed by the Constitution.

Under Article 32, the Supreme Court can issue the following five writs for restoration of fundamental rights. These writs are: Habeas Corpus; Mandamus; Prohibition; Certiorari and Quo Warranto



12. Fundamental Rights between Citizens and Aliens

Fundamental Rights available to both citizens and foreigners except enemy aliens:

The Fundamental Rights guaranteed by Articles 14, 20, 21, 21A, 22, 23, 24, 25, 26, 27 and 28 are available to all persons whether citizens or foreigners.

These are as follows:

- Equality before law and equal protection of laws (Article 14).
- Protection in respect of conviction for offences (Article 20).
- Protection of life and personal liberty (Article 21).
- Right to elementary education (Article 21A).
- Protection against arrest and detention in certain cases (Article 22).
- Prohibition of traffic in human beings and forced labour (Article 23).
- Prohibition of employment of children in factories etc., (Article 24).
- Freedom of conscience and free profession, practice and propagation of religion (Article 25).
- Freedom to manage religious affairs (Article 26).
- Freedom from payment of taxes for promotion of any religion (Article 27).
- Freedom from attending religious instruction or worship in certain educational institutions (Article 28).



13. Articles Related to Martial Law

What is martial law?

Constitution does not define it. It has been borrowed from English common law and simply refers to military rule. So, any administration which is carried out by armed forces is martial law. Martial law CAN be declared in any area under the territories of India. It is generally imposed under situations like insurgency, war, invasion, rebellion, riots or any other violent activities.

Power of Parliament and Suspension of Fundamental Rights: Article 33 and 34

- Article 33 & 34 provides Parliament the power to modify the application of the fundamental rights to the members of armed forces and Police forces. This is required to make the proper discharge of their duty.
- Article 33 empowers the Parliament to restrict or abrogate the application of the fundamental rights in relation to the armed forces, paramilitary forces, police etc.
- Article 34 pertains to the restrictions on the fundamental rights conferred by this part while martial law is in force in any area. The article gives indemnity by law in respect to acts done during operations of martial law.
- Here we have to note that the Constitution does not have a provision of authorizing the proclamation of martial law.
- The article simply means that if there is a Government servant on duty, then s/he is indemnified for the acts done by him or her in connection with maintenance of law and order in the area where martial law is in force.
- This act of indemnity CAN NOT be challenged in any court on the ground of contravention with any of the fundamental rights.

Now, here is an important question, which needs our attention:

Article 32 gives right to constitutional remedies by means of writ petitions. Article 33 blocks some of the fundamental rights.

Then are the members of armed forces allowed to file a writ petition in Supreme Court or High court? The answer is, Yes.

- Here, we have to note that Article 136(2) and 227 (4) exclude the appellate jurisdiction of the Supreme Court and the supervisory jurisdiction of the High Court in case of Court Martial.
- But at the same time, they also don't exclude the operation of article 32 and 226 (powers of SC and HC to issue writs). This means that the honorable Supreme Court as well as the High Court CAN intervene in the Court martial cases too, provided that there is a substantive fundamental right is excluded by law made under article 33.
- The Supreme Court can intervene if the sentence provided under court martial is disproportionate to the Crime.



14. Rights and Safeguards Provided to Women, Children and Old Age

CONSTITUTIONAL RIGHTS AND SAFEGUARDS PROVIDED TO WOMEN

- **Article 15(1)** - The state shall not discriminate against any citizen of India on the ground of sex.
- **Article 15(3)** - The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favor of women.
- **Article 16(2)** - No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex.
- **Article 23(1)** - Traffic in human beings and forced labor are prohibited.
- **Article 39(a)** - The state to secure for men and women equally the right to an adequate means of livelihood.
- **Article 39(d)** - The state to secure equal pay for equal work for both Indian men and women.
- **Article 39(e)** - The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength.
- **Article 42** - The state shall make provision for securing just and humane conditions of work and maternity relief.
- **Article 51-A(e)** - It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women.
- **Article 243-D(3)** - One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women.
- **Article 243-D(4)** - One-third of the total number of offices of chairpersons in the Panchayat at each level shall be reserved for women.
- **Article 243-T(3)** - One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women.
- **Article 243-T(4)** - The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide.

CONSTITUTIONAL RIGHTS AND SAFEGUARDS PROVIDED TO CHILDREN

- **Article 14** - The State shall not deny to any person equality before the law or the equal protection of laws within the territory of India
- **Article 15** - The State shall not discriminate against any citizen. Nothing in this Article shall prevent the State from making any special provisions for women and children
- **Article 21** - No person shall be deprived of his life

or personal liberty except according to procedure established by law

- **Article 21 A** - The State shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may, by law, determine.
- **Article 23** - Traffic in human beings and beggary and other forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.
- **Article 24** - No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- Constitution (86th Amendment) Act was notified on 13th December 2002, making free and compulsory education a Fundamental Right for all children in the age group of 6-14 years.
- **Article 39(e) and (f)** provides that the State shall, in particular, direct its policy towards securing to "ensure that the health and strength of workers, men and women and the tender age of children are not abused" and "that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength" and that "the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity" and that the childhood and youth are protected against exploitation and against moral and material abandonment.
- **Article 45** - The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.
- **Article 47** - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.
- **Article 243G read with Schedule 11** - provide for institutionalization of child care by seeking to entrust programmes of Women and Child Development to Panchayat (Item 25 of Schedule 11), apart from education (item 17), family welfare (item 25), health and sanitation (item 23) and other items with a bearing on the welfare of children.

CONSTITUTIONAL RIGHTS AND SAFEGUARDS PROVIDED TO OLD AGE PERSONS

The population of the elderly persons has been increasing over the years. As per the UNESCO estimates, the number of the aged (60+) is likely to be 590 million in 2005. The figure will double by 2025. By 2025, the world will have more elderly than young people and cross two billion mark by 2050. In India also, the population of elder persons has increased from nearly 2 crores in 1951 to 7.2 crores in 2001. In

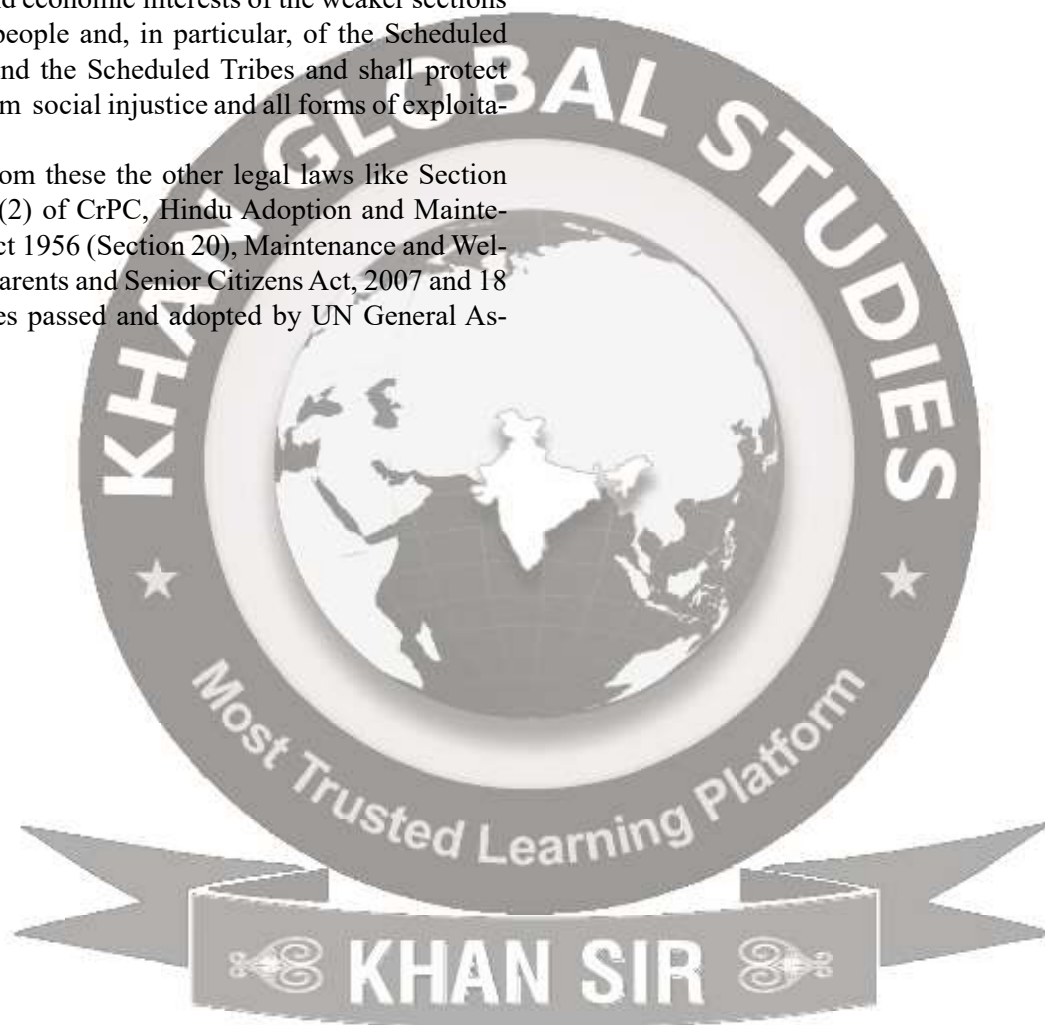
other words about 8% of the total population is above 60 years. The figure will cross 18 % marks by 2025.

- Directive Principle of State Policy, Article 41 states that "the state shall, within the limits of its economic capacity and development, make effective provision for old age, sickness and disablement and in other cases of underserved want."

Article 46: Promotion of educational and economic interests of SCs, STs and other weaker sections:

The State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.

- Apart from these the other legal laws like Section 125 (1) (2) of CrPC, Hindu Adoption and Maintenance Act 1956 (Section 20), Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and 18 Principles passed and adopted by UN General Assembly



15. Rights and Safeguards Provided to the Minorities

Introduction

- The Constitution of India does not define the word "Minority" and only refers to "Minorities" which are 'based on religion or language'
- The Constitution spells out the rights of the minorities in detail.
'Common Domain' and 'Separate Domain' of rights of minorities provided in the Constitution
- 'Common domain' rights are those which are applicable to all the citizens of our country.
- 'Separate domain' rights are those which are applicable to the minorities only and these are reserved to protect their identity.
- (Bullet) The Preamble to the Constitution declares the State to be "Secular" and this is a special relevance for the Religious Minorities.
- Equally relevant for them, especially, is the declaration of the Constitution in its Preamble that all citizens of India are to be secured liberty of thought, expression, belief, faith and worship and "equality of status and of opportunity".

'Common Domain' of Minority Rights

1. The Directive Principles of State Policy - Part IV of the Constitution:

- Obligation of the State „to endeavour to eliminate inequalities in status, facilities and opportunities" amongst individuals and groups of people residing in different areas or engaged in different vocations. Article 38 (2).
- Obligation of State "to promote with special care" the educational and economic interests of „the weaker sections of the people" (besides Scheduled Castes and Scheduled Tribes). Article 46.

2. Fundamental Duties - Part IVA of the Constitution:

- "Citizens" duty to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; and
- Citizens duty to value and preserve the rich heritage of our composite culture.

3. Fundamental Rights - Part III of the Constitution

- Both the rights common domain and separate domain are being provided to minorities under Fundamental Rights.

In the 'common domain', the following fundamental rights and freedoms are covered:

- Article 14 - People's right to "equality before the law" and "equal protection of the laws"

- Article 15 (1) & (2) - Prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth.
 - **Article 15 (4)** - Authority of State to make "any special provision for the advancement of any socially and educationally backward classes of citizens" (besides the Scheduled Castes and Scheduled Tribes).
 - **Article 16(1) & (2)** - Citizens' right to „equality of opportunity" in matters relating to employment or appointment to any office under the State - and prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth
 - **Article 16(4)** - Authority of State to make „any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State
 - **Article 25(1)** - People's freedom of conscience and right to freely profess, practice and propagate religion- subject to public order, morality and other Fundamental Rights.
 - **Article 26** - Right of „every religious denomination or any section thereof - subject to public order, morality and health - to establish and maintain institutions for religious and charitable purposes, „manage its own affairs in matters of religion", and own and acquire movable immovable property and administer it „in accordance with law".
 - **Article 27** - Prohibition against compelling any person to pay taxes for promotion of any particular religion.
 - **Article 28** - People's "freedom as to attendance at religious instruction or religious worship in educational institutions" wholly maintained, recognized, or aided by the State.
- ### 'Separate Domain' of Minority Rights:
- **Article 25** - Sikh community's right of „wearing and carrying of Kirpans.
 - **Article 29(1)** - Right of „any section of the citizens" to „conserve" its „distinct language, script or culture".
 - **Article 29(2)** - Restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, „on grounds only of religion, race, caste, language or any of them".
 - **Article 30(1)** - Right of all Religious and Linguistic Minorities to establish and administer educational institutions of their choice.
 - **Article 30(2)** - Freedom of Minority-managed educational institutions from discrimination in the matter of receiving aid from the State.
 - **Article 347** - Special provision relating to the language spoken by a section of the population of any

State.

- **Article 350 A** - Provision for facilities for instruction in mother-tongue at primary stage.
- **Article 350 B** - Provision for a Special Officer for Linguistic Minorities and his duties; and



16. Rights and Safeguards Provided to SCS, STS

Introduction

- The goal of establishing an egalitarian society is at the foundation of the Indian Constitution.
- In India, the additional burden of history in the form of inherited social distortions taking ethnic and caste dimensions needs to be addressed with preferential and special constitutional steps in support of the SC/ST communities.

The Constitution provides the following support to them

- **Article 15** - eliminates disability with regard to access to public places.
- **Article 16** - provides equality of opportunity which is enriched by protective measure for the SC/STs in matters of State employment and appointment.
- **Article 18** - abolishes untouchability and the accused has to prove his innocence.
- **Article 341 - 342** - The President is empowered to draw a list of SC/STs in consultation with the Governor of each state subject to Parliamentary amendments
- **Article 19(5)** - The property of these communities cannot be taken away unless specified authorities permit the same
- **Article 338** - National Commission of SCs/STs has been set up by the 65th Amendment Act in 1990 The President may appoint a commission to review the functioning of the Scheduled areas and the welfare of the STs in the areas.
- **5th and 6th Schedules** - Special provisions are laid down in the 5th and 6th Schedules of the Constitution, which are read along with Article 244 for the administration of areas inhabited by the STs.
- **Article 46 (Directive Principles)** says that the interest of SC/ST must be protected.
- The President may direct a state to draw and execute schemes for the welfare of the STs.
- One of the criteria for extending the Central grants-in-aid of the states is the obligation of the latter to meet the cost of the welfare schemes for the SC/STs.
- There are seats and constituencies reserved for the SC/STs. It is temporary provision that is being extended, so far, for every ten years.
- In states like Madhya Pradesh, Bihar etc, there shall be ministers in charge of welfare of SC, ST and OBC.

17. Rights and Safeguards Related to Environment

To protect and improve the environment is a constitutional mandate. It is the commitment for a country wedded to the ideas of a welfare State.

The Indian constitution contains specific provisions for environmental protection under the chapters of Directive Principles of the State Policy and Fundamental Duties.

The absence of any specific provision in the Constitution recognizing the fundamental right to (clean and wholesome) environment has been set off by judicial activism in the recent times.

- **Article 51 A (g):** says that “It shall be duty of every citizen of India to protect and improve the natural
- **Article 48 A:** focuses on protection and improvement of environment and safeguarding of forests and wild life. This article says: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”. environment including forests, lakes, rivers and wild life and to have compassion for living creatures”.
- **Article 47:** provides that the “State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.” Protection and improvement of environment is necessary for improving the public health.
- **Article 48:** directs the state to take steps to organize agriculture and animal husbandry on modern and scientific lines.
- **Article 21:** says no person shall be deprived of his life or personal liberty except according to procedure established by law”, has been subject to maximum scrutiny by Supreme Court, which has mandated for more than once that the right to environment, free of danger of disease and infection are inherent in this act.
- The right to healthy environment was first recognized by Supreme Court as inherent in Article 21 in the Dehradun Quarrying Case in 1988. In this case, Supreme Court gave direction to stop quarrying under Environment Protection Act. Similarly, the M.C. Mehta vs. Union of India, 1987 case also, the Supreme Court treated the right to live in pollution free environment as a fundamental right inherent under Article 21.
- Supreme Court has also interpreted Article 19(1) to tackle the menace of noise pollution. The court has maintained in PA Jacob case 1993 that freedom of speech does not include freedom to use loud speakers or sound amplifiers.
- Further, Article 19(1) (g) confers the fundamental right over citizens to practice any occupation, trade or business. But this fundamental right is subject to reasonable restrictions and citizens can not practice the business activities that cause health hazards to public.
- Apart from the above, Supreme Court (Via Article 32) and High Courts (Via Article 226) have frequently admitted to public interest litigation related to environment.



18. Writs and Doctrines

WRITS

Introduction

Under Article 32, the Supreme Court can issue the following five writs for restoration of fundamental rights:

- **Habeas Corpus:** It literally means "To have a body" i.e. to be produced in person before the court. This kind of writ is issued to protect the personal liberty of an individual against the arbitrary action of both the State and Private individuals. The aggrieved person can even claim for compensation against state action.
- **Mandamus:** It literally means "Command". This kind of writ is issued against a public authority or a public officer and interior courts for the purpose of enforcing rights only. It is the command by the Court to the public person or body, to do his or its duty. However, this writ cannot be issued against the President and the Governors. Also, private rights cannot be enforced by this writ.
- **Prohibition:** This kind of writ is issued by the higher courts to the lower courts or quasi-judicial bodies (tribunals etc.) when the latter exceeds their jurisdiction. The objective is to keep the inferior courts or the quasi-judicial bodies within the limits of their respective jurisdiction.
The difference between 'Mandamus' and 'Prohibition' is that while the former can be issued against judicial as well as administrative authorities, the latter is issued only against the judicial or quasi judicial authorities.
- **Certiorari:** It is similar to prohibition. The only difference is that this writ is issued to quash the order of a lower court or the decision of a tribunal in excess of its jurisdiction, while Prohibition is issued to prevent an inferior court or tribunal to go ahead with the trial of a case in which it has assumed excess of jurisdiction. The purpose of this writ is to ensure that the jurisdiction of an inferior court or tribunal is properly exercised and that it does not usurp the jurisdiction it does not possess.
- **Quo Warranto:** It literally means „what is your authority'. This kind of a writ is issued to ensure that the person holding a public office is qualified to hold the office. No time limit is prescribed for issuing the

writs in the Constitution and it has been left to the courts to decide on this issue.

Difference between the Writ Jurisdiction of the Supreme Court and High Court:

- The SC issues a writ (under Article 32) only in cases of the violation of the Fundamental Rights, whereas the High Court (under Art 226) can issue the writs not only for the enforcement of the Fundamental Rights but also for redressal of any other injury or illegality, provided certain conditions are satisfied. Thus in a way, the writ jurisdiction of the High Court is wider than the SC.
- Article 32 imposes on the SC a duty to issue the writs, whereas no such duty is imposed on the High Court by Article 226
- The Jurisdiction of the SC extends all over the country, whereas that of the High Court only to the territorial confines of the particular state and Union Territory to which its jurisdiction extends.

TERMS RELATED TO DOCTRINES

(a) Doctrine of severability:

- Under the doctrine of severability, only the offending provision(s) of the act would be declared void and not the whole act.
- In other words, there is no need to nullify the whole act if only a part of it violates fundamental rights. Only the offending part needs to be nullified.
- Here the court(s) must find out whether the offending part can be separated from the rest of the act or not.

(b) Validity of Pre-Constitutional Laws:

- Article 13 applies to post constitutional laws only. A post-constitutional law, which violates fundamental rights, is void but a pre-constitutional law, which violates a fundamental right, remains valid till the commencement of the Constitution.
- It cannot operate after 26 January 1950.

(c) Doctrine of Eclipse:

- The doctrine of Eclipse is applied in relation to a pre constitutional law which was valid when it was enacted.
- Subsequently when the Constitution came into force a shadow falls on it because it is inconsistent with the Constitution. The act is eclipsed.
- When the shadow is removed the pre-constitutional law becomes fully applicable and is free from infirmity

19. Directive Principles of State Policy (DPSP)

Key Highlights

- Part-IV of the constitution - Art. 36 to 51.
- Borrowed from the Constitution of Ireland.
- These directives provide the ideals which the Union and the State governments must keep in mind while formulating a policy or passing a law. The DPSPs constitute a comprehensive social and economic objective for a modern democratic state.
- While fundamental rights provide the political pillar of Indian democracy, its social and economic pillars are provided by DPSPs.
- **Non Justiciable in nature -**
 - FRs are Justiciable rights but DPSPs are non-justiciable rights.
 - Although DPSPs were no less important than fundamental rights yet they entailed financial back-up to implement them.
 - Since the Indian state had and still has limited economic capacity, making DPSPs justiciable would have put the state in a tight situation. This fact explains why DPSPs were deliberately made non-justiciable.
 - Despite being non-justiciable importance of DPSPs has been stated in Art. 37 which declares that although the DPSPs are non-justiciable, they should be considered fundamental in the governance of the country.

What are the different categories of DPSPs?

Socialistic Principles:

- (a) Adequate means of livelihood for all citizens
- (b) Fair distribution of wealth and material resources among all classes and to prevent concentration of wealth in a few hands
- (c) Equal pay for equal work for men as well as women; and
- (d) To secure just and humane conditions of work and maternity relief.

Gandhian Principles

- (a) To organize village Panchayats and to endow them with such powers and authority as may be necessary to enable them to function as units of self-government;
- (b) To promote cottage industries on individual or co-operative basis in rural areas;
- (c) The safeguard and promote the educational and economic interests of the scheduled castes and scheduled tribes;
- (d) To bring about the prohibition and consumption of intoxicating liquor; and

- (e) To organize agriculture and animal husbandry on modern and scientific lines and in particular prohibit slaughter of cows.

Liberal Principles

- (a) To secure uniform and liberal code of law for all citizens of India;
- (b) To separate the judiciary from the executive;
- (c) to raise the standard of nutrition and standard of living of the people;
- (d) To protect monuments of historical and national interest;
- (e) Equal justice and free legal aid to economically backward classes;
- (f) participation of workers in management of organizations engaged in any industry; and
- (g) Promotion and improvement of environment and safeguarding of forests and wild life.

Provisions relating to be International Peace and Security:

- (a) To promote international peace and security;
- (b) To maintain just and honorable relations between nations
- (c) To foster respect for international law and treaty obligations;
- (d) To encourage settlement of disputes by arbitration.

Article Wise Explanation of DPSPS

- **Art. 36:** This defines the term state in the same way as Art.12
- **Art.37:** This declares the importance of DPSPs. It states that though DPSPs are not justiciable yet they shall be considered fundamental in the governance of the country and it shall be the duty of the state to include these directives in their policies.
- **Art. 38:** This directs the state to create a social order for the promotion of welfare of the people. This social order must provide social, economic and political justice. Under 44th Amendment, clause (2) has been added to Art.38 which directs the state to minimize inequalities in income, to eliminate inequalities in status, facilities and opportunities.
- **Art. 39:** This is a very important article containing a number of directives which go a long way to establish what is known as welfare state in India. It directs the states to secure the following:-
 - Adequate means of livelihood for citizens both men and women.
 - Control and ownership of the material resources of the community to be distributed in such a manner that it serves the common good.
 - The operation of the economic system does not result in the concentration of wealth and means of pro-

duction to the common detriment.

–Equal pay for equal work for both men and women.
–Health and strength of workers, men & women and children are not abused and the citizens are not forced by economic necessity to enter Avocations unsuited to their age or strength

–Children are given opportunities and facilities to develop in a healthy manner and their childhood and youth are protected against exploitation and moral and material abandonment (added by 42nd Amendment, 1976).

–Thus, Art. 39 is very wide in its scope. It requires the state to ensure adequate means of livelihood, fair distribution of wealth, equal pay for equal work and protection of children and labour. Specially Art. 39 (b & c) lay the foundations of a welfare state.

- **Art. 39-A:** Added to the Constitution by 42nd Amendment, 1976, this article requires the state to provide for equal justice and free legal aid. In pursuance of this article, Parliament has passed the Legal Services Authorities Act, 1987.
- **Art. 40:** This directs the state to organize village panchayats and confer adequate powers to them so that they can function as units of self-government. Accordingly, Parliament has passed 73rd Amendment, 1992 which has introduced panchayat in part 9th of the constitution
- **Art. 41:** Under this Article the state is directed to provide right to work, to education and to public assistance subject to its economic capacity.
- **Art. 42:** Under this article, the state shall make provision for securing just and humane conditions of work and maternity relief. The state has enacted laws such as the industrial Disputes Act, Minimum Wages Act, Maternity Relief Act, etc., to implement this article.
- **Art. 43:** This article directs the state to make efforts to secure living wages and organize cottage industries in rural areas.
- **Art. 43-A:** Added by 42nd Amendment, 1976, this article calls for legislation by the state to ensure workers participation in the management of industries.
- **Art. 44:** This article contains a very important directive, viz., implementation of a Uniform Civil Code for the citizens throughout India. The state is supposed to take steps to establish a Uniform Civil code for all the citizens irrespective of caste, creed or religion. Unfortunately, despite this provision in the Constitution, there has been no implementation of uniform civil code since the adoption of the Constitution. A uniform civil code implies that persons be-

longing to different religions and beliefs would be governed by same set of laws in matters of marriage, divorce, adoption, succession to property, etc

- **Art. 45:** Provision for free and compulsory education for children till the age of 14 years. However, this article has been amended by 86th Amendment Act, 2002 which has inserted Art. 21A in the constitution making right to education a fundamental right for all children between 6-14 years of age. Now Art. 45 direct the state to make provisions for early childhood care and education for all children till the age of 6 years.
- **Art. 46:** This article seeks to protect the educational and economic interests of SC/STs and other weaker sections. A number of educational facilities have been extended to SC/STs in pursuance of this article.
- **Art. 47:** The state has been directed by this article to raise the level of nutrition and the standard of living and to improve public health. This also includes prohibition of liquor and intoxicating drugs.
- **Art. 48:** Organisation of agriculture and animal husbandry. The state under this article has to organize agriculture and animal husbandry on modern and scientific lines. This also includes prohibition of killing of cows, calves and other milch and draught cattle.
- **Art. 48A:** Added by 42nd Amendment, 1976, this article enjoins on the state task of protecting and improving environment, forests and wild life. A number of acts relating to protecting the environment, forests and wild life have been enacted.
- **Art. 49:** This article obligates the state to protect monuments and places of national importance.
- **Art. 50:** Separation of judiciary from the executive in the public services of the state. This article provides that there should be a separate judicial service free from executive control in the states. This article has been implemented by amending the CrPC in 1973 under which the judicial magistrates are being appointed separately in the states and they are accountable to the High Courts and not to the state executive.
- **Art. 51:** This article requires the state to promote international peace and security, maintain good relations between nations and respect international laws.

DPSPs at Work

A number of legislations have been enacted by both Central and State governments to implement various directive principles.

- **Art. 39(b)** - Agriculture Land Ceiling Acts were passed. All these are relatable to
- **Art. 40** - Under 73rd and 74th Amendments, powers

have been conferred on Zilla Parishads, Municipalities and Panchayats.

- **Art. 39 (b) and (c)** - In 1971 fourteen banks were nationalized. During the seventies many industries were taken over by the government.
- **Art. 39 (d)** - Legislation guaranteeing equal pay for equal work is relatable to.
- **Art. 43** - The 26th Amendment of the Constitution made in 1971 abolished the privy purses, which were granted to the Rulers of Indian States. Various Boards and Commissions have been established by the State. Some of them are Khaadi and Village industries Commission, All India Handicraft Board, All India Handloom Board, Silk Board and Coir Board.
- **Art. 48** - Many States have enacted laws to prohibit slaughter of cows and bullocks.
- **Arts. 41, 42, 43A** - The numerous Acts pertaining to labour, e.g., Minimum Wages Act, Workmen Compensation Act, Maternity Benefit Act, Industrial Employment (Standing Orders) Act, The Factories Act etc.
- **Art. 48A** - The Water Pollution, Air Pollution, Environmental Pollution Acts, The Forest Act, and Wild Life Protection Act passed by the Parliament.

DPSPs in Other Parts of Indian Constitution (Not in Part IV)

The following Directives are also non-justiciable:

- **Art. 350 A:** Enjoins every State and every local authority within the State to provide adequate facilities for instruction in the mother tongue at primary stage to children of linguistic minorities.

- **Art 351 A:** Enjoins the Union to promote the spread of Hindi language so that it may serve as a medium of expression of all the elements of the composite culture of India.

- **Art 355 A:** Claims of Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of Union or of a State

DPSP vs. Fundamental Rights

Fundamental Rights	Directive Principles of State Policy
Negative obligation of the state	Positive obligation of the state
Justiciable in country	Non-justiciable in
Foundation of political democracy	Foundation of social and economic democracy

Conclusion

- It should be remembered that the Preamble, the FRs and the DPSPs are all integral parts of the same constitutional edifice.
- They are all equally important and have to be read with each other.
- The emphasis in the entire scheme of the Constitution under the headings of the Preamble, the Fundamental Rights and the Directive Principles is on building an egalitarian society and on the concept of socio-economic justice.
- The Fundamental Rights and the Directive Principles together constituted the soul of the Constitution.

20. Fundamental Duties

Key Highlights

- **Art 51A** - Fundamental Duties of the citizens are enumerated in Art. 51A.
 - **42nd Amendment Act 1976** - They were included in 1976 by the 42nd Amendment on the recommendation of Sardar Swaran Singh Committee. Fundamental Duties did not form part of the Constitution as originally adopted.
 - **Citizens** - The duties are addressed to the citizens only.
 - **Not Enforceable** - These duties are not enforceable by a Court. Yet they provide a valuable guide and aid to interpretation of the Constitution.
 - **Eleven Duties**- The fundamental duties are 11 in number.
 - **42nd Amendment Act 1976** - Ten duties were included in the Indian Constitution by the 42nd Amendment Act 1976 and
 - **86th Amendment Act, 2002** - The Eleventh duty was added by the 86th Amendment Act, 2002. Why fundamental duties are important?
 - Article 51A constitutes a constant reminder to the citizens that they have duties in building up a free, egalitarian and responsible society.
 - India is a multi-racial and multi-ethnic country. Such a vast democratic country like India can prosper only when the citizens of our country respect its integrity and promote cultural harmony.
 - Environmental pollution has become a great cause of concern, not only for Indian, but for the entire humanity. Unless, we all take the pledge to keep our environment free from pollutants, there remains the threat of undesirable consequences.
 - The inclusion of providing opportunity for education for children as a Fundamental duty is a big step forward towards safeguard of human-rights and abolition of social injustices.
- FDs are Non-enforceable and Non-justiciable**
- The fundamental duties are non-enforceable and non-justiciable in character.
- It means that no citizen can be punished by a court for violation of a fundamental duty.
 - In this respect the fundamental duties are like the directive principles of the constitution in part IV.
 - The directive principles lay down some high ideals to be followed by the state. Similarly, the fundamental duties in Art 51A lay down some high ideals to be followed by the citizens.
 - Courts can certainly take cognizance of laws seeking to give effect to fundamental duties.

List of Fundamental Duties -

1. To abide the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
2. To cherish and follow the noble ideals which inspired our national struggle for freedom;
3. To uphold and protect the sovereignty, unity and integrity of India;
4. To defend the country and render national services when called upon to do so;
5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
6. To value and preserve the rich heritage of our composite culture;
7. To value protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
8. To develop the scientific temper, humanism and spirit of inquiry and reform;
9. To safeguard public property and to abjure violence;
10. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.
11. Who is a parent or guardian to provide opportunities for education to his child, as the case may be, ward between the age of six and fourteen years (added by 86th Amendment Act, 2002)

Union and State Executive

21. President

Key Highlights

- (a) The President is the head of the Indian State and the first citizen of India.
- (b) **Article 52** - The President is the head of the union executive
- (c) **Article 53** - All executive actions of the Government of India is formally taken in his name.
- (d) **Article 54** - The election of the President. The President is elected not directly by the people but by members of electoral college consisting of
 1. The elected members of both the Houses of Parliament
 2. The elected members of the Legislative assemblies of the states; and
 3. The elected members of the Legislative assemblies of the National Capital Territory of Delhi and of the Union Territory of Puducherry.
- (e) **Article 55** - The number of votes which each elected member of the legislative assembly of each state and the Parliament is entitled to cast at such election.

QUALIFICATIONS

- (a) He is a citizen of India.
- (b) He is over 35 years of age.
- (c) He is otherwise qualified for election as a member of the Lok Sabha.
- (d) He must not hold any office of profit under the Government of India or any State or any other authority subject to the control of any of these governments.
- (e) However, the offices of the President or the Vice-President or the Governor of a State or a Minister for the union or for any state would not be deemed to be holding an office of profit.

ELECTION

Art. 54 provides for indirect election of the President through an Electoral College consisting of -

- (a) The elected member of the Lok Sabha and the Rajya Sabha
- (b) The elected members of the legislative assembly of the States.
- (c) The members of the legislative assembly of the National Capital Territory of Delhi and of the Union Territory of Puducherry.

Manner of election

- (a) The election of the President is held in accordance with the system of Proportional Representation by means of the single transferable vote.
 - (b) The voting is done by secret ballot.
- Value of a vote and securing parity

- (a) Art. 55 provides for uniformity in the scale of representation of different states at the election of the President.
- (b) Besides, there should also be parity between the states as a whole and the union.
- (c) For this purpose the value of votes of an MLA and an MP is counted under the following formula
 - (a) Value of the votes of an MLA

$$\times \frac{\text{Population of the state}}{\text{Total number of elected MLA} \times 1000}$$

- (b) Value of the votes of an MP

$$\times \frac{\text{Total value of votes of all elected MLAs}}{\text{Total number of elected MPs}}$$

CONDITIONS OF OFFICE

- (a) The President shall not be a member of either house of Parliament or of a House of the legislature of any State.
- (b) If a person who is a member of the Parliament or of a State Legislature is elected President he shall be deemed to have vacated his seat in the house on the day he enters upon his office as President.
- (c) The emoluments and allowances of the president cannot be decreased during his term of office. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament by law.

Term of office

- (a) The President holds office for a term of 5 years from the date on which he enters upon his office.
- (b) The President is eligible for re-election any number of times. The Constitution does not impose any limit regarding re-election.
- (c) **Vacant Office** - In case for any reason the successor to the President does not enter upon the office then the President shall continue to hold office even after expiration of his term for 5 years till his successor takes oath of office.

The office of the President may terminate before the expiry of the term of 5 years

- **Resignation** - The President submitting his resignation is addressed to the Vice-President.
- **Impeachment** - The President being removed from office by the process of impeachment in the manner provided in Art. 61.

Impeachment of the President

- (a) **Article 61** - lays down the procedure for the impeachment of the President. The procedure is quasi judicial as well as political.
- (b) The only ground for impeachment is violation of the Constitution.

- (c) The charge against the President may be initiated in any house of the Parliament. The charge must be in the form of a proposal contained in a resolution.
- (d) The notice for moving the resolution must be signed by not less than one fourth of the total number of members of the House.
- (e) Advance notice of 14 days is required.
- (f) The resolution must be passed by a majority of not less than two third of the total membership of the House.
- (g) After the change is so preferred it is investigated by the House. The President has the right to appear and be represented in such investigations.
- (h) If after investigation the House passes the resolution by 2/3 majority and if the other House also passes this resolution by the same majority, the effect of the resolution would be that the President shall be removed from his office the date on which the resolution is passed.

Disputes regarding Election

- (a) **Article 71** - provides that all disputes in connection with the election of President or Vice-President shall be inquired into and decided by the Supreme Court.

Existence of vacancies

- (a) If there exist vacancies in the Electoral College which elects the President, the election cannot be called in question on the ground of such vacancy.
- (b) Election for the post of the President cannot be postponed on the ground that some legislative assemblies have been dissolved and elections are yet to take place because Article 62 mandates that the election to fill a vacancy must be completed before the expiration of the term of the President.

POWERS OF THE PRESIDENT

Key Highlights

- **Art 53** - declares that the executive power of the Union shall be vested in the President and shall be exercised by him directly or through officers subordinate to him.
- **Art 72** - Grant pardon and remit punishments (Pardoning Power)
- **Art 77** - Executive action of the central government is to be taken in the name of the President.
- **Appointments**
 - Art 75 - Prime Minister and other ministers
 - Art 76 - Attorney General
 - Art 124 - Supreme Court Judges
 - Art 148 - Election Commissioners and CAG
 - Art 155 - Governors
 - Art 217 - High Court Judges
 - Art 316 - Chairman and members of UPSC
 - Art 324 - Chief Election Commissioner

● **Emergency Powers**

- Art 123 - Proclamation of ordinances
- Art 352, 356, 360 - Emergency Powers
- Art. 359 - Suspension of fundamental rights during emergency

- **Arts. 243 & 244** - Making regulations for peace and good government of scheduled areas

- **Art 111** - Assent to bills

- **Art 201** - Assent to state bills reserved by Governor

A. Executive powers

- (a) The executive power of the Union is vested in the President. The executive power does not only mean the execution of laws passed by the legislative but also the powers to carry out the business of the Government.

- (b) However, it is evident that President is not free to use his powers; rather he acts on the advice of the Council of Ministers.

- (c) The executive powers of the President include administrative powers and military powers.

- (d) Administratively, the President may not discharge any function as there are ministries responsible for such an act. This way President becomes a formal head and action is taken in his name.

- (e) The administrative power also includes the power to appoint and remove the high dignitaries of the State.

The President shall have the power to appoint -

- The Prime Minister of India.
- Other Ministers of the Union.
- The Attorney-General for India.
- The Comptroller and Auditor General of India.
- The judges of the Supreme Court.
- The judges of the High Courts of the States.
- The Governor of a State
- A commission to investigate interference with water-supplies.
- The Finance Commission.
- The Union Public Service Commission and joint Commissions for a group of States.
- The Chief Election Commissioner and other members of the Election Commission
- A Special Officer for the Schedule Castes and Tribes.

- A Commission to report on the administration of Scheduled Areas.

- A Commission to investigate into the condition of backward classes.

- A Commission on Official Language.

- Special Officer for linguistic minorities.

- (f) In making some of the appointments, the President is required to consult persons other than his ministers as well. Thus, in appointing the Judges of

the Supreme Court, the President shall consult the Chief Justice as he may deem necessary [Art. 124(2)].

- (g) The President shall also have the power to remove
- His Ministers, individually;
 - The Attorney-General of India;
 - The Governor of a State
 - The Chairman or a member of the Public Service Commission of the Union or of a State, on the report of the Supreme Court;
 - A Judge of the Supreme Court or of a High Court or the Election Commissioner, on an address of Parliament.

B. Legislative Powers

- (a) **Summoning, Prorogation, Dissolution:** Indian President shall have the power to summon or prorogue the Houses of Parliament and to dissolve the lower House. He shall also have the power to summon a joint sitting of both Houses of Parliament in case of a deadlock between them. [Arts. 85, 108]
- (b) **The Opening Address:** The President shall address both Houses of Parliament assembled together, at the first session after each general election to the House of the People and at the commencement of the first session of each year, and “inform Parliament of the causes of its summons” [Art. 87].
- (c) **The Right to send Messages:** Apart from the right to address, the Indian President shall have the right to send messages to either House of Parliament either in regard to any pending Bill or to any other matter, and the House must then consider the message “with all convenient dispatch” [Art. 86(2)].
- (d) **Nominating Members to the Houses:** President has been given the power to nominate certain members to both the Houses upon the supposition that adequate representation of certain interests will not be possible through the competitive system of election. Thus,
- I. In the Council of States, 12 members are to be nominated by the President from persons having special knowledge or practical experience of literature, science, art and social service [Art. 80(1)].
 - II. The President is also empowered to nominate not more than two members to the House of the People from the Anglo-Indian community, if he is of opinion that the Anglo-Indian community is not adequately represented in that House [Art. 331].
- (e) **Laying Reports before Parliament:** The President is brought into contact with Parliament also through his power and study to cause certain reports and statements to be laid before Parliament, so that Parliament

may have the opportunity of taking action upon them.

- (f) **Previous sanction to legislation:** The Constitution requires the previous sanction or recommendation of the President for introducing legislation on some matters. These matters are:

I. Assent to legislation and Veto: A Bill will not be an Act of the Indian Parliament unless and until it receives the assent of the President. When a Bill is presented to the President, after its passage in both Houses of Parliament, the President shall be entitled to take any of the following three steps

1. His assent to the Bill;
2. He withholds his assent to the Bill; or
3. He may, in the case of Bills other than Money Bills, return the Bill for reconsideration of the Houses, with or without a message suggesting amendments. A Money Bill cannot be returned for reconsideration
4. In case of (c), if the Bill is passed again by both Houses of Parliament with or without amendment and again presented to the President, it would be obligatory upon him to declare his assent to it (Art. 111).

II. Types of ‘Veto power’ - From the standpoint of effect on the legislation, executive vetoes have been classified as absolute, qualified, suspensive and pocket veto.

1. **Absolute Veto:** Refusal of assent to any bill. The bill cannot become law, notwithstanding any vote of Parliament.
2. **Qualified Veto:** A veto is „qualified“ when it can be overridden by a higher majority of the Legislature and the Bill can be enacted as law with such majority vote, overriding the executive veto.
3. **Suspensive Veto:** A veto is suspensive when the executive veto can be overridden by the Legislature by an ordinary majority.
4. **Pocket Veto:** By simply withholding a Bill during the last few days of the session of the Parliament

- (g) **Disallowance of state legislation:** Legislature, the Executive can prevent the Bill to become law.

- I. Besides the power to veto Union Legislation, the President of India shall also have the power of disallowance or return for reconsideration of a Bill of the State Legislature, which may have been reserved for his consideration by the Governor of the State (Art. 201).

Key Highlights

- In India, President is both Executive Head and also

the part of legislature.

Address the Parliament

- The President has power to summon and prorogue Parliament.
- He can also dissolve the Lok Sabha before the expiry of five year term.
- The President also enjoys the power to summon a joint sitting of both the House of Parliament in case of deadlock between the two.
- The President also addresses the opening session of a newly elected Parliament. He can also address it jointly in between.

Nominate Members

- The President also enjoys the power to nominate certain member of the Parliament.
- In Rajya Sabha 12 members are nominated and 2 members from Anglo-Indian communities are nominated to the Lok Sabha if the community has not been adequately represented in his opinion in the House.

Assent to Bills

- Certain Bills do require a previous sanction of the President like money bill, the bill involving expenditure from the Consolidated Fund of India, bill for the formation of a new state, bill relating to language, and the bill affecting the taxation of state.
- The bill passed by the Parliament cannot become an Act before it has President's assent. He can, after his comments, return the bill limited in case of money bill.

C. Ordinance Issuing Power (ART- 123)

- (a) The President has a very strong position in the sense that he has the power of issuing ordinance. In case there is a matter of urgency and a law is needed for a particular situation, the President can issue ordinance.
- (b) The 38th Amendment in this regard is a mile stone in the sense that his assent is important.
- (c) The ordinance can be promulgated by the President when the Houses of Parliament are not in session. The ordinance will have the same effect as of the law of the land.

D. Pardoning Power

- (a) Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:
 - Punishment or sentence is for an offence against a Union Law, offence by a court martial (military court) and the sentence of death.

–The object of conferring this power on the President is to keep the door open for correcting any judicial errors in the operation of law and to afford relief from a sentence, which the President regards as unduly harsh.

- (b) The pardoning power of the President includes the following

–Pardon It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications

–Commutation It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment

–Remission It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.

–Respite It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.

–Reprieve It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

E. Emergency Powers

- (a) The President also enjoys emergency power. In a federal structure the grip of the Union on the State is not so tight and hence the Constitution framers did provide for the exigencies which may require a tighten grip of the Union on the State.

- (b) Article 356 gives powers to the President for the extension of his rule in the State. “If the President on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on; the President may extend his rule to the State.

- (c) Article 360 deals with financial emergency, “If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory is threatened ... the President can declare financial emergency.”

The **38th Amendment** (clause 5) has furthered the strength of the President in this regard as his decision is final and cannot be challenged in the Court of law

22. Governor

Key Highlights

- Art. 153 create the office of the Governor.
- Governor is the head of the executive in all the states is the Governor.
- Generally each state has a Governor but under the provision to Art. 153 the same person may be appointed Governor for two or more states.
- The executive power of the state is exercise by the Governor either directly or through officers subordinate to him.
- The real executive powers in a state are vested in the Council of Ministers headed by the Chief Minister.

NATURE OF THE OFFICE OF GOVERNOR

- (a) Constitutional provisions concerning the Governor and the Scope of these provisions shows that there are three main facets of Governor's role.
- (b) The three facets so pointed out are
 - (i) As the constitutional head of the State operating normally under a system of Parliamentary democracy
 - (ii) As a vital link between the Union Government and the State Government.
 - (iii) As a representative of the Union Government in a specific areas during normal times [e.g. Article 239(2)] — appointment of the Governor of a State in charge of an adjoining UT; and in a number of areas during abnormal situations [e.g. Article 356(1)]
- (c) He is the linchpin of constitutional apparatus and assures continuity of Government.

APPOINTMENT

- (a) The post of Governor is not an elected one unlike the President who is indirectly elected.
- (b) The Governor is appointed by the President (Art. 155) and holds office for five years subject to the pleasure of the President.
- (c) To have an appointed Governor in the states by the President ensures that the Governor, apart from being the head of the state executive would also be an agent of the centre.

Eligibility

- (a) He should be a citizen of India and 35 years of age.
- (b) He must not be a member of either House of Parliament or State Legislature.
- (c) He should not hold any Office of Profit.

Oath

- (a) The oath of the Governor is given by the Chief Justice of the High Court or in his absence the senior most Judge of the High Court

TERM OF OFFICE

- (a) The Governor holds for a term of 5 years from the date on which he enters in his office.
- (b) But his appointment may be terminated earlier because he holds office during the pleasure of the President.
- (c) The Governor may be removed by an order of the President.
- (d) The President may transfer a Governor appointed to one state to another for the rest of term.
- (e) A Governor whose term has expired may be reappointed in the same or any other state. There is no bar to being appointed Governor more than once.
- (f) The Governor may resign by writing, addressed to the President

Arrangement for discharges of functions

- (a) The President has been vested with the power to make arrangements for discharging the functions of the Governor in any contingency not provided for in the Constitution (Art. 160).
- (b) Normally under an exigency, the President gives dual charge to a Governor of States.
- (c) In some cases the Chief Justice of the State High Court were appointed acting Governor.

POWERS OF THE GOVERNOR

A. Executive powers

- (a) Governor being the head of the state executive, all executive action is expresses to be taken in the name of the Governor.
- (b) Appointments -
 - (i) The Chief Minister and other ministers with the advice of the Chief Minister. He has to appoint the leader of the party having absolute majority in the legislative assembly as the Chief Minister. However, in case of no party having a clear cut majority in the House, the Governor may use his discretion.
 - (ii) Advocate-General
 - (iii) Chairman and the members of the State Public Service Commission.
 - (iv) Members of the subordinate judiciary (District Judge and below).
 - (v) Vice-Chancellors of state universities.

- (c) The Governor is the Chancellor of the universities run by the state.
- (d) Though the Governor has no power to appoint the Judges of the state High Court, he may be consulted by the President in such appointment.

B. Legislative powers

The Governor is a part of the legislature (Art. 168). In this capacity he performs the following legislative functions:

- (i) To summon, prorogue and dissolve the legislative

Assembly.

- (ii) Right to address the legislature and to send messages to it.
- (iii) No Bill can become a law unless the Governor gives assent to it. He can give his assent, withhold his assent or use the pocket veto to a state Bill
- (iv) He nominates one member of the Anglo-Indian community to the state assembly and one-sixth of the members of the legislative council from among persons having special experience in art, science, literature, social service or cooperative movement.
- (v) Art. 200: Assent to Bills
 - (i) When a Bill has been passed by the Legislature of a State, it shall be presented to the Governor who may accept or reject the Bill.
 - (ii) In the case of Bills other than Money Bills, he may return to the legislature for reconsideration.
 - (iii) Governor may also reserve the Bill for consideration of the President.
 - (iv) When a Bill is returned to legislature by the Governor, it must be passed again to be accepted by the Governor.
 - (v) In essence as per the Article 200, when a Bill passed by the Legislature of a State is presented to the Governor, he has four options
 - 1. he assents to the Bill when it becomes an Act
 - 2. he withholds assent
 - 3. he returns the Bill to the Legislature for reconsideration
 - 4. he reserves the Bill for the consideration of the President
- (vi) Art. 201. Bills reserved for consideration
 - (i) When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent in case of a Money Bill.
 - (ii) In other Bills, he may return the Bill for repassage—the third option for the President.
 - (iii) The repassed Bill need not be assented to by the President and he may return it again and again. Thus, it is an absolute veto
 - (iv) Also, there is no time limit within which the President should take a decision.
 - (v) There have been instances where Bills have been pending with the President for periods up to six years or more.

- (vi) The most recent Bill to be reserved by the Governor for the Presidential assent is the GUJCOC Bill Gujarat Control of Organised Crime Bill for which the President has expressed the need for three changes and returned it.

C. Ordinance making powers

- (a) Art. 213 empowers the Governor to promulgate ordinances during the recess of state legislature.
- (b) These ordinances will have the same force and effect as a law passed by the state legislature.
- (c) However, the ordinances are temporary measures to be taken when the state legislature is not in session and a law is urgently required. Therefore, it must be regularized by the approval of the state legislature within six weeks of its next session or else it will cease to operate.
- (d) The differences between the ordinance making powers of Governor and the President
 - (i) Largely the powers of the Governor in the promulgation of ordinances are similar to the President. There are the following differences:
 - 1. If the ordinance has contents which in the form of a Bill would require Presidential permission before hand for introduction or
 - 2. If the ordinance has contents which in the form of a Bill would be compulsorily reserved for Presidential assent after passage as a matter of Constitutional requirement—for example, a Bill derogating from the powers of the High Court, or
 - 3. If the ordinance has contents that in the form of a Bill would have inclined the Governor to reserve it for the President—for example, the GUJCOC Bill in the most recent case. In all the above cases, the Governor would take the prior consent of the President before passing the ordinance.

D. Financial powers

- (a) Under Art. 202, the Governor is required to be laid before the House or Houses of the legislature the Budget or the Annual Financial Statement. =
- (b) A money bill cannot be introduced without the recommendation of the Governor.
- (c) A Demand for Grant cannot be moved without the recommendation of the Governor

E. Judicial or pardoning powers

- (a) Article 161 confers on the Governor the power to grant pardon, commutation, remission, respite or reprieve to any person convicted of any offence against any law relating to matters to which the

executive power of the State extends. This power is available to the President under Art. 72. However, the power of the President under Art. 72 is much wider. The President has the exclusive power to grant pardon in cases where a person has been sentenced to death.

- (b) The Governor cannot grant pardon in case of death sentence. He can only commute the punishment.
- (c) The Governor has no power in relation to Court Martial. In regards to suspension remission and commutation of sentence of death the powers of the Governor and President are concurrent.

F. Discretionary powers of the Governor

- (a) Art. 163 - There shall be a Council of Ministers headed by the Chief Minister to aid and advise the Governor and the Governor shall exercise his powers according to such advice except where the Constitution requires him to act in his discretion.
- (b) There are two types of situations in which the Governor is expected to use his discretion
 - (i) Those, which are implied by the nature of Parliamentary democracy and the Constitution.
 - (ii) Those where the Constitution has expressly imposed special responsibility on the Governor.

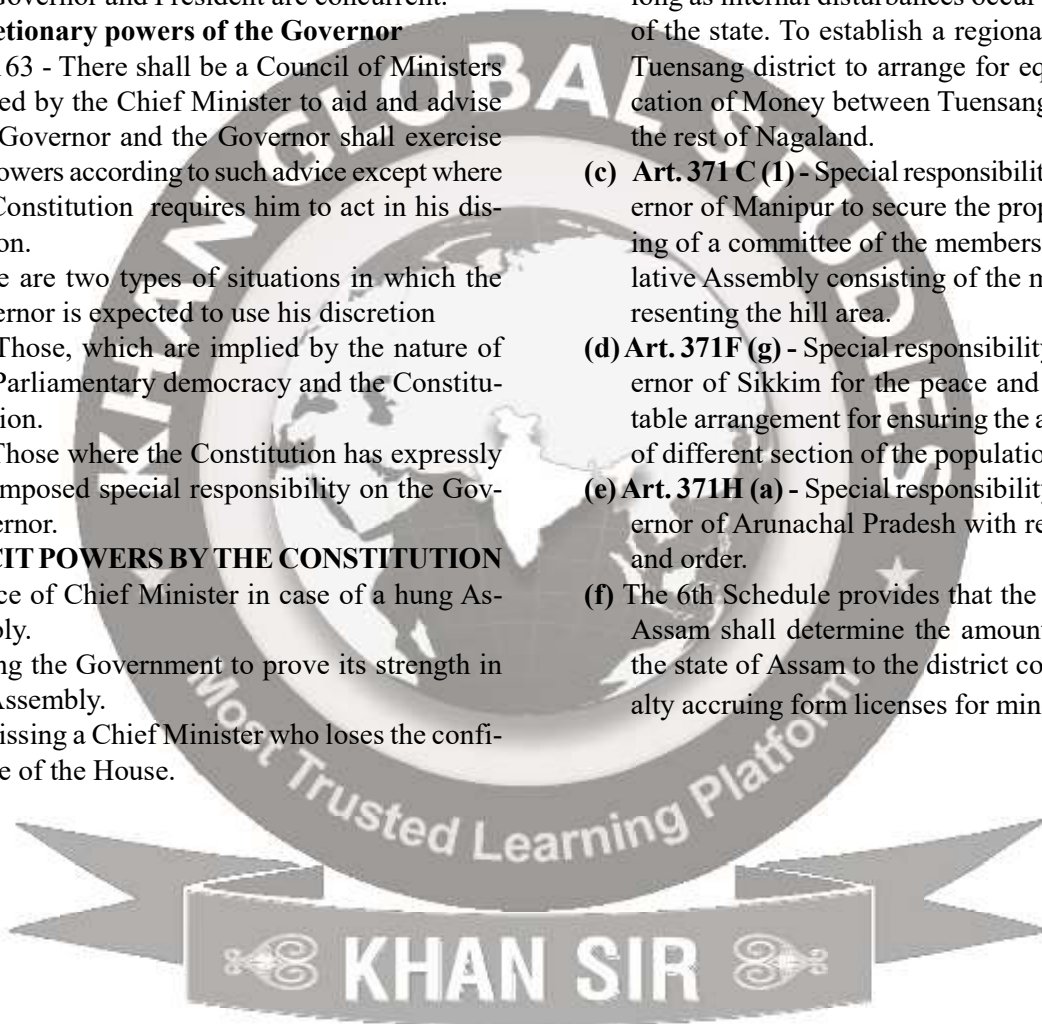
IMPLICIT POWERS BY THE CONSTITUTION

- (a) Choice of Chief Minister in case of a hung Assembly.
- (b) Asking the Government to prove its strength in the Assembly.
- (c) Dismissing a Chief Minister who loses the confidence of the House.

- (d) Recommending President's Rule (Art.356).
- (e) Reserving Bills for consideration of the President (Art. 200).

SPECIAL RESPONSIBILITY POWERS OF GOVERNOR

- (a) **Art. 371 (1)** - Special responsibility of the Governor of Maharashtra and Gujarat for the establishment of development boards for Vidarbha, Marathwada, Saurashtra and Kutch, etc.
- (b) **Art. 371A** - Special responsibility of the Governor of Nagaland with respect to law and order so long as internal disturbances occur in some area of the state. To establish a regional council for Tuensang district to arrange for equitable allocation of Money between Tuensang district and the rest of Nagaland.
- (c) **Art. 371 C (1)** - Special responsibility of the Governor of Manipur to secure the proper functioning of a committee of the members of the legislative Assembly consisting of the members representing the hill area.
- (d) **Art. 371F (g)** - Special responsibility of the Governor of Sikkim for the peace and for an equitable arrangement for ensuring the advancement of different section of the population of Sikkim.
- (e) **Art. 371H (a)** - Special responsibility of the Governor of Arunachal Pradesh with respect to law and order.
- (f) The 6th Schedule provides that the Governor of Assam shall determine the amount payable by the state of Assam to the district council as royalty accruing from licenses for minerals



23. Union and State COM

Union Council of Ministers

Key Highlights

- **Article 74(1)** state that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President.
- The Constitution itself recognizes a Council of Ministers.
- The Prime Minister is appointed by the President. He necessarily appoints a person as the Prime Minister who is either the leader of the party, which holds majority of seats in the Lok Sabha or is able to prove his majority by gaining support of other political parties.
- The President on the advice of the Prime Minister appoints all other ministers. It is the Prime Minister who allocates portfolios to the other ministers.
- The Prime Minister may call for the resignation of any minister at any time and in case of refusal he may advise the President to dismiss the minister.

Constitutional Provisions

1. Article 74-Council of Ministers to aid and advice President

- a. There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President
- b. The advice tendered by Ministers to the President shall not be inquired into in any court

2. Article 75-Other Provisions as to Ministers

- a. The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.
- b. The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. The provision was added by the 91st Amendment Act of 2003. A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.
 - i. The ministers shall hold office during the pleasure of the President.
 - ii. The council of ministers shall be collectively responsible to the Lok Sabha.
 - iii. The President shall administer the oaths of office and secrecy to a minister.
 - iv. A minister who is not a member of the Parliament (either house) for any period of six con-

secutive months shall cease to be a minister.

3. The salaries and allowances of ministers shall be determined by the Parliament Article 77- Conduct of Business of the Government of India

- a. All executive action of the Government of India shall be expressed to be taken in the name of the President.
- b. Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President.
- c. The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

4. Article 78-Duties of Prime Minister

- a. To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation
- b. If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Nature of Advice by Ministers

The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President.

- Further, the nature of advice tendered by ministers to the President cannot be enquired by any court.
- This provision emphasises the intimate and the confidential relationship between the President and the ministers.
- In 1971, the Supreme Court held that even after the dissolution of the Lok Sabha, the council of ministers does not cease to hold office.
- Article 74 is mandatory and, therefore, the president cannot exercise the executive power without the aid and advice of the council of ministers.

Strength of the Council

- The Constitution did not lay down the number of ministers that may constitute the Council of Ministers.
- However, a ceiling has been put on the strength of the Council of Ministers both in the union as well as in the states by 91st Amendment Act, 2003.
- Total number of ministers including the PM shall not exceed 15% of the total members of the Lok Sabha in case of the Union Council of Ministers and 15% of the state legislative assembly in case of state Council of Minister.
- All the members of the Council of Ministers do not belong to the same rank. The constitution does not

classify minister into different ranks but in practice 4 ranks have come to be recognized.

- **Cabinet Ministers** - He has the right to be present and participate in every meeting of the Cabinet. For proclamation of an emergency under Art. 352 the advice must come from the Prime Minister and other ministers of cabinet rank.
- **Minister of State with independent charge**- He is a Minister of State who does not work under a Cabinet Minister. When any matter concerning his department is on the agenda of the Cabinet, he is invited to attend the meeting.
- **Minister of State** - He is a Minister who does not have independent charges of any department and works under a Cabinet Minister. The work to such minister is allotted by his Cabinet Minister.
- **Deputy Minister** - He is a minister who works under a Cabinet Minister or a minister of State with independent charge. The work to him is allotted by the minister under whom he is working.
- The Prime Minister allocates portfolios to the Cabinet Ministers and Ministers of the State with independent charges. The other ministers are allocated work by their respective Cabinet Ministers.
- Ministers may be chosen from the Lok Sabha or the Rajya Sabha. A minister who is member of one House has the right to speak and to take part in the proceedings of the other House also.
- A minister is allowed to vote only in the House of which he is a member.

Appointment of a Non legislator as a minister

- Art. 75(5) - A person who is not qualified to become a member of a legislature cannot be appointed a minister.
- A person who is not a member of either House may also be appointed as a minister. He can continue as a minister only for six months.
- Because, that is the limit fixed by Art. 75(5), if he desires to continue as minister he has to become a member of any one of the Houses of Parliament before the expiration of the period of 6 months.

Collective Responsibility of the Ministers

- The principle of collective responsibility finds place in Art. 75(3) where it is stated that the Council of Ministers shall be collectively responsible to the Lok Sabha.
- In other words, this provision means that a Council of Ministers which loses confidence of the Lok Sabha is obliged to resign. The ministers fall and stand together.

Individual Responsibility of Ministers

- The rule regarding individual responsibility is to be

found in Art. 75(2)

- It is stated that ministers shall hold office during the pleasure of the President.
- Collectively the ministers survive so long as they have the required support in the Lok Sabha.
- An individual minister may continue to be a member of the council of ministers as long as he has the confidence of the Prime Minister.
- Refusal to oblige the Prime Minister may lead to his dismissal by the President.

State Council of Ministers

Key Highlights

- Art 163 Council of Ministers to aid and advise Governor
- Art 164 Other provisions as to Ministers
- Art 166 Conduct of business of the Government of a State
- Art 167 Duties of Chief Minister as respects the furnishing of information to Governor, etc.
- The council of ministers headed by the chief minister is the real executive authority in the politico administrative system of a state
- The principles of parliamentary system of government are not detailed in the Constitution but two Articles (163 and 164) deal with them.
- Article 163 deals with the status of the council of ministers while Article 164 deals with the appointment, tenure, responsibility, qualifications, oath and salaries and allowances of the ministers.

Article 163-Council of Ministers to aid and advice Governor

- If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.
- The advice tendered by Ministers to the Governor shall not be inquired into in any court

Composition of the Council of Ministers

- The Constitution does not specify the size of the state Council of Ministers or the ranking of ministers.
- They are determined by the Chief Minister according to the exigencies of the time and requirements of the situation.
- Like at the Centre, in the states too, the Council of Ministers consists of three categories of ministers, namely, Cabinet Ministers, Ministers of State, and Deputy Ministers.
- The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the Chief Minister-

supreme governing authority in the state.

- The Cabinet Ministers head the important departments of the state government like home, education, finance, agriculture and so forth. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of state government.
- The Ministers of State can either be given independent charge of departments or can be attached to Cabinet Ministers. However, they are not members of the Cabinet and do not attend the Cabinet meetings unless specially invited when something related to their departments are considered by the Cabinet.
- Next in rank are the Deputy Ministers. They are not given independent charge of departments. They are attached to the Cabinet Ministers and assist them in their administrative, political and parliamentary duties. They are not members of the Cabinet and do not attend Cabinet meetings.

Responsibility of the Council of Ministers

1. Collective Responsibility

- The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility.
- Article 164 clearly states that the Council of Ministers is collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission. They work as a team and swim or sink together.
- When the Legislative Assembly passes a no confidence motion against the Council of Ministers, all the ministers have to resign including those ministers who are from the Legislative Council.
- The principle of collective responsibility also means that the Cabinet decisions bind all Cabinet Ministers (and other ministers) even if they deferred in the cabinet meeting.
- It is the duty of every minister to stand by the Cabinet decisions and support them both within and out-

side the state legislature. If any minister disagrees with a Cabinet decision and is not prepared to defend it, he must resign. Several ministers have resigned in the past owing to their differences with the Cabinet.

2. Individual Responsibility

- Article 164 also contains the principle of individual responsibility.
- It states that the ministers hold office during the pleasure of the Governor. This means that the Governor can remove a minister at a time when the Council of Ministers enjoys the confidence of the Legislative Assembly.
- But, the Governor can remove a minister only on the advice of the Chief Minister. In case of difference of opinion or dissatisfaction with the performance of a minister, the Chief Minister can ask him to resign or advise the Governor to dismiss him.
- By exercising this power, the Chief Minister can ensure the realization of the rule of collective responsibility.

3. No Legal Responsibility

- As at the Centre, there is no provision in the Constitution for the system of legal responsibility of the minister in the states.
- It is not required that an order of the Governor for a public act should be countersigned by a minister.
- Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the governor.
- **91st Amendment Act, 2003** and the strength of the council of ministers: The constitution did not lay down the number of ministers that may constitute the council of ministers. However, a ceiling has been put on the strength of the council of ministers both in the union as well as in the states by 91st Amendment Act, 2003. The total number of ministers including the Prime Minister shall not exceed 15% of the total members of the Lok Sabha in case of the union council of ministers and 15% of the state legislative assembly in case of state council of minister.

24. PM and CM

Prime Minister

Key Highlights

- In a parliamentary form of government in India, the post of the Prime Minister is considered the most important constitutional post. The Prime Minister plays a very significant and highly crucial role in the politico-administrative system of the country. Dr B R Ambedkar stated, 'If any functionary under our constitution is to be compared with the US President, he is the Prime Minister and not the President of the Union'.

- Prime Minister is the real executive authority (de facto executive).
- Is the head of the government
- He wields the real executive powers heading the entire Council of Ministers.

Appointment

- **Art. 75** - provide that the Prime Minister shall be appointed by the President.
- But the President has no choice except to appoint as Prime Minister the leader of the party which has absolute majority in the Lok Sabha.
- However, in case no single party enjoys an absolute majority in the House, the President may use the discretion to appoint any person as Prime Minister in whom he has confidence that he can muster majority support of Lok Sabha.
- Here also, the President follows certain conventions developed over a period of time in case of a hung Parliament. The President first invites the leader of the single largest party to form the government. In case he is not able to form the government, then the President calls the leader of a pre-election coalition of political parties. If he also fails then the President calls the leader of a post election coalition of parties to form the government.
- There is no provision in the Constitution that the Prime Minister must belong to the Lok Sabha.
- A member of Rajya Sabha may also be appointed as Prime Minister
- In case the Prime Minister is from Rajya Sabha, he cannot be the leader of Lok Sabha.
- Even a person who is not a member of either House of Parliament may be appointed as the Prime Minister provided he gets elected to one of the Houses of Parliament within 6 months.
- The Prime Minister is the keystone of the arch of the Cabinet. It means that the existence of the entire Council of Ministers is dependent on the Prime Minister.

- The death or resignation of the Prime Minister automatically brings about the dissolution of the Council of Ministers. It generates a vacuum.
- The demise, resignation or dismissal of a minister creates only a vacancy, which the Prime Minister may or may not like to fill
- The Government cannot function without a Prime Minister.

Powers and Functions of the Prime Minister

1. In Relation to Council of Ministers

The Prime Minister enjoys the following powers as head of the Union Council of Ministers:

- (a) He recommends persons who can be appointed as ministers by the President. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
- (b) He allocates and reshuffles various portfolios among the ministers.
- (c) He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.
- (d) He presides over the meeting of Council of Ministers and influences its decisions.
- (e) He guides, directs, controls, and coordinates the activities of all the ministers.
- (f) He can bring about the collapse of the Council of Ministers by resigning from office. The resignation or death of an incumbent Prime Minister automatically dissolves the Council of Ministers and thereby generates a vacuum. The resignation or death of any other minister, on the other hand, merely creates a vacancy which the Prime Minister may or may not like to fill.

2. In Relation to the President

The Prime Minister enjoys the following powers in relation to the President:

1. He is the principal channel of communication between the President and the Council of Ministers. It is the duty of the Prime Minister -
 - (a) To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation
 - (b) To furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
 - (c) If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

2. He advises the president with regard to the appointment of important officials like Attorney General of India, Comptroller and Auditor General of India, chairman and members of the UPSC, Election Commissioners, Chairman and members of the Finance Commission and so on.

3. In Relation to Parliament

The Prime Minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

1. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
2. He can recommend dissolution of the Lok Sabha to President at any time.
3. He announces government policies on the floor of the House.
4. Other Powers & Functions

In addition to the above-mentioned three major roles, the Prime Minister has various other roles.

These are:

1. He is the chairman of the Planning Commission, National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.
2. He plays a significant role in shaping the foreign policy of the country.
3. He is the chief spokesman of the Union government.
4. He is the crisis manager-in-chief at the political level during emergencies.
5. As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.
6. He is leader of the party in power.
7. He is political head of the services.

Relationship between the President and the Prime Minister

1. **Article 74** - a council of ministers with the Prime Minister at the head to aid and advise the President the President may require the council of ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.
2. **Article 75**
 - a. The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the president on the advice of the Prime Minister;
 - b. The ministers shall hold office during the pleasure of the president; and
 - c. The council of ministers shall be collectively re-

sponsible to the House of the People.

3. **Article 78** - It shall be the duty of the Prime Minister:

- a. to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;
- b. to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- c. if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

Chief Minister

CHIEF MINISTER

Key Highlights

- Article 164 only says that the Chief Minister shall be appointed by the Governor.
- The form of government in the states, as at the centre, is parliamentary.
- The functioning of the Council of Ministers in the states is nothing but a replica of the union Council of Ministers.
- The governor is the nominal executive authority (de jure executive) and the Chief Minister is the real executive authority (de facto executive).
- In other words, the governor is the head of the state while the Chief Minister is the head of the government.
- Thus the position of the Chief Minister at the state level is analogous to the position of prime minister at the Centre.

Appointment of Chief Minister

- The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister.
- Article 164 only says that the Chief Minister shall be appointed by the governor.
- However, this does not imply that the governor is free to appoint any one as the Chief Minister.
- In accordance with the conceptions of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative assembly as the Chief Minister.
- The Constitution does not require that a person must prove his majority in the assembly. But, when no party has appointment of the Chief Minister.
- In such a situation, the governor usually appoints the leader of the largest party or coalition in the assembly.

bly as the Chief Minister and asks him to seek a vote of confidence in the House within a month.

- The governor may have to exercise his individual judgment in the selection and appointment of the Chief Minister when the Chief Minister in office dies suddenly and there is no obvious successor.
- However, on the death of a Chief Minister, the ruling party usually elects a new leader and the governor has no choice but to appoint him as Chief Minister.
- The governor may first appoint him as the Chief Minister and then ask him to prove his majority in the legislative assembly within a reasonable period. This is what has been done in a number of cases.
- A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he should be elected to the state legislature, failing which he ceases to be the Chief Minister
- According to the Constitution, the Chief Minister may be a member of any of the two Houses of a state legislature.
- Usually Chief Ministers have been selected from the Lower House (legislative assembly), but, on a number of occasions, a member of the Upper House (legislative council) has also been appointed as Chief Minister

Term

- The term of the Chief Minister is not fixed and he holds office during the pleasure of the governor.
- However, this does not mean that the governor can dismiss him at any time. He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly
- But, if he loses the confidence of the assembly, he must resign or the governor can dismiss him
- The salary and allowances of the Chief Minister are determined by the state legislature. In addition to the salary and allowances, which are payable to a member of the state legislature, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc

Powers and Functions of Chief Minister

The powers and functions of the Chief Minister can be studied under the following heads:

1. In Relation to Council of Ministers

- (a) The governor appoints only those persons as ministers who are recommended by the Chief Minister.
- (b) He allocates and reshuffles the portfolios among ministers.
- (c) He can ask a minister to resign or advise the Governor to dismiss him in case of difference of opinion.

ion.

- (d) He presides over the meetings of the Council of Ministers and influences its decisions.
- (e) He guides, directs, controls and coordinates the activities of all the ministers.
- (f) He can bring about the collapse of the Council of Ministers by resigning from office. Since the Chief Minister is the head of the Council of Ministers, his resignation or death automatically dissolves the Council of Ministers. The resignation or death of any other minister, on the other hand, merely creates a vacancy, which the Chief Minister may or may not like to fill.

2. In Relation to the Governor

- (a) He is the principal channel of communication between the Governor and the Council of Ministers. It is the duty of the Chief Minister:
 - (i) To communicate to the Governor of the state all decisions of the Council of Ministers relating to the administration of the affairs of the state and proposals for legislation;
 - (ii) To furnish such information relating to the administration of the affairs of the state and proposals for legislation as the Governor may call for; and
 - (iii) If the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
- (b) He advises the Governor with regard to the appointment of important officials like Advocate General, Chairman and members of the State Public Service Commission, State Election Commissioner, and so on.

3. In Relation to State Legislature

The Chief Minister enjoys the following powers as the leader of the house:

- (a) He advises the Governor with regard to the summoning and proroguing of the sessions of the state legislature.
- (b) He can recommend the dissolution of the Legislative Assembly to the Governor at any time.
- (c) He announces the government policies on the floor of the house.

4. Other Powers and Functions

In addition, the Chief Minister also performs the following functions:

- (a) He is the chairman of the State Planning Board.
- (b) He acts as a vice-chairman of the concerned Zonal Council by rotation, holding office for a period of one year at a time.

- (c) He is a member of the Inter-State Council and the National Development Council, both headed by the Prime Minister.
- (d) He is the chief spokesman of the state government.
- (e) He is the crisis manager-in-chief at the political level during emergencies.
- (f) As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.
- (g) He is the political head of the services.

Thus, he plays a very significant and highly crucial role in the state administration. However, the discretionary powers enjoyed by the governor reduce to some extent the power, authority, influence, prestige and role of the Chief Minister in the state administration.



25. Other State and Union Executives

VICE-PRESIDENT

Key Highlights

- Art. 63 has created the office of the Vice-President of India by declaring that. "There shall be a Vice President of India".
- The post of Vice-President in India is comparable to that of the US Vice-President both of which are equally weak posts.
- The normal function of the Vice-President is to reside over the Rajya Sabha.
- It is only when a vacancy occurs in the office of the President due to any reason that the Vice-President assumes the role of an acting President.

Qualifications

- A person is eligible for election as Vice-President if he:
 - Is a citizen of India;
 - Has completed the age of 35 years; and
 - Is qualified for election as a member of Rajya Sabha.
- It is also required that he must not hold any office of profit under the Government of India or of any state or under any authority under the control of the said Governments (Art. 66).

Election

- Eligible Voters
 - The members of the Lok Sabha and
 - The members of the Rajya Sabha
- The Vice-President is also indirectly elected by an electoral college.
- But unlike the Electoral College of the President, in case of Vice-President nominated members are also electors.
- The election is held by the system of proportional representation by means of the single transferable vote.
- Another difference in the election of the Vice-President with that of the President is that of the President is that the members of State Assemblies have no right to vote in the election of the Vice-President.

Term of Office

- The Vice-President holds office for a term of 5 years from the date he assumes charge of his office.
- The office of Vice-President may fall vacant before the expiration of the term:
 - By resignation. He can resign his office at any time by writing to the President.
 - By removal from his office: The Vice-President may be removed from his office by a resolution of Rajya Sabha passed by a simple majority of all the members and agreed to by the Lok Sabha.

Functions of the Vice-President

- The Vice-President has no functions to perform per se.
- By virtue of his office (i.e., ex-officio), he is the Chairman of the Rajya Sabha. Hence the normal function of the Vice-President is to preside over the Rajya Sabha.
- The Vice-President acts as President when there is a vacancy in the office of the President.
- The vacancy may occur by reasons of death, resignation, removal by impeachment or otherwise. He discharges the functions of the President when the President is unable to perform his functions. The reasons may also include absence of the Vice-President
- A situation may arise w President from India or illness or some other cause Vacancy in both the offices of the President and then the offices of both the President and the Vice-President fall vacant by reason of death, resignation, and removal or otherwise.
- Article 70 empowers the Parliament to make provisions for such contingencies.
- The Parliament has enacted an act in 1989 to take care of such situation. Under this act, when both the posts are vacant the Chief Justice of India or the senior most judge of the Supreme Court of India available shall discharge the function until a new President is elected.

ATTORNEY-GENERAL OF INDIA

Key Highlights

- The Attorney-General of India is the first Law Officer of the Government of India.
- The Attorney-General is appointed by the President and he holds office during the pleasure of the President.
- In order to be appointed as the Attorney General of India, a person must have qualified to be appointed as a Judge of the Supreme Court.
- He shall also have the right to speak in the Houses of Parliament or in any Committee thereof, but shall have no right to vote [Art. 88].
- By virtue of his office, he is entitled to the privileges of members of the Parliament [Art. 105(4)].
- In the performance of his official duties, the Attorney-General shall have a right of audience in all Courts in the territory of India.
- He represents the Union & the States before the courts but is also allowed to take up private practice provided the other party is not the state. Because of this he is not paid salary but a retainer to be determined by the President. The Attorney-General gets a retainer equivalent to the salary of a Judge of the Supreme Court.

- It is a political appointment, and therefore, whenever there is a change in the party in power, the Attorney General resigns from his post to enable the new government to appoint a nominee of its choice.

- The Attorney-General is assisted by two Solicitors-General and four Additional Solicitors-General.

Duties of the Attorney - General of India

- To give advice on such legal matters and to perform such other duties of a legal character as may, from time to time, be referred or assigned to him by the President; and
- To discharge the functions conferred on him by the Constitution or any other law for the time being in force [Art. 76].

COMPTROLLER AND AUDITOR-GENERAL Key Highlights

- As observed by Dr BR Ambedkar, the Comptroller and Auditor-General of India shall be the "most important officer under the Constitution of India". For, he is to be the guardian of the public purse and it is his duty to see that not a farthing is spent out of the Consolidated Fund of India or of a State without the authority of the appropriate Legislature. In short, he shall be the impartial head of the audit and accounts system of India. In order to discharge this duty properly, it is highly essential that this office should be independent of any control of the executive.

Appointment

- The Comptroller and Auditor General of India is appointed by the President.
- He holds office until he attains the age of sixty five years or at the expiry of the six-year term, whichever is earlier.
- He is the guardian of the public purse.

Duties

- His duties are to keep the accounts of the Union and the States and to ensure that nothing is spent out of the Consolidated Fund of India or of the States without the sanction of the Parliament or the respective State Legislatures.
- He submits an audit report of the Union to the President who shall lay it before the Parliament and the audit reports of the States to the respective Governors who shall lay it before the respective State Legislatures.
- In case of Union Territories, the Comptroller and Auditor-General submit audit reports to Lt. Governors where the Union territories have Legislative Assemblies of their own.
- The accounts of the other Union Territories are audited by him as part of the account of the Union of

India.

What are the provisions to secure CAG's independence?

Because of the importance of the office of the Comptroller and Auditor - General, the Constitution of India contains provisions to ensure the impartiality of the office and to make it independent of the Executive. These are as follows:

- He can be removed from his office only on ground of proven misbehavior or incapacity and in a manner a Judge of the Supreme Court is removed, i.e., each House of the Parliament passing a resolution supported by two-thirds of the members present and voting and by a majority of the House.
- His salary and conditions of service cannot be changed to his disadvantage during his term of office except under a financial emergency.
- His salary is charge on the Consolidated Fund of India and is not subject to the vote of the Parliament.
- After retirement he is disqualified for appointment either under the Union or the State

ADVOCATE-GENERAL FOR THE STATE

Art. 165 provides that there shall be an Advocate General for the state to be appointed by the Governor. The person who is qualified to be appointed a judge of a High Court only is eligible for the post. Art. 165 corresponds to Art. 76 which deals with the post of Attorney General. But unlike the Attorney General, the Advocate General does not have the right of audience in all courts of India. The duty of the Advocate General is to give advice to the state government on such legal matters and to perform such other duties of a legal character as may be referred to him by the Governor. He holds office during the pleasure of the Governor.

Solicitor General of India

The **Solicitor General** of India is below the Attorney General for India, who is the Indian government's chief legal advisor, and its primary lawyer in the Supreme Court of India.

The **Solicitor General** of India is appointed for the period of 3 years. The Solicitor General of India is the secondary law officer of the country, assists the Attorney General, and is himself assisted by several Additional Solicitors General of India.

Duties of Solicitor General are laid out in Law Officers (Conditions of Service) Rules, 1987:

- To give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time, be referred or assigned to him by the Government of India.

- To appear, whenever required, in the Supreme Court or in any High Court on behalf of the Government of India in cases (including suits, writ petitions, appeal and other proceedings) in which the Government of India is concerned as a party or is otherwise interested;
- To represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution; and
- To discharge such other functions as are conferred on a Law Officer by or under the Constitution or any other Law for the time being in force.

Restrictions of private practice

As law officers represent government of India, there are certain restrictions which are put on their private practice. A law officer is not allowed to:

- Hold briefs in any court for any party except the Government of India or the government of a State or any University, Government School or College, local authority, Public Service Commission, Port Trust, Port Commissioners, Government aided or Government managed hospitals, a Government company, any Corporation owned or controlled by the State, anybody or institution in which the Government has a preponderating interest;
- Advise any party against the Government of India or a Public Sector Undertaking, or in cases in which he is likely to be called upon to advise, or appear for, the Government of India or a Public Sector Undertaking;
- Defend an accused person in a criminal prosecution, without the permission of the Government of India; or
- Accept appointment to any office in any company or corporation without the permission of the Government of India;
- Advise any Ministry or Department of Government of India or any statutory organisation or any Public Sector Undertaking unless the proposal or a reference in this regard is received through the Ministry of Law and Justice, Department of Legal Affairs.



Centre and State Relations

26. Centre-state Administrative Relations

The Constitution provides a federal system of government in the country even though it describes India as 'a Union of States'. The term implies that firstly, the Indian federation is not the result of an agreement between independent units, and secondly, the units of Indian federation cannot leave the federation. The Indian Constitution contains federal and non-federal features.

The federal features of the Constitution include:

- A written constitution which defines the structure, organization and powers of the central as well as state government
- A rigid constitution which can be amended only with the consent of the state
- An independent judiciary which acts as the guardian of the constitution
- A clear division of powers between the Center and the States through three lists- Union list, State list and Concurrent list
- The creation of an Upper House (Rajya Sabha) which gives representation to the states, etc. The Constitution also contains a number of unitary features:
 - The creation of a very strong centre
 - The absence of separate constitutions for the states
 - The right of Parliament to amend major portions of the constitution by itself
 - A single citizenship for all
 - Unequal representation to the states in the Rajya Sabha
 - The right of Parliament to change the name, territory or boundary of states without their consent
 - The presence of All-India Services which hold key positions in the Centre as well as the States appointment of the Governor by the President
 - The granting of extensive powers to the President to deal with various kinds of emergencies
 - The right of Parliament to legislate on state subjects on the recommendation of the Rajya Sabha
 - The presence of a single judiciary with the Supreme Court of India at the apex
 - The residuary powers under the Indian Constitution are assigned to the Union and not to the States.
 - The exclusive right of Parliament to propose amendments to the Constitution.
 - On account of the presence of a large number of non-federal features in the Indian Constitution India is often described as a 'quasi-federal' country.

The relations between centre and state are divided as:

- Administrative relations
- Legislative relations
- Financial relations

ADMINISTRATIVE RELATIONS

- i. State's responsibility about the use of their executive powers - Article 256
- ii. Responsibility of the construction and maintenance of means of communication - Article 257 (2)
- iii. Responsibility of the protection of Railways - Article 257 (3)
- iv. Appointment of Governors by Centre - Article 155
- v. Influence of Centre during National Emergency - Article 252
- vi. Influence of Centre during Constitutional Emergency - Article 356
- vii. To solve disputes regarding the distribution of water of inter-state rivers - Article 262
- viii. Protection of Federal property in the states
- ix. All India Services - Article 312
- x. To establish Inter-State Council - Article 213
- xi. Direction for the welfare of Scheduled Tribes
- xii. Governor's discretionary power - Assam & Nagaland

- The administrative jurisdiction of the Union and the State Governments extends to the subjects in the Union list and State list respectively. The Constitution thus defines the clauses that deal with the administrative relations between Centre and States.

During Normal Times

- (1) **Executive Powers of State be exercised in compliance with Union Laws:** Article 256 lays down that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose.

- (2) **Executive Powers of State not to interfere with Executive Power of Union:** Article 257 of the Constitution provides that the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to giving of such directions to a state as may appear to the Government of India to be necessary for that purpose. In short, the Union Government can issue directions to the state Government even with regard to the subjects enumerated in the state list.

- (3) **Maintain means of communication of National or Military importance:** The Union Government can

give directions to the state with regard to construction and maintenance of the means of communication declared to be of national or military importance

- (4) **Protection of the Railways:** Union can issue State Governments necessary directions regarding the measures to be taken for the protection of the railways within the jurisdiction of the State. It may be noted that the expenses incurred by the State Governments for the discharge of these functions have to be reimbursed by the Union Government.
- (5) **To ensure welfare of Scheduled Tribes in the States:** Union can direct the State Governments to ensure execution of schemes essential for the welfare of the Scheduled Tribes in the States.
- (6) **To secure instruction in the mother-tongue at the primary stage of education:** Union can direct the State Governments to secure the provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups.
- (7) **To ensure development of the Hindi language:** Union can direct the State Governments to ensure the development of the Hindi language.
- (8) **To ensure government of a State is carried on in accordance with the provision of the Constitution:** Union can direct the State Governments to ensure that the government of a State is carried on in accordance with the provision of the Constitution. If any State failed to comply with any directions given by the Union in exercise of its executive power, then President may hold that, a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Thus he may proclaim President's Rule in that State.
- (9) **Delegation of Union's function to State:** The President of India can entrust to the officers of the State certain functions of the Union Government. However, before doing so the President has to take the consent of the State Government. But the Parliament can enact law authorizing the Central Government to delegate its function to the State Governments or its officers irrespective of the consent of such State Government. On the other hand, a State may confer administrative functions upon the Union, with the consent of the Union only.
- (10) **Appointment of High Dignitaries:** Union has major say in appointment and removal of Governor and appointment of Judges of High Court and Members of State Public Service Commission.

(11) **All India Services:** The presence of the All India Services - the Indian Administrative Services, Indian Police Services - further accords a predominant position to the Union Government. The members of these services are recruited and appointed by the Union Public Service Commission. The members of these services are posted on key posts in the states, but remain loyal to the Union Government.

(12) **Union to adjudicate Inter-State River Water Dispute:** The Parliament has been vested with power to adjudicate any dispute or complaint with respect to the use, distribution or control of the waters of, or in any Inter-State river or river-valley. In this regard, the Parliament also reserves the right to exclude such disputes from the jurisdiction of the Supreme Court or other Courts.

During Emergencies

(1) **Under President's Rule:** The State Governments cannot ignore the directions of the Union Government, otherwise the President can take the action against the Government of the State stating that the administration cannot be carried on in accordance with the provisions of the Constitution and thus can impose President's rule on the State. In such an eventuality the President shall assume to himself all or any of the functions of the State Government.

(2) **Under Proclamation of National Emergency:** During a Proclamation of National Emergency, the power of the Union to give directions extends to the giving of directions as to the manner in which the executive power of the State is to be exercised relating to any matter

(3) **Under Proclamation of Financial Emergency:** During a Proclamation of Financial Emergency, Union can direct the State Governments to observe certain canons of financial propriety and to reduce the salaries and allowances of all or any class of person serving in connection with the affairs of the Union including the Judges of the Supreme Court and High Courts. Union also requires all Money Bills or Financial Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.

It is thus, evident that in the administrative sphere the States cannot act in complete isolation and have to work under the directions and in cooperation with the Center

27. Legislative and Financial Relations

LEGISLATIVE RELATIONS

Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the State.

- i. On the basis of the resolution passed by the Council of State - Article 249, 2/3 majority, Issues of National Interest
- ii. On the request of two or more state legislatures - Article 252, Law passed by Union Parliament shall be applicable only to the states which demanded such legislation.
- iii. For the enforcement of International Treaties and Agreements - Article 253
- iv. Prior approval of President of India on certain Bills - Article 304
- v. Supremacy of Union Parliament during National Emergency - Article 352
- vi. During Constitutional Emergency - Article 356
- vii. Supremacy of Union Parliament over Concurrent List
- viii. Residuary Powers are under the control of Union Parliament - Article 248
- ix. Power of Union Parliament to abolish State Legislative Council - Article 169

(1) Extent of laws made by Parliament and by the Legislatures of States

- The Parliament can make laws for the whole or any part of the territory of India. Territory of India includes the states, UTs and any other area for the time being included in the territory of India. Whereas, the state legislature can make laws for whole or any part of state.
- The Parliament can alone make 'extra territorial legislation' thus the laws of the Parliament are applicable to the Indian citizens and their property in any part of the world.

(2) Subject-matter of laws made by Parliament and by the Legislation of States

- The Constitution divides legislative authority between the Union and the States in three lists- the Union List, the State List and the Concurrent List.
- The Union list consists of 99 items. The Union Parliament has exclusive authority to frame laws on subjects enumerated in the list. These include foreign affairs, defence, armed forces, communications, posts and telegraph, foreign trade, etc.
- The State list consists of 61 subjects on which ordinarily the States alone can make laws. These include public order, police, administration of justice, prison, local governments, agriculture, etc.
- The Concurrent list comprises of 52 items including

criminal and civil procedure, marriage and divorce, economic and special planning trade unions, electricity, newspapers, books, education, population control and family planning, etc.

- Both the Parliament and the State legislatures can make laws on subjects given in the Concurrent list, but the Centre has a prior and supreme claim to legislate on current subjects. In case of conflict between the law of the State and Union law on a subject in the Concurrent list, the law of the Parliament prevails.

(3) Residuary powers of legislation

- The Constitution also vests the residuary powers (subjects not enumerated in any of the three Lists) with the Union Parliament. The residuary powers have been granted to the Union contrary to the convention in other federations of the world, where the residuary powers are given to the States.
- However, in case of any conflict, whether a particular matter falls under the residuary power or not is to be decided by the court.

(4) Parliament's Power to Legislate on State List

- Though under ordinary circumstances the Central Government does not possess power to legislate on subjects enumerated in the State List, but under certain special conditions the Union Parliament can make laws even on these subjects.

(a) In the National Interest (Art. 249)

- If the Rajya Sabha declares by a resolution supported by not less than 2/3rd of its members present and voting, that it is necessary or expedient in the national interest that the Parliament should make laws with respect to any matter enumerated in the State List (Art. 249).
- After such a resolution is passed, Parliament can make laws for the whole or any part of the territory of India. Such a resolution remains in force for a period of 1 year and can be further extended by one year by means of a subsequent resolution.

(b) Under Proclamation of National Emergency (Art. 250)

- Parliament can legislate on the subjects mentioned in the State List when the Proclamation of National Emergency is in operation. However, the laws made by the Parliament under this provision shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate.

(c) By Agreement between States (Art. 252)

- The Parliament can also legislate on a State subject if the legislatures of two or more states resolve that it is lawful of Parliament to make laws with respect to any matter enumerated in the State List relating to

those State.

- Thereafter, any act passed by the Parliament shall apply to such states and to any other state which passes such a resolution. The Parliament also reserves the right to amend or repeal any such act.

(d) To Implement Treaties (Art. 253)

- The Parliament can make law for the whole or any part of the territory of India for implementing any treaty, international agreement or convention with any other country or countries or any decision made at any international conference, association or other body.
- Any law passed by the Parliament for this purpose cannot be invalidated on the ground that it relates to the subject mentioned in the State list.

(e) Under Proclamation of President's Rule (Art. 356)

- The President can also authorize the Parliament to exercise the powers of the State legislature during the Proclamation of President's Rule due to breakdown of constitutional machinery in a state
- But all such laws passed by the Parliament cease to operate six months after the Proclamation of President's Rule comes to an end.

(5) Centre's control over State Legislation

- The Constitution empowers the centre to exercise control over the state's legislature in following ways:
 - (a) The governor can reserve certain types of Bills passed by the state legislature for the consideration of the President. The President enjoys absolute veto over them.
 - (b) Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the President as imposing restrictions on freedom of trade and commerce.
 - (c) The President can direct the states to reserve Money Bills and other Financial Bills passed by the state legislature for his consideration during a financial emergency.

FINANCIAL RELATIONS

Financial Relations

- Sources of revenue of Union Government
 - Custom and Export Duty
 - Income Tax
 - Corporation Tax
 - Estate Duty (Excluding Agriculture)
 - Excise Duty on Tobacco and other intoxicants
 - Succession Duty (Excluding Agriculture)
 - Inter - State Trade Tax, etc..
- Sources of Revenue of State Governments
 - Taxes on agriculture, House Tax, Tax on Electricity, Toll Tax, Entertainment Tax, Tax on Boats, Tax

on Vehicles, Tax on cattle and house-hold animals, Tax on Minerals, etc.

- Grants to the States - Article 275
- Appointment of Finance Commission - Article 280
- Financial Emergency - Article 360
- Provision of Comptroller and Auditor General
- Indian Constitution has made elaborate provisions, relating to the distribution of the taxes as well as non tax revenues and the power of borrowing, supplemented by provisions for grants-in-aid by the Union to the States.
- Article 268 to 293 deals with the provisions of financial relations between Centre and States.

The Constitution divides the taxing powers between the Centre and the states as follows:

The Parliament has exclusive power to levy taxes on subjects enumerated in the Union List, the state legislature has exclusive power to levy taxes on subjects enumerated in the State List, both can levy taxes on the subjects enumerated in Concurrent List whereas residuary power of taxation lies with Parliament only

- The distribution of the tax-revenue between the Union and the States stands as follows:

(a) Duties Levied by the Union but Collected and Appropriated by the States: Stamp duties on bills of Exchange, etc., and Excise duties on medical and toilet preparations containing alcohol. These taxes don't form the part of the Consolidated Fund of India, but are assigned to that state only.

(b) Service Tax are Levied by the Centre but Collected and Appropriated by the Centre and the States.

(c) Taxes Levied as well as Collected by the Union, but Assigned to the States: These include taxes on the sale and purchase of goods in the course of inter-state trade or commerce or the taxes on the consignment of goods in the course of inter-state trade or commerce.

(d) Taxes Levied and Collected by the Union and Distributed between Union and the States: Certain taxes shall be levied as well as collected by the Union, but their proceeds shall be divided between the Union and the States in a certain proportion, in order to effect on equitable division of the financial resources. This category includes all taxes referred in Union List except the duties and taxes referred to in Article 268, 268-A and 269; surcharge on taxes and duties mentioned in Article 271 or any Cess levied for specific purposes.

(e) Surcharge on certain duties and taxes for purposes of the Union: parliament may at any time increase any of the duties or taxes referred in those articles by

a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part the Consolidated Fund of India.

- Grants-in-Aid
- **Besides sharing of taxes between the Center and the States, the Constitution provides for Grants-in-aid to the States from the Central resources.**

There are two types of grants:-

- (1) **Statutory Grants:** These grants are given by the Parliament out of the Consolidated Fund of India to such States which are in need of assistance. Different States may be granted different sums. Specific grants are also given to promote the welfare of scheduled tribes in a state or to raise the level of administration of the Scheduled areas therein (Art. 275).
- (2) **Discretionary Grants:** Center provides certain grants to the states on the recommendations of the Planning Commission which are at the discretion of the Union Government. These are given to help the state financially to fulfill plan targets (Art. 282).

● **Effects of Emergency on Center-State Financial Relations:-**

- (1) **During National Emergency:** The President by order can direct that all provisions regarding division of taxes between Union and States and Grants-in-aids remain suspended. However, such suspension shall not go beyond the expiration of the financial year in which the proclamation ceases to operate.
- (2) **During Financial Emergency:** Union can give directions to the States:-
 - (a) To observe such canons of financial propriety as specified in the direction.
 - (b) To reduce the salaries and allowances of all people serving in connection with the affairs of the State, including High Courts judges.
 - (c) To reserve for the consideration of the President all Money and Financial Bills, after they are passed by the Legislature of the State.



Union and State Legislature

28. Committees on Centre-state Relation

The Constitution provides a federal system of government in the country even though it describes India as 'a Union of States'. The term implies that firstly, the Indian federation is not the result of an agreement between independent units, and secondly, the units of Indian federation cannot leave the federation. The Indian Constitution contains federal and non-federal features.

Since independence and mainly after the development of state parties the many issues have arisen. Thus to handle the issues with cooperation and coordination many committees have been formed.

Two important committees have been discussed below:

SARKARIA COMMISSION (1983)

A three member Commission on Centre-state relations under the chairmanship of R. S. Sarkaria to review examine and review the working of existing arrangements between the Centre and states in all spheres and recommend appropriate changes and measures. It emphasized on the need for changes in the function or operational aspects and did not favour structural changes.

It stated strong Centre is essential to safeguard the national unity and integrity which is being threatened by the fissiparous tendencies in the body politic. However, it did not equate strong Centre with centralisation of powers. It observed that over-centralisation leads to blood pressure at the centre and anemia at the periphery.

The important recommendations are mentioned below:

- 1. Appointment of Governor:** The procedure of consulting the chief minister in the appointment of the state governor should be prescribed in the Constitution itself. The governor's term of five years in a state should not be disturbed except for some extremely compelling reasons.
- 2. President Rule:** Article 356 (President's Rule) should be used very sparingly, in extreme Cases as a last resort, when all the available alternatives fail.
- 3. Inter State Council:** A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263.
- 4. All India Services:** The institution of All-India Services should be further strengthened-and some more such services should be created.

5. Bill Assent: When the president withholds his assent to the state bills, the reasons should be communicated to the state government.

6. Zonal Council: The zonal councils should be constituted afresh and reactivated to promote the spirit of federalism.

7. Armed Forces Deployment: The Centre should have powers to deploy its armed forces, even without the consent of states. However, it is desirable that the states should be consulted.

8. Legislative matters: The Centre should consult the states before making a law on a subject of the Concurrent List.

9. Financial:

- The net proceeds of the corporation tax may be made permissibly shareable with the states.
- The surcharge on income tax should not be levied by the Centre except for a specific purpose and for a strictly limited period.

10. Language:

- Steps should be taken to uniformly implement the three language formula in its true spirit.
- The commissioner for linguistic minorities should be activated.

PUNCHHI COMMISSION (2007)

The Second commission on Centre-State Relations was set-up by the Government of India in April 2007 under the Chairmanship of Mada Mohan Punchhi, former Chief Justice of India.

The important recommendations are mentioned below:

1. Appointment of Governor: While selecting Governors, the Central Government should adopt the following strict guidelines as recommended in the Sarkaria Commission report and follow its mandate in letter and spirit:

- He should be eminent in some walk of life.
- He should be a person from outside the state.
- He should be a detached figure and not too intimately connected with the local politics of the states.
- He should be a person who has not taken, too great a part in politics generally and particularly in the recent past.

Governors should be given a fixed tenure of five years and their removal should not be at the sweet will of the Government at the Centre.

The Procedure laid down for impeachment of President, mutatis mutandis can be made applicable for impeachment of Governors as well.

2. Role of Governor:

- The convention of Governors acting as Chancel-

lors of Universities and holding other statutory positions should be done away with. His role should be confined to the Constitutional provisions only.

- (b) On the question of dismissal of a Chief Minister, the Governor should invariably insist on the Chief Minister proving his majority on the floor of the House for which he should prescribe a time limit.
 - (c) The Governor should have the right to sanction for prosecution of a state minister against the advice of the Council of Ministers, if the motivated by bias in the face of overwhelming material.
 - (d) Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area, his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.
- 3. In case of Hung Assembly:** On the question of Governor's role in appointment of Chief Minister in the case of a hung assembly, it is necessary to lay down certain clear guidelines to be followed as Constitutional conventions. These guidelines may be as follows:
- (i) The party or combination of Parties which command the widest support in the Legislative Assembly should be called upon to form the Government.
 - (ii) If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.
 - (iii) In case no party or pre-poll coalition has a clear majority, the Governor should select the Chief Minister in the order of preference indicated here.
 - (a) The group of parties which had Prepoll alliance commanding the largest number
 - (b) The largest single party staking a claim to form the government with the support of others
 - (c) A post-electoral coalition with all partners joining the government
 - (d) A post-electoral alliance with some parties joining the government and the remaining including independents supporting the government from outside
- 4. Legislative:**
- (a) To facilitate effective implementation of the laws on List III subjects, it is necessary that some broad agreement is reached between the Union and states before introducing legislation in Parliament on matters in

the Concurrent List.

- (b) The Union should occupy only that many of subjects in concurrent-or overlapping jurisdiction which are absolutely necessary to achieve uniformity of policy in national interest.
- (c) The period of six months prescribed in Article 201 for State Legislature to act when the bill is returned by the President can be made applicable for the president also to decide on assenting or withholding assent to a state bill reserved for consideration of the President.
- (d) Parliament should make a law on the subject of Entry 14 of List I (treaty making and implementing it through Parliamentary legislation) to streamline the procedures involved. The exercise of the power obviously cannot be absolute or unchartered in view of the federal structure of legislative and executive powers.
- (e) In respect of bills passed by the Legislative Assembly of a state, the Governor should take the decision within six months whether to grant assent or to reserve it for consideration of the President.

5. Failure of the Constitutional machinery:

- (a) When an external aggression or internal disturbance paralyses the state administration creating a situation of a potential break down of the Constitutional machinery of the state, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation and the exercise of the power under Article 356 should be limited strictly to rectifying, a "failure of the Constitutional machinery in the state".
- (b) On the question of invoking Article 356 in case of failure of Constitutional machinery in states, suitable amendments are required to incorporate the guidelines set forth in the land-mark judgement of the Supreme Court in S.R. Bommai V Union of India (1994). This would remove possible misgivings in this regard on the part of states and help in smoothing Centre-state relations.

6. Emergency Provisions: Given the strict parameters now set for invoking the emergency provisions under Articles 352 and 356 to be used only as a measure of "last resort", and the duty of the Union to protect states under Article 355, it is necessary to provide a Constitutional or legal framework to deal with situations which require Central intervention but do not warrant invoking the extreme steps under Articles 352 and 356. Providing the framework for 'localised emergency' would ensure that the state government can continue to function and the Assem-

bly would not have to be dissolved while providing a mechanism to let the Central Government , respond to the issue specifically and locally. The imposition of local emergency is fully justified under the mandate of Article 355 read with Entry 2A of List I and Entry I of List II of the Seventh Schedule.

7. Inter State Council:

- (a) Suitable amendments to Article 263 are required to make the Inter-State -Council a credible, powerful and fair mechanism for management of inter-state and Centre-state differences.
- (b) There should be a continuing auditing role for the inter-state Council in the management of matters in concurrent or overlapping jurisdiction.

8. Zonal Council: The Zonal Councils should meet at least twice a year with an agenda proposed by states concerned to maximise co-ordination and promote harmonisation of policies and action having inter-state ramification. The Secretariat of a strengthened Inter-State Council can function as the Secretariat of the Zonal Councils as well.

9. Fiscal matters:

- (a) The Empowered Committee of Finance Ministers of States proved to be a Successful experiment in inter state co-ordination on fiscal matters. There is need to institutionalise similar models in other sectors as well. A forum of Chief Ministers, Chaired by one of the Chief Minister by rotation can be similarly thought about particularly to co-ordinate policies of sectors like energy, food, education, environment and health.
- (b) All future Central legislations involving states involvement should provide for cost sharing as in the case of the RTE Act. Existing Central legislations where the states are entrusted with the responsibility of implementation should be suitably amended providing for sharing of costs by the Central Government.
- (c) To bring greater accountability, all fiscal legislations should provide for an annual assessment by an independent body and the reports of these bodies should be laid in both Houses of Parliament/state legislature.

10. All India Services: New all-India services in sectors like health, education, engineering and judiciary should be created.

11. Rajya Sabha: A balance of power between states inter se is desirable and this is possible by equality of representation in the Rajya Sabha. This requires amendment of the relevant provisions to give equality of seats to states in the Rajya Sabha, irrespective of their population size.

12. Local Bodies: The scope of devolution of powers to local bodies to act as institutions of self government should be constitutionally defined through appropriate amendments.

13. Royalty Issue: The royalty rates on major minerals should be revised at least every three years without any delay. States should be properly compensated for any delay in the revision of royalty beyond three years.

14. Tax Issues: The scope for raising more revenue from the taxes mentioned in article 268 should be examined afresh. This issue may be either referred to the next Finance Commission or an expert committee be appointed to look into the matter

15. Finance Commission: The Finance Commission division in the Ministry of Finance should be converted into a full-fledged department, serving as the permanent secretariat for the Finance Commissions.

16. Inter-State Trade and Commerce Commission: Steps should be taken for the setting up of an Inter-State Trade and Commerce Commission under Article 307 read with Entry 42 of List-1. This Commission should be vested with both advisory and executive roles with decision making powers.

Commission came to the conclusion that 'cooperative federalism' will be the key for sustaining India's unity, integrity and social and economic development in future. The principles, of cooperative federalism thus may have

to act as a practical guide for Indian polity and governance.

29. Union and State Legislature

PARLIAMENT

Key Highlights

- The institution of Parliament is central to a parliamentary form of government.
- Art 79 to 122 in Part V of the Constitution deal with the organization, composition, duration, officers, procedures, privileges, powers and so on of the Parliament.
- Art. 79 provides for a Parliament consisting of the President, Lok Sabha and Rajya Sabha.
- Government of India Act, 1919 - Since 1919, the central legislature has been a bi-cameral body consisting of lower House (LOK Sabha) and an upper House (Rajya Sabha)
- The RAJYA SABHA (RS) represents the states and union territories of the Indian Union, while the LOK SABHA (LS) represents the people of India as a whole.
- The President of India is not a member of either House of Parliament and does not sit in the Parliament to attend its meetings.
- He is an integral part of the Parliament. This is because a bill passed by both the Houses of Parliament cannot become law without the President's assent.
- The president summons and pro- rogues both the Houses, dissolves the Lok Sabha, addresses both the Houses, and issues ordinances when they are not in session etc.

Functions of Parliament

- (a) **Law making functions**
- (b) **Providing the Cabinet:** It is the Parliament which provides the cabinet. No person can continue to be a minister for more than six months unless he is member of either House of the Parliament.
- (c) **Control over the Cabinet:** It is one of the more important functions and duties of the Lok Sabha to ensure that the ministry remains in power only as long as it has the support of the majority in that house [Art.75(3)].
- (d) **Daily Answerability:** In the Parliamentary system of Government the ministers have to answer questions, reply to calling attention motions, move legislation and justify Government's actions in both Houses of Parliament.
- (e) **Financial Control:** An important function of Parliament is to exercise financial control over the government. Parliament also monitors spending of government money through its own committee called Parliamentary Accounts Committee (PAC).
- (f) **A Platform for discussion on National Issues:** Par-

liament provides the single largest platform for discussion of all important national and public issues and thereby it creates public opinion on these issues.

Qualifications and disqualifications for being a Member of Parliament

To be qualified to become a Member of Parliament a person must be:

- (a) A citizen of India;
- (b) Not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years in the case of the Lok Sabha
- (c) A voter for any parliamentary constituency in India, but in the case of the Rajya Sabha a candidate must be registered as an elector in the State or Union Territory from where he is to be chosen.

There are, however, certain disqualifications for becoming a member. A person would be ineligible for being a member of either House of Parliament if the person:

- (a) Holds any office of profit under the government other than an office declared by Parliament by law not to disqualify its holder
- (b) Is of unsound mind;
- (c) Has ceased to be a citizen of India;
- (d) Is so disqualified by any law made by Parliament;
- (e) Is so disqualified on the ground of defection.
- (f) If a person has been convicted, among other things, for promoting enmity between different groups or convicted for the offence of bribery or has been punished for preaching and practicing social crimes such as untouchability, dowry, or sati, then he is disqualified from being chosen as a member.
- (g) There are also disqualifications for a government servant dismissed for corruption.

RAJYA SABHA

Composition

- (a) The Rajya Sabha is the permanent upper House and not subject to dissolution.
- (b) It is composed of not more than 250 members.
- (c) Out of these 238 are to be the representatives of the State and the Union Territories and 12 are to be nominated by the President.
- (d) Persons to be so nominated are required to have special knowledge or practical experience in respect of literature, science, art or social service.
- (e) The object of this nomination is to provide distinguished persons a place in the Rajya Sabha without going through the process of election.

Election - The representatives of the States are elected indirectly by the elected members of State Legislative Assemblies in accordance with the system of proportional representation by means of a single trans-

ferable vote.

LOK SABHA

Composition

- (a) The maximum strength of Lok Sabha is 552 of which 530 are elected from the states, 20 from union territories and 2 are nominated from the Anglo-Indian community
- (b) The Constitution prescribes the numbers of seats in the Lok Sabha to be divided between the States and the Union territories.
- (c) The allocation of seats in the Lok Sabha to a particular state and division of each state into territorial constituency is done on the recommendation of the Delimitation Commission (Art. 82), which is appointed after the completion of each census.
- (d) By 42nd Amendment Act, 1976 the allocation and division had been frozen till the year 2000.
- (e) By 87th Amendment Act, 2003 it has been laid down that the allocation of seats to a State shall remain frozen till 2026.
- (f) The division of the State into territorial constituencies shall be done on the basis of the census figures of 2001 census



30. The State Legislature

Articles 168 to 212 in Part VI of the Constitution deal with the State Legislatures'

Organization of State Legislature

- (a) The state legislature consists of the Governor and one or two houses.
- (b) The Constitution under Article 168 provides that in some States there shall be two houses known as **Legislative Council (Upper House) and Legislative Assembly (Lower House)**.
- (c) There is no uniformity in the organization of state legislatures.
- (d) Most of the states have a unicameral system, while others have a bicameral system.
- (e) At present, only seven states have two Houses (bicameral). These are Andhra Pradesh, Uttar Pradesh, Bihar, Maharashtra, Karnataka, Jammu and Kashmir and Telangana. The twenty-four states have unicameral system. Here, the state legislature consists of the governor and the legislative assembly.
- (f) In the states having bicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly. The legislative council (Vidhan Parishad) is the upper house (second chamber or house of elders), while the legislative assembly (Vidhan Sabha) is the lower house (first chamber or popular house).

LEGISLATIVE ASSEMBLY

Composition (Art.170)

- (a) The Legislative Assembly consists of not more than 500 and not less than 60 members chosen by direct election from territorial constituencies in the state on the basis of universal adult franchise.
- (b) Maximum strength is fixed at 500 and minimum strength at 60, in case of Arunachal Pradesh, Sikkim and Goa, the minimum number is fixed at 30 and in case of Mizoram and Nagaland, it is 40 and 46 respectively, some members of the legislative assemblies in Sikkim and Nagaland are also elected indirectly.
- (c) For the purpose of election, each state shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it, as far as practicable, be the same throughout the State.
- (d) At the end of each decennial Census, the constituencies will be recasted to make the necessary adjustments to meet the variation in population.
- (e) There is, however, a provision for safeguarding the interests of Scheduled Castes, Scheduled Tribes and Anglo Indian community. Therefore, some constitu-

encies are reserved for Scheduled Caste and Scheduled Tribe.

Nominated Member

- (a) Constitution also empowers the Governor that when he feels that the Anglo-Indian community has not been given proper representation, he can nominate a fixed number of members belonging to that community to the State Assembly.
- (b) Governor nominate one member from the Anglo-Indian community,

Qualifications

- (a) He is a citizen of India;
- (b) He must be 25 years old;
- (c) He possesses such other qualification as may be prescribed in that behalf by or under any law made by Parliament;

Duration

- (a) Every Legislative Assembly has a five years term from the date appointed for its first meeting unless dissolved earlier.
- (b) The Assembly stands automatically dissolved after five years.
- (c) The period of five years, may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time, and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

Powers and Functions

- (a) It can make laws on any subject provided in the State List. It can also make a law on a subject of the Concurrent List in case; it is not in conflict with a law already made by the Parliament.
- (b) It has control over the State Council of Ministers - Its members may ask questions to the minister, introduce resolutions or motions, and may pass a vote of censure to dismiss the government. The Ministry is collectively responsible to the Assembly. It controls the finances of the state.
- (c) It has constituent powers. According to Article 368, a bill of constitutional amendment first passed by the Parliament shall be referred to the states for ratification. It is here that the Assembly has its role to play.
- (d) It is also provided that the President shall refer to the Assembly of the concerned state a bill desiring alteration in its territory for eliciting its views in this regard before he recommends that such a bill be introduced in the Parliament.
- (e) The Assembly also elects its own Speaker and Deputy Speaker and may remove them by a vote of no confidence.

- (f) It takes part in the election of the President of India.
- (g) It considers reports submitted by various independent agencies like the State Public Service Commission, Auditor-General, and others.

Parliament's Control over State Legislature

There are many restrictions on the powers of the state legislature, which make them subservient to the will of the Parliament. The restriction on the powers of the state legislatures are as follows:-

- (a) State legislatures can neither legislate on an item of the Union List nor a residuary subject.
- (b) Though it can enact laws on a subject mentioned in the Concurrent List, it is Central law, which shall prevail and to the extent to which the state law is violative of Central law it will be constitutional
- (c) Article 249 provides that Rajya Sabha may pass a special resolution by two thirds majority of members, present and voting, to transfer any item from the State List to the Union or Concurrent Lists for the period of one year on the plea that it is expedient in the national interest.
- (d) There are some categories that require that a bill passed by the state legislature shall be reserved by the Governor for the consideration of the President
- (e) The state legislatures cannot override the veto of the President.
- (f) There are some kinds of bills that cannot be introduced in the state legislatures without the prior permission of the President. Bills seeking to impose restrictions on trade, commerce or intercourse with other States or within the State fall within this category.
- (g) The President is empowered to declare a state of emergency in the country without consulting the states. But once such an emergency has been declared, the Parliament is empowered to legislate on the subject mentioned in the State List.

LEGISLATIVE COUNCIL

Abolition or creation of Legislative Councils (Art.169)

- (a) Article 169 states that Parliament may by law provide for the abolition of the Legislative Council or for the creation of such a Council in a State, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.
- (b) However, no such law shall be deemed to be an amendment of this Constitution for the purpose of article 368.

Composition (Art. 171)

- (a) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that state.
- (b) The total number of members in the Legislative Council shall in no case be less than 40, unless Parliament by law otherwise provides.

Qualifications

- (a) He should be a citizen of India
- (b) He must have completed the age of 30 years
- (c) Possess such other qualifications as may be prescribed by the Parliament from time to time
- (d) Person holding office of profit under the Union or the State Government and persons convicted by the Court of election malpractices or other crimes are also not eligible for membership of the Legislative Council.

Elections

Of the total number of members of the Legislative Council of a State

- (a) As nearly as, 1/3 shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify.
- (b) As nearly as, 1/12 shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any University in the territory of India or have been for at least three years in possession of qualifications as equivalent to that of a graduate of such University,
- (c) As nearly as, 1/12 shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the state not lower in standard than that of Secondary School.
- (d) As nearly as, 1/3 shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not member of the Assembly;
- (e) The remainder shall be nominated by the Governor from among persons having special knowledge or practical experience in respect of matters such as literature, science, art, co-operative movement and social service.

Terms of Office

- (a) No person can be a member of both Houses of the State Legislature at the same time.
- (b) The Legislative Council is a permanent body, not subject to dissolution. One-third of its members retire every two years, after completing the term of six years. The quorum of the Council is one tenth of the total strength or 10 members, whichever is greater.

Powers and Functions

- (a) As regards with its powers, the Legislative Council plays a more advisory role.
- (b) Over legislative matters it has only a suspense veto for a maximum period of 4 months.
- (c) Over financial matters, its powers are not absolute.
- (d) A Money Bill originates only in the Assembly and the Council may detain it only for a period of 14 days.
- (e) As similar to the case of the Parliament at the Centre, there is no provision for a joint sitting of both the Houses of the States Legislature to resolve a deadlock between them, over legislative matters, if any.
- (f) Thus, the Legislative Council is only a subordinate component of the Legislature.

Duration of Two Houses

(a) Duration of Assembly

- (i) Normal term is five years
- (ii) The governor is authorized to dissolve the assembly at any time (i.e., even before the completion of five years) to pave the way for fresh elections.
- (iii) The term of the assembly can be extended during the period of national emergency by a law of Parliament for one year at a time (for any length of time) cannot continue beyond a period of six months after the emergency has ceased to operate

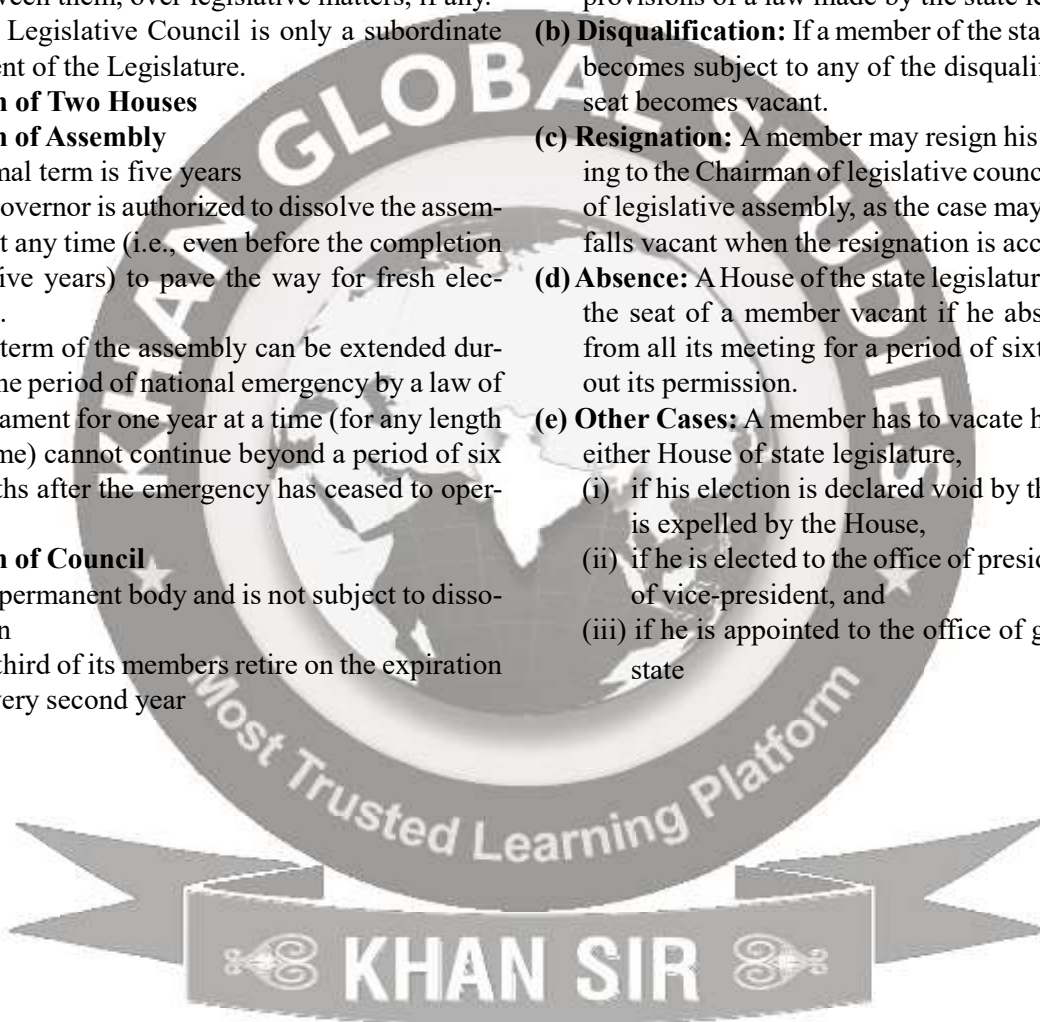
(b) Duration of Council

- (i) It is a permanent body and is not subject to dissolution
- (ii) One-third of its members retire on the expiration of every second year

- (iii) A member continues as such for six year
- (iv) Vacant seats are filled up by fresh elections and nominations (by governor) at the beginning of every third year
- (v) Retiring members are also eligible for re-election and re-nomination any number of times

Vacation of Seats

- (a) **Double Membership:** A person cannot be a member of both Houses of state legislature at one and the same time. If a person is elected to both the Houses, his seat in one of the Houses falls vacant as per the provisions of a law made by the state legislature.
- (b) **Disqualification:** If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.
- (c) **Resignation:** A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls vacant when the resignation is accepted.
- (d) **Absence:** A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meeting for a period of sixty days without its permission.
- (e) **Other Cases:** A member has to vacate his seat in the either House of state legislature,
 - (i) if his election is declared void by the court if he is expelled by the House,
 - (ii) if he is elected to the office of president or office of vice-president, and
 - (iii) if he is appointed to the office of governor of a state



31. Parliamentary Functioning

SESSION OF PARLIAMENT, SUMMONING PROROGATION AND DISSOLUTION

- (a) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its sitting in the next session.
- (b) The President may from time to time -
 - (i) Prorogue the Houses or either House
 - (ii) Dissolve the House of the People.

Sessions of the Parliament

- (a) A session of Indian Parliament is the time period during which a House meets almost every day continuously to transact business.
 - (b) There are usually three sessions in a year.
 - a. the Budget Session (February to May)
 - b. the Monsoon Session (July to September) and
 - c. the Winter Session (November to December).
 - (c) A session contains many meetings. Each meeting has two sittings - morning sitting from 11 am to 1 pm and post-lunch sitting from 2 pm to 6 pm.
 - (d) A sitting of Parliament can be terminated by adjournment, adjournment sine die, prorogation or dissolution.
 - (e) The period between the prorogation of a House and its reassembly in a new session is called „recess“.
- Summoning**
- (a) Summoning is the process of calling all members of the Parliament to meet.
 - (b) It is the duty of Indian President to summon each House of the Parliament from time to time.
 - (c) The maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice a year.

Adjournment

- (a) An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks.
- (b) In this case, the time of reassembly is specified.
- (c) An adjournment only terminates a sitting and not a session of the House.
- (d) The power of adjournment lies with the presiding officer of the House

Adjournment Sine Die

- (a) Adjournment sine die means terminating a sitting of Parliament for an indefinite period.
- (b) In other words, when the House is adjourned without naming a day for reassembly, it is called adjournment sine die.
- (c) The power of adjournment sine die lies with the presiding officer of the House.

Note: The presiding officer of a House can call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned sine die.

Prorogation

- (a) Prorogation means the termination of a session of the House by an order made by the President under article 85(2)(a) of the Constitution.
- (b) Prorogation terminates both the sitting and session of the house.
- (c) Usually, within a few days after the House is adjourned sine die by the presiding officer, the President issues a notification for the prorogation of the session.
- (d) However, the President can also prorogue the House while in session.

Dissolution

- (a) Dissolution ends the very life of the existing House, and a new House is constituted after general elections are held.
- (b) Rajya Sabha, being a permanent House, is not subject to dissolution. Only the Lok Sabha is subject to dissolution.
- (c) The dissolution of the Lok Sabha may take place in either of two ways:
 - a. Automatic dissolution: On the expiry of its tenure - five years or the terms as extended during a national emergency.
 - b. Order of President: If President is authorized by CoM, he can dissolve Lok Sabha, even before the end of the term. He may also dissolve Lok Sabha if CoM loses confidence and no party is able to form the government. Once the Lok Sabha is dissolved before the completion of its normal tenure, the dissolution is irrevocable.
- (d) When the Lok Sabha is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committees lapse.

OTHER TERMS RELATED TO THE PARLIAMENTARY FUNCTIONING

Quorum

- It is the minimum number of members whose presence is essential to transact the business of the House. Article 100 provides the quorum of either House shall be one tenth of the total number of members of the House.

Question Hour

The day's business normally begins with the Question Hour during which question asked by the members are answered by the Minister. The different types of questions are-

- (a) **Starred Question:** It is one for which an oral answer is required to be given by the Minister on the floor

of the House. Supplementary question may be asked based on the Minister's reply. The Speaker decides if a question should be answered orally or otherwise. One member can ask only one starred question in a day.

(b) Unstarred Question: It is one for which the Minister lays on the table a written answer. A ten day notice has to be given to ask such question and no supplementary questions can be asked with regard to such questions.

(c) Short Notice Question: This type of question which can be asked by members on matters of public importance of an urgent nature. It is for the speaker to decide whether the matter is of urgent nature or not. The member has also to state reasons for asking the question while serving notice.

Zero Hour

- This period follows the „Question Hour" and it normally begins at noon. Usually, the members use this period to raise various issues for discussion.

Cut Motions

- A motion that seeks reduction in the amount of a demand presented by the govt. is known as a cut Motion.
- Such motions are admitted at the speakers" discretion. It is a device through which members can draw the attention of the government to a specific grievance or problem.
- There are three types Of cut motions -
 - (i) Disapproval of policy cut** - which is to express disapproval of the policy underlying a particular demand, says that „the amount of the demand be reduced to Re. 1".
 - (ii) Economy cut** - Economy Cut refers to a cut motion which seeks to reduce the demand by a specific sum with a view to effecting the economy in the expenditure.
 - (iii) Token cut** - is a device to ventilate specific grievances within the sphere of the government"s responsibility. The grievance has to be specified. Usually, the motion is in the form, “The amount of the demand is reduced by Rs. 100”.

Calling Attention Motion

- With prior permission of the speaker; a member may call the attention of a Minister to any matter of urgent public importance. The Minister may make a brief statement regarding the matter or ask for time to make a statement.

Privilege Motion

- It is motion moved by a member if he feels that a minister has committed a breach of privilege of the House or of any one or more of its members by with-

holding facts of a case or by giving a distorted version of acts.

Points of Order

- A member may raise a point of order if the proceedings of the House do not follow the rules. The presiding officer decides whether the points of order raised by the member should be allowed

Vote on account

- As there is usually gap between the presentation of the budget and its approval, the vote on account enables the govt. to draw some amount from the consolidated fund of India to meet the expenses in the intervening period.

Guillotine

- On the last of the allotted days at the appointed time, the speaker puts every question necessary to dispose all the outstanding matters in connection with the demands for grants. This is known as guillotine. The guillotine concludes the discussion and demands for grants.

Censure Motion

- It differs from a no-confidence motion in that the latter does not specify any ground on which it is based, while the former has to mention the charges against the govt. for which it is being moved.
- A censure motion can be moved against the Council of Minister or an individual minister for failing to act or for some policy. Reason for the censure must be precisely enumerated. The speaker decides whether or not the motion is in order and no leave of the House is required for moving it.
- The Govt. may at its discretion fix a date for the discussion of the motion. If the motion is passed in the Lok Sabha the Council of Minister is expected to resign.

PARLIAMENTARY PRIVILEGES AND IMMUNITIES

- Parliamentary privileges, i.e., exceptional right or advantages are granted to the members of legislatures all over the world. Thus, in most of the democratic countries, the legislatures and their members enjoy certain privileges so as to function effectively.
- Privilege though part of the law of the land, is to a certain extent an exemption from the ordinary law.
- The privileges can be exercised by the House of the Parliament without help or hindrance from the judges.
- Parliamentary privileges can be classified into two broad categories:
 1. Those that are enjoyed by each House of Parliament collectively, and
 2. Those that are enjoyed by the members individually.

Collective Privileges - The privileges belonging to each House of Parliament collectively are:

- (i) has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same. The 44th Amendment Act of 1978 restored the freedom of the press to publish true reports of parliamentary proceedings without prior permission of the House. But this is not applicable in the case of a secret sitting of the House.
- (ii) It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
- (iii) It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
- (iv) It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
- (v) It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
- (vi) It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
- (vii) The courts are prohibited to inquire into the proceedings of a House or its committees.
- (viii) No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

Individual Privileges - The privileges belonging to the members individually are:

- (i) They cannot be arrested during the session of Parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
- (ii) They have freedom of speech in Parliament. No member is liable to any proceedings in any court for anything said or any vote given by him in Parliament or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament.
- (iii) They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when Parliament is in session.

Constitutional provisions relating to Parliamentary Privileges

These privileges are available to all the legislatures -

- (a) The main articles of the Constitution of India dealing with the privileges of Parliament are 105 and 122 and the corresponding articles for the states are 194 and 212.

(b) Article 105 (1) of the Constitution of India provides that, subject to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament, there would be freedom of speech in the Parliament.

(c) Article 105(2) provides that no member of Parliament would be liable to any proceedings against him in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and that no person would be liable in respect of the publication of any report, paper votes or proceedings by or under the authority of either House of Parliament.

(d) Article 105(3) ordains that in other respects the powers, privileges and immunities of each House of Parliament, and of the members and committees thereof, would be such as may from time to time be defined by Parliament by law

(e) According to clause of this article, the provisions of clauses 1, and 3 would apply to persons who by virtue of the Constitution have the right to speak in or take part in the proceedings of a House of Parliament or a committee thereof, as they apply to the members of Parliament.

OFFICERS OF THE PARLIAMENT

Each House of Parliament has its own officers to preside over its meetings

Speaker

- (a) The House of the people is presided over by the Speaker who is elected by the House from among its own members.
- (b) He has to discharge his responsibilities as a presiding officer. He brings the detachment and objectivity to bear upon all his decision
- (c) He presides over the meetings of the House. He adjourns the House or suspends its meeting if there is no quorum.

(d) Article 94 (c) provides for the removal of the Speaker by a resolution of the House passed by a majority of all the then members of the House. Removal of officers from their position in this manner, namely, by such special resolutions and by such special majorities is restricted to only a few officers such as the President, the Vice-President, the Presiding Officers of both House of Parliament, Judges of the Supreme Court, etc, as these officers are expected to discharge their responsibilities without political and party considerations.

Deputy Speaker

- (a) The Deputy Speaker who presides over the House in the absence of the Speaker is elected in the same manner in which the Speaker is elected by the House.
- (b) He can be removed from office also in the same manner.

- (c) When he sits in the seat of the Speaker, he has all the powers of the Speaker and can perform all his functions. One of his special privileges is that when he is appointed as a member of a Parliamentary Committee, he automatically becomes its Chairman.
- (d) By virtue of the office that he holds, he has a right to be present at any meeting of any Committee if he so chooses and can preside over its deliberations. His rulings are generally final in any case, so far as they are related to the matter under discussion, but the Speaker may give guidance in the interest of uniformity in practice. Whenever the Deputy Speaker is in doubt, he reserves the matter for the ruling of the Speaker.
- (e) The Deputy Speaker, however, is otherwise like any ordinary member when the Speaker presides over the House. He may speak like any other member, maintain his party affiliation and vote on propositions before the House as any ordinary member.
- (f) The Deputy Speaker is entitled to a regular salary.
- Chairman and Deputy Chairman of the Council of States**
- (a) While presiding officers of the Lok Sabha are called the Speaker and the Deputy Speaker, their opposite officers in the Council of States are called the Chairman and the Deputy Chairman respectively.
- (b) The Vice-President of India is the ex-officio Chairman of the Council of States. As the presiding officer of the Rajya Sabha, his functions and powers are the same as those of the Speaker. He is however not a member of the House.
- (c) Duties
- In the absence of the Chairman, the Council is presided over by the Deputy Chairman. He is a member of the House and is elected by the members of the House. When he ceases to be a member of the Council, he automatically vacates the office of the Deputy Chairman. He can resign his office by writing to the Chairman.
 - The Deputy Chairman is empowered to discharge all the functions and to perform all duties of the office of the Chairman, whenever Chairman's office is vacant or when the Vice-President is acting as the President.
 - As a presiding officer of the Council he is also given a regular salary and other allowances that Parliament by law has fixed. The Council of States also has a panel of members, called Vice Chairman, nominated by the Chairman for the purpose of presiding over the House in the absence of both the Chairman and the Deputy Chairman.
- (d) Removal - He may be removed from his office by a resolution passed by a majority of all the member of the Council.
- PRESIDING OFFICERS OF STATE LEGISLATURE**
- Speaker and a Deputy Speaker for the legislative assembly
 - Chairman and a Deputy Chairman for the legislative council
- Speaker**
- Speaker is Elected by the assembly itself from amongst its members.
 - He vacates his office earlier in any of the following three cases
 - If he ceases to be a member of the assembly
 - If he resigns by writing to the deputy speaker and
 - If he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days advance notice
- (c) Powers and duties
- Maintains order and decorum in the assembly
 - Final interpreter of the provisions of (a) the Constitution of India, (b) the rules of procedure and conduct of business of assembly, and (c) the legislative precedents adjourns the assembly or suspends the meeting in the absence of a quorum
 - Does not vote in the first instance. But, he can exercise a casting vote in the case of a tie
 - Can allow a secret, sitting of the House at the request of the leader of the House decides whether a bill is a Money Bill or not and his decision on this question is final
 - Appoints the chairmen of all the committees of the assembly and supervises their functioning Himself
 - Chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee
- Deputy Speaker of Assembly**
- Also elected by the assembly itself from amongst its members, remaining part is same as like speaker.
- Chairman of Council**
- Elected by the council itself from amongst its members
 - Vacates-same like Speaker
 - Powers and duties is also like speaker
 - The Speaker has one special power which is not enjoyed by the Chairman.
 - The Speaker decides whether a bill is a Money Bill or not and his decision on this question is final which is

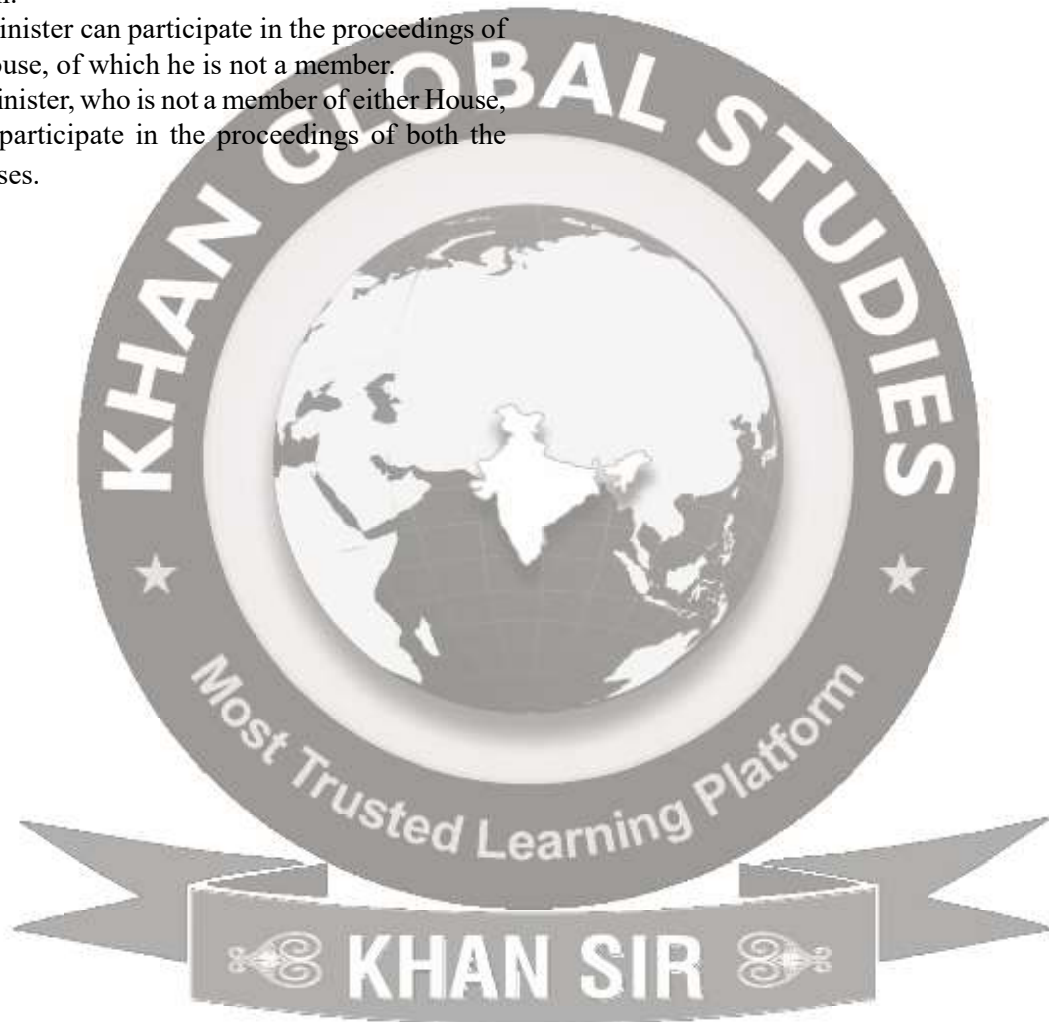
not done by the chairman of the council.

Deputy Chairman of Council

- (a) Also elected by the assembly itself from amongst its members, remaining part is same as like deputy speaker

Rights of Ministers and Advocate General

- (a) Every minister and the advocate general of the state have the right to speak and take part in the proceedings of either House or any of its committees of which he is named a member, without being entitled to vote.
- (b) There are two reasons underlying this constitutional provision:
1. A minister can participate in the proceedings of a House, of which he is not a member.
 2. A minister, who is not a member of either House, can participate in the proceedings of both the Houses.



32. Passage of Bill

The most important function of the Parliament is to enact laws. Legislative procedures are of four types depending on the type of a Bill

- A. Ordinary Bill
- B. Money Bill as defined in Art.110
- C. Financial Bill (Art.117)
- D. Constitution Amendment Bill

A. Ordinary Bill

(a) Introduction of Bill: A Bill that does not fall in category (b), (c) and (d) above is called ordinary Bill. Such a Bill may originate in either House of Parliament (Art.107). An ordinary Bill may be introduced either by a minister or by any other member. When a Bill is introduced by a member other than a minister then it is called private member's Bill. The prescribed period of notice is one month for a private member's Bill. For ministers notice is not required. If a Bill has been published in the official Gazette before introduction, no motion for leave to introduce is necessary. A Bill which has not been published prior to its introduction is published after introduction.

(b) Post introduction Motions: Any time after the Bill has been introduced the member in charge of the Bill may make one of the following motions in regard of his Bill namely

- (i) To be taken into consideration; or
- (ii) To be referred to a select committee; or
- (iii) To be referred to a joint committee of the Houses; or
- (iv) To be circulated for eliciting opinion.

(c) Discussion of principles: On the day on which any of the above motions is made or on any subsequent day to which the discussion is postponed the principles of the Bill and its provisions may be discussed. Generally at this stage no amendments to the Bill may be moved. This is called the first reading.

(d) Reference to a Committee: After the first reading is over the Bill is referred to a select committee or a joint select committee. When a motion for referring the Bill to a committee is carried the committee considers the Bill clause by clause and suggests omission, insertions and additions to the Bill. When the report of the committee is presented to the House, the bill is taken up for consideration of the House.

(e) Clause by Clause consideration: After the bill has been taken into consideration the House takes up clause-by-clause consideration of the bill. At this stage, amendment to clauses of the bill is admitted. This is called the second reading of the bill.

(f) Passing of the Bill: After the second reading the bill is ready for voting: This is called the third reading. When a Bill is passed by one House it is transmitted to the other House for concurrence. In the second House the Bill passes through all the stages except introduction. The second House may adopt any of the following courses

- (i) It may pass the Bill without amendment.
- (ii) It may pass the Bill with amendment
- (iii) If the originating House accepts the Bill as amended by the second House, it is presented to the President for assent.
- (iv) If the originating House does not concur in the amendment and the disagreement is final, the President may summon a joint sitting to resolve the deadlock (Art. 108).

(v) The Deadlock is a situation resulting from any of the following reasons:

1. If a House has passed the bill and the other House has rejected it.
2. If the originating House does not finally agree to the amendments suggested by the other House
3. If a House keeps the bill passed by another House pending and takes no action for a period of six months To resolve the deadlock the President has the power to summon a joint session of both Houses of Parliament under art. 108.
5. This session is presided over by the Speaker of Lok Sabha. Due to its numerical majority, the Lok Sabha has an upper hand during joint session.

(vi) Assent of the President - Once a bill has been duly passed by both the Houses, it is sent to the President for his assent. The President can give his assent, withhold his assent or return the bill to Parliament for reconsideration. If the bill is again passed by both Houses with or without amendments suggested by the President and is presented to the President again, he is obliged to give his assent (Art. 111). This is called the second passage of the same bill.

Ordinary Bills in State Legislature

Introduction:

- Can originate in either House of the state legislature (in case of a bicameral legislature)
- Can be introduced either by a minister or by any other member, passes through three stages in the originating House
 - First reading,
 - Second reading, and
 - Third reading
- After the bill is passed by the originating House, it is transmitted to the second House for consideration and passage.

- A bill is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments.
- In case of a unicameral legislature, a bill passed by the legislative assembly is sent directly to the governor for his assent

Bill in the Second House

- The ultimate power of passing an ordinary bill is vested in the assembly; the council can detain or delay the bill for a period of four months—three months in the first instance and one month in the second instance.
- When a bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead

Assent of the Governor

- After it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the governor for his assent
- Four alternatives
 - he may give his assent to the bill;
 - he may withhold his assent to the bill;
 - he may return the bill for reconsideration of the House or Houses
 - he may reserve the bill for the consideration of the President. If the governor gives his assent to the bill, the bill becomes an Act and is placed on the Statute Book.
- If the governor withholds his assent to the bill, the bill ends and does not become an Act.
- If the governor returns the bill for reconsideration and if the bill is passed by the House or both the Houses again, with or without amendments, and presented to the governor for his assent, the governor must give his assent to the bill. the governor enjoys only a suspensive veto

Assent of the President

- When a bill is reserved by the governor for the consideration of the President, the President may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature.
- When a bill is so returned, the House or Houses have to reconsider it within a period of six months The bill is presented again to the presidential assent after it is passed by the House or Houses with or without amendments. It is not mentioned in the Constitution whether it is obligatory on the part of the president to give his assent to such a bill or not.

B. Money Bill

- (a) Article 110 states that a Bill is deemed to be a money bill if it contains provisions dealing with all or any of the following matters:

- (i) The imposition, abolition, remission, alteration or regulation of any tax
- (ii) The regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India
- (iii) The custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund
- (iv) The appropriation of moneys out of the Consolidated Fund of India
- (v) The declaring of any expenditure to be expenditure charged on the consolidated Fund of India or the increasing of the amount of any such expenditure
- (vi) The receipt of money on account of the Consolidated Fund of India or the Public Account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State

(b) Procedure for Money Bill

(i) Introduction of Money Bill: A Money Bill may be introduced only in the Lok Sabha. A Money Bill can be introduced only on the prior recommendation of the President.

(ii) Procedure in Rajya Sabha: A Money Bill after being passed by the Lok Sabha is transmitted to the Rajya Sabha. The Rajya Sabha must return the Bill within a period of 14 days from the date of the receipt of the Bill. If the Bill is not returned within 14 days it is deemed to have been passed by both Houses.

(iii) Assent: A Money Bill passed in the manner stated above is presented to the President for his assent. The President may either give assent or withhold assent. If the President has already given his recommendations on a Money Bill, it is improbable that he will refuse to give his assent.

Money Bill in State Legislature

Introduction

- Money Bill cannot be introduced in the legislative council
- It can be introduced in the legislative assembly only and that too on the recommendation of the governor

Bill in the second House

- After a Money Bill is passed by the legislative assembly, it is transmitted to the legislative council for its consideration.
- The legislative council has restricted powers with regard to a Money Bill. It cannot reject or amend a Money Bill. It can only make recommendations and

must return the bill to the legislative assembly within 14 days.

- The legislative assembly can either accept or reject all or any of the recommendations of the legislative council
- If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both Houses at the expiry of the said period in the form originally passed by the legislative assembly.
- Thus, the legislative assembly has more powers than legislative council with regard to a money bill.
- At the most, the legislative council can detain or delay a money bill for a period of 14 days when a Money Bill is presented to the governor, he may either give his assent, withhold his assent or reserve the bill for presidential assent but cannot return the bill for reconsideration of the state legislature.

Assent of the Governor

- Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his prior permission, same as like assent of president

C. Financial Bill

- (a) Defined in Art. 117, a Financial Bill is a Bill which contains provisions of general legislation along with one or more matters mentioned in Art.110.
- (b) There are two types of Financial Bills:
 - (i) Bill which contains any of the provisions of a Money Bill mentioned in Art.110 plus some other matters.
 - (ii) A Bill which is like an ordinary bill but which also contains provisions involving expenditure from the Consolidated Fund of India is called a Financial Bill class II.
- (c) Special procedure of Financial Bills:
 - (i) A class I Financial Bill can be introduced only in a Lok Sabha on the prior recommendation of the President. To this extent it is also like an ordinary bill. Thus, class I Financial Bill involves the processes of both Money Bill and ordinary Bill.
 - (ii) A class II Financial Bill involving expenditure from the Consolidated Fund of India may be introduced in either House. It does not require President's prior recommendation for introduction. But it requires President's recommendation for consideration in both the Houses and shall not be passed without it.
 - (iii) Thus, Rajya Sabha has the same power in regard to a Financial Bill as it has in regard to an ordinary Bill. It can reject or amend such a Bill.
 - (iv) Financial Bills have to be passed by the Rajya Sabha and in case of final disagreement between

the two Houses a joint session has to be called. For Money Bills there is no joint sitting.

- (d) Assent to Financial Bills: Like an ordinary bill, the President has three options as regards his assent to a Financial Bill:

- (i) To declare his assent,
- (ii) To withhold his assent, and
- (iii) To refer back for reconsideration.

(Note: A Money Bill can only be assented to or vetoed. It cannot be sent back for reconsideration.)

- (e) Effect of absence of prior recommendation: Article 255 of the Constitution provides that if a bill requiring prior recommendation of the President is passed by Parliament and it receives assent of the President subsequently it will be considered valid. This is a cure and saves such legislation from invalidity.

D. Constitution Amendment Bill

- (a) **Introduction:** A Bill to amend the Constitution may be introduced in either House of Parliament. Prior recommendation of the President is not required.

- (b) **Passing:** Constitution Bills are to be passed by each House separately with special majority at every stage, i.e., all the three readings. There is no provision for a joint session of the two Houses of Parliament in case of a deadlock over an Amendment Bill.

- (c) **Assent:** After the 24th Amendment Act, 1971, the President has no option but to give assent to a Constitution Amendment Bill

- (d) **Lapsing of Bills:** Article 107 enumerates the following conditions under which a Bill may lapse. In case of lapse, it has to be introduced again and all steps are required to be taken again.

- (a) A Bill pending by the Lok Sabha and pending in the Rajya Sabha lapse on its dissolution. The Bill may have originated in the Lok Sabha or may have been transmitted to it by the Rajya Sabha.

- (b) A Bill passed by the Lok Sabha and pending in the Rajya Sabha lapses on the dissolution of the Lok Sabha.

- (c) A Bill originating in the Rajya Sabha which has not been passed by the Lok Sabha and which is still pending in the Rajya Sabha does not lapse.

- (d) A Bill, which has been passed by both the Houses and has been presented to the President for assent does not lapse.

- (e) A Bill returned by the President for reconsideration does not lapse.

- (f) A Bill in regard to which the President has notified his intention to summon the Houses to a joint sitting does not lapse by dissolution of the Lok Sabha.

- (g) All motions, resolutions, amendments etc. pending in the Lok Sabha lapse on its dissolution.

33. Budget in Parliament

The term „Budget" has nowhere been used in the Constitution. It is the popular name for the 'Annual Financial Statement' that has been dealt with in Article 112 of the Constitution.

The budget is a statement of the estimated receipts and expenditure of the Government of India in a financial year, which begins on 1 April and ends on 31 March of the following year.

CONSTITUTIONAL PROVISIONS

The Constitution of India contains the following provisions with regard to the enactment of budget:

- (a) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of estimated receipts and expenditure of the Government of India for that year.
- (b) No demand for a grant shall be made except on the recommendation of the President.
- (c) No money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law.
- (d) No money bill imposing tax shall be introduced in the Parliament except on the recommendation of the President, and such a bill shall not be introduced in the Rajya Sabha.
- (e) No tax shall be levied or collected except by authority of law.
- (f) Parliament can reduce or abolish a tax but cannot increase it.
- (g) The Constitution has also defined the relative roles or position of both the Houses of Parliament with regard to the enactment of the budget in the following way:
 - (i) A money bill or finance bill dealing with taxation cannot be introduced in the Rajya Sabha- it must be introduced only in the Lok Sabha.
 - (ii) The Rajya Sabha has no power to vote on the demand for grants; it is the exclusive privilege of the Lok Sabha.
 - (iii) The Rajya Sabha should return the Money bill (or Finance bill) to the Lok Sabha within fourteen days. The Lok Sabha can either accept or reject the recommendations made by Rajya Sabha in this regard.
 - (h) The estimates of expenditure embodied in the budget shall show separately the expenditure charged on the Consolidated Fund of India and the expenditure made from the Consolidated Fund of India.
 - (i) The budget shall distinguish expenditure on revenue account from other expenditure.

1. Charged Expenditure

The budget consists of two types of expenditure- the expenditure 'charged' upon the Consolidated Fund of India and the expenditure 'made' from the Consolidated Fund of India

The charged expenditure is non-votable by the Parliament, that is, it can only be discussed by the Parliament, while the other type has to be voted by the Parliament.

The list of the charged expenditure is as follows:

- (a) Emoluments and allowances of the President and other expenditure relating to his office.
- (b) Salaries and allowances of the Chairman and the Deputy Chairman of the Rajya Sabha and the Speaker and the Deputy Speaker of the Lok Sabha.
- (c) Salaries, allowances and pensions of the Judges of the Supreme Court.
- (d) Pensions of the Judges of High Courts.
- (e) Salary, allowances and pension of the Comptroller and Auditor General of India.
- (f) Salaries, allowances and pension of the Chairman and members of the Union Public Service Commission.
- (g) Administrative expenses of the Supreme Court, the office of the Comptroller and Auditor General of India and the Union Public Service Commission including the salaries, allowances and pensions of the persons serving in these offices.
- (h) The debt charges for which the Government of India is liable, including interest, sinking fund charges and redemption charges and other expenditure relating to the raising of loans and the service and redemption of debt.
- (i) Any sum required to satisfy any judgment, decree or award of any court or arbitral tribunal.
- (j) Any other expenditure declared by the Parliament to be so charged.

2. Stages in Enactment of Budget

The budget goes through the following six stages in the Parliament:

- (a) **Presentation of Budget:** The budget is presented in two parts- Railway Budget and General Budget. Both are governed by the same procedure. The introduction of Railway Budget precedes that of the General Budget. While the former is presented to the Lok Sabha by the railway minister in the last week of February, the latter is presented to the Lok Sabha by the finance minister on the last working day of February. The Finance Minister presents the General Budget with a speech known as the „budget speech". At the end of the speech in the Lok Sabha, the budget is laid before the Rajya Sabha, which can only discuss it and has no power to vote on the demands for grants.

(b) General Discussion: The general discussion on budget begins a few days after its presentation. It takes place in both the Houses of Parliament and lasts usually for three to four days. During this stage, the Lok Sabha can discuss the budget as a whole or on any question of principle involved therein but no cut motion can be moved nor can the budget be submitted to the vote of the House. The finance minister has a general right of reply at the end of the discussion.

(c) Scrutiny by Departmental Committees: After the general discussion on the budget is over, the Houses are adjourned for about three to four weeks. During this gap period, the 24 departmental standing committees of Parliament examine and discuss in detail the demands for grants of the concerned ministers and prepare reports on them. These reports are submitted to both the Houses of Parliament for consideration.

(d) Voting on Demands for Grants: In the light of the reports of the departmental standing committees, the Lok Sabha takes up voting on demands for grants. The demands are presented ministry wise. A demand becomes a grant after it has been duly voted. Two points should be noted in this context. One, the voting of demands for grants is the exclusive privilege of the Lok Sabha, that is, the Rajya Sabha has no power of voting the demands. Second, the voting is confined to the votable part of the budget-the expenditure charged on the Consolidated Fund of India is not submitted to the vote (it can only be discussed). They can also move motions to reduce any demand for grant. Such motions are called as „cut motion“.

(e) Passing of Appropriation Bill: The Constitution states that „no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law“. Accordingly, an appropriation bill is introduced to provide for the appropriation, out of the Consolidated Fund of India, all money required to meet:

- (i) The grants voted by the Lok Sabha.
- (ii) The expenditure charged on the Consolidated Fund of India.
- (iii) No such amendment can be proposed to the appropriation bill in either house of the Parliament that will have the effect of varying the amount or altering the destination of any grant voted, or of varying the amount of any expenditure charged on the Consolidated Fund of India.
- (iv) The Appropriation Bill becomes the Appropriation Act after it is assented to by the President. This act authorizes (or legalizes) the payments

from the Consolidated Fund of India. This means that the government cannot withdraw money from the Consolidated Fund of India till the enactment of the appropriation bill.

Other Grants

In addition to the budget that contains the ordinary estimates of income and expenditure for one financial year; various other grants are made by the Parliament under extraordinary or special circumstances:

(a) Supplementary Grant: It is granted when the amount authorized by the Parliament through the appropriation act for a particular service for the current financial year is found to be insufficient for that year.

(b) Additional Grant: It is granted when a need has arisen during the current financial year for additional expenditure upon some new service not contemplated in the budget for that year.

(c) Excess Grant: It is granted when money has been spent on any service during a financial year in excess of the amount granted for that service in the budget for that year. It is voted by the Lok Sabha after the financial year. Before the demands for excess grants are submitted to the Lok Sabha for voting, they must be approved by the Public Accounts Committee of Parliament.

(d) Vote of Credit: It is granted for meeting an unexpected demand upon the resources of India, when on account of the magnitude or the indefinite character of the service, the demand cannot be stated with the details ordinarily given in a budget. Hence, it is like a blank cheque given to the Executive by the Lok Sabha

(e) Exceptional Grant: It is granted for a special purpose and forms no part of the current service of any financial year.

(f) Token Grant: It is granted when funds to meet the proposed expenditure on a new service can be made available by reappropriation. A demand for the grant of a token sum (of Re 1) is submitted to the vote of the Lok Sabha and if assented, funds are made available

PARLIAMENTARY COMMITTEES

There are different types of parliamentary committees which can be classified as follows:

1. **Consultative committees** for different ministries which provide a forum for discussion on the policies and the working of the ministry.
2. **Select or Joint Select Committees** on individual bills for investigation or inquiry.
3. **Committee for Specific Purpose** - Parliament may appoint a committee for specific purpose of studying a particular subject matter for example, a committee

for the welfare of Scheduled caste and scheduled tribes.

4. **Committees to Inquire** - There are committees to inquire into the various matters like the Committee of Petitions and the Committee of Privileges, the Committee to Scrutinize or the Committee of Government Assurance and Committee on Subordinate Legislation.
5. **Committee of Administrative Character** - There are also committees of administrative character relating to the business of House such as Committee on absence of Members from the sittings of the House, Business Advisory Committee and Rules Committee.
6. **Committee for Member of Parliament** - A few committees are concerned with the facilities of a Member of Parliament like the House Committee and Library Committee.
7. **Financial Committees** - However, the most important committees include the financial committees such as Estimates Committee, Public Accounts Committee and the Committee on Public Undertakings.

Some of the important committees are described as follows:

1. Estimates Committee

- a. The Committee has 30 members, who are elected in accordance with the system of proportional representation from among the members of Lok Sabha for a period of one year.
- b. The Quorum for the meeting is one-third. The Estimates Committee is a standing Committee.
- c. The Chairman is nominated by the Speaker provided if the Deputy Speaker is the member of the Committee; he automatically assumes the power of the Chairman. No minister can be a member of the Committee.
- d. The Estimates Committee is charged with the responsibility of detailed examination of budget estimates.
- e. Major functions include:
 - i. To suggest alternative policy in order to bring about efficiency and economy in administration.
 - ii. To report how the economies, improvement in organization, efficiency or administrative reforms consistent with the policy underlying the estimates may be affected; To examine whether the money is well laid out within limits of the policy implied in the estimates.

2. Public Accounts Committee

- a. The Public Accounts Committee is essentially a committee of the Lok Sabha. The strength of the committee is 22 of which 15 are elected from the Lok Sabha and the rest are nominated from the Rajya Sabha.

- b. The Speaker nominates the Chairman, who conventionally is the Leader of Opposition in the Lower House
- c. The major function of the Public Account Committee is to scrutinize the appropriation account of the Government of India and other accounts laid before the House and the report of the Auditor General of India and also to satisfy itself that money is spent appropriately.
- d. It is also responsible for commenting on the ways of the extravagance in the spending of the public funds.

3. Committee on Public Undertakings

- a. The committee constituted in 1964 consists of 15 members of Lok Sabha and 7 members of the Rajya Sabha.
- b. The major function of the committee is to examine the reports and accounts of public undertakings and suggest economic improvement in organization and financial management, etc.

4. Select Committee

- a. The members of Select Committee are appointed by the House with their consent. The Chairman is appointed by the Speaker.
- b. He has the power to ensure the attendance of a member and also ensures the production of papers and records. Select Committees present their report to the House.

5. **Committee on Privileges** The Speaker nominates the members of this committee. The strength is of 15 members. It is empowered to take stock of the breach of privileges and determination of breach of privileges.

6. **Business Advisory Committee** The committee is for the purpose of regulating the time-table of the working of the House. There are 15 members nominated by the Speaker, who himself is the Chairman of this committee.

7. **Committee on Welfare of SC and ST** 30 members drawn from both Houses serve on this Committee which considers all matters relating to SC/ST, coming under the purview of the Union Government and ensures whether constitutional safeguards in respect of these classes are properly implemented.

8. **Committee on Private Members Bills and Resolutions** Consisting of 15 members nominated by the speaker, the Committee classifies and allocates times to bills introduced by private members. The Deputy Speaker is invariably its members.

9. Departmental Standing Committees

- a. Parliament has decided to constitute committees to consider the demand for grants of various ministries.

- b. The committees consist of 23 members from both Lok Sabha and Rajya Sabha.
- c. But Rajya Sabha Members is being denied a vote in case a particular grant calls for such a procedure.
- d. The Lok Sabha to which Council of Ministers is responsible and which alone can grant the money required for running the country's administration after detailed scrutiny. The Parliament guillotine comes in handy in such circumstances.

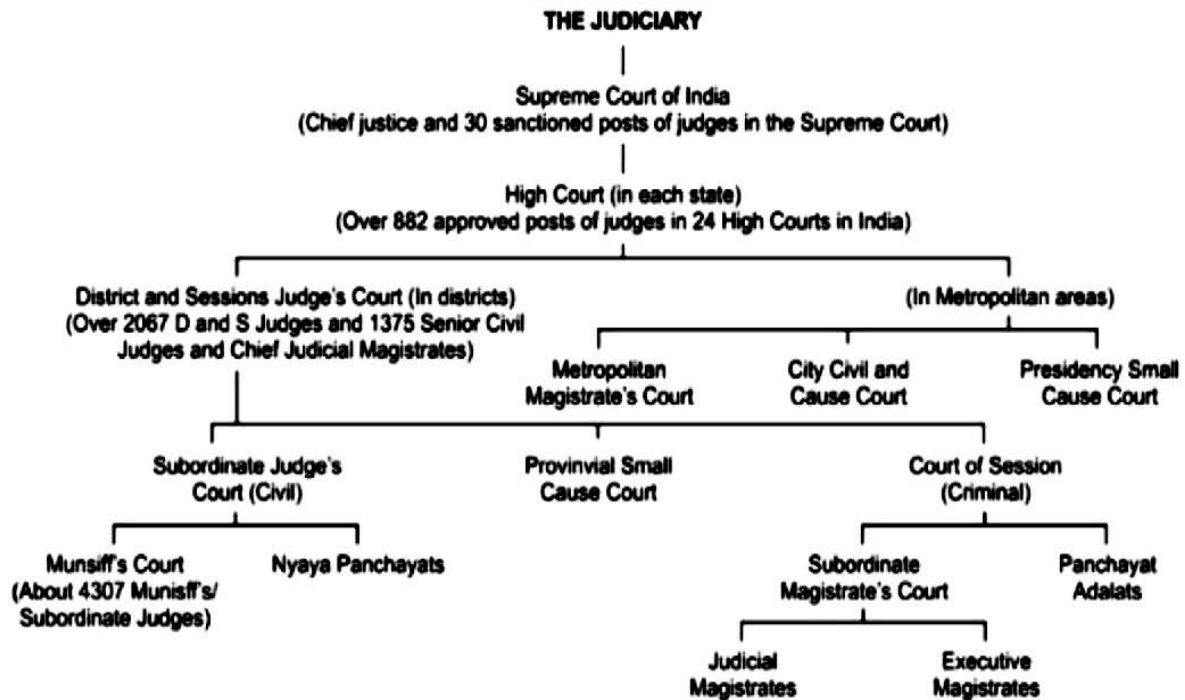
10. Ad-hoc Committees - These Committees are appointed as need arises and they cease to exist as soon as they complete the task assigned to them. The usual ad-hoc committees are select/joint committees on bills, appointed to consider and report on particular bills



Judiciary

34. The Judiciary Structures in India

- Judiciary is that branch of government which interprets law, settles disputes and administers justice. Laws are like dead letters without courts to explain and expound their meaning.
- Judiciary is the watchdog of democracy, guardian of the constitution as well as champion of liberty.
- In India the structure of judiciary is like a pyramid. The Supreme Court is at the apex, below it, there are High Courts, the next step in the hierarchy are the district courts and at the bottom of the judicial pyramid are the subordinate courts.
- In India, the courts from top to bottom deal with the disputes arising under the laws enacted by the Union Parliament as well as by state legislatures.



THE FUNCTIONS OF THE JUDICIARY

Administration of Justice

To apply the law to specific cases or disputes. When it brought before the courts and renders the appropriate awards and judgment.

Creation of judge made law

When the might appear in conflict under the given circumstances, judges decided appropriate law on the basis of their wisdom and common sense. Under the doctrine of the „stare decisis“ the previous decision of judges are regarded as binding on forthcoming similar cases

Guardian of the Constitution

The conflicts of jurisdiction between the central government and the state governments or between the legislature and the executive

are decided by the court. Any law or executive order which violates any provision of the constitution is declared unconstitutional or null and void by the judiciary. For eg. Judicial review- guaranteeing the fundamental rights of individuals and ensuring balance between the union and the units in a federal state.

Protector of Fundamental Rights

The judiciary protects the rights of people against the encroachment of the government or any other association or individual. The superior courts enforce the fundamental rights of the people through appropriate writs in the nature of Habeas Corpus, Mandamus, Certiorari,

Advisory Function Quo-Warranto etc.
In India the Supreme Court, the highest court of law, may give advisory opinion on constitutional questions. Such advice is given even in the absence of an actual dispute, when the chief executive so desires.

Supervisory Function Higher courts, in most cases, are assigned the task of supervising the work of the lower courts. The High Courts supervise the work of the subordinate courts in India.

Non-judicial or Administrative Functions Miscellaneous functions like the courts may grant certain licenses, administer the estates of deceased persons and appoint receivers. They register marriages; appoint guardians of minor children and lunatics. In some states, they are authorized to confer citizenship on aliens. Superior courts are given the power to exercise control over their officers and servants.



SUPREME COURT

- Independent Judiciary : Sine - Qua - Non of Democracy (Absolutely needed)
 - Exist to see that laws made by legislature are intra vires (with the constitution)
 - At the apex lie SC : Custodian & interpreter of constitution
 - Originally 1 CJ & 7 judges, but At present 1 CJ & 30 Judges Seat:
SC normally seats at New Delhi. However it can be hold its meeting anywhere in India. The decision in this regard is taken by the CJI in consultation with the President.
- Appointment of the Chief Justice of India:**
- There is no procedure laid down for the appointment of the Chief Justice of India.
 - A convention was followed to appoint the senior most judge as the Chief Justice until it was broken by Mrs. Indira Gandhi who appointed justice A. N. Ray as the chief justice superseding three senior justices of the Supreme Court.
 - The Supreme Court has laid down in a judgment that only the senior most judge of the Supreme Court is eligible to become the Chief Justice.
 - At present the convention of appointing the senior most judge as the chief justice prevails.
- Appointment of Judges (Art. 124)**
- Every judge of the Supreme Court shall be appointed by the President after consultation with such judges of the Supreme Court and of the High Court as the President may deem necessary.
 - In case of the appointment of a judge other than the chief justice, the chief justice of India shall always be consulted.
 - The consultation process has been made systematic, elaborate and effective by the Supreme Court in various cases known as Supreme Court Judges case.
 - The Supreme Court has held that the Chief Justice must consult the four senior most judges of the Supreme Court and if two judges give an adverse opinion, the Chief Justice should not send the recommendation to the government.
 - Thus, the word consultation with the judiciary while appointing the Supreme Court judges has been practically converted into concurrence.
- Qualification for appointment as a Judge (Art. 124):**
- No person shall be qualified for appointment as a judge of the Supreme Court unless he is:-
- a citizen of India; and
 - has been for at least 5 year a judge of a High Court; or
 - has been for at least 10 years an advocate of High Court; or
 - is in the opinion of the President, a distinguished jurist. (a highly qualified academia / law professor)
- Tenure:**
- A judge of the Supreme Court holds office until he attains the age of 65 years. No minimum age for appointment is fixed. A judge may at any time resign his office by writing addressed to the President.
 - 3 years more than that of High court Judge
 - He may be removed by the President by an order issued after being presented an address by each House of Parliament passed by special (also known as double majority) majority.

- Such removal can be on the ground of (a) proved misbehaviour or (b) incapacity. Salary of Supreme Court Judges:
- Chief Justice -1 lakh
- Other Judges -90,000 (From consolidated fund of India)

Appointment of acting Chief Justice (Art. 126)

- In case of absence of the Chief Justice of the Supreme Court by any reason, the President may appoint a judge of the Supreme Court as the acting Chief Justice during such absence.

Ad-hoc Judges (Art. 127)

- The Chief Justice with the previous consent of the President can ask a High Court judge after consulting the chief justice of that High Court to attend at the sittings of the Supreme Court as an ad hoc judge.
- The ad hoc judge will have all the jurisdiction, powers and privileges of a judge of the Supreme Court.

Attendance of retired Judges (Art. 128)

- The chief justice may with the prior consent of the President request a retired judge of the Supreme Court or a High Court who is qualified to be judge of the Supreme Court to and act as a judge of the Supreme Court.
- The President may determine his allowances. He shall have all the jurisdiction, powers and privileges of the Supreme Court. But he shall not be deemed to be a judge of the Supreme Court.

Removal of Supreme Court judges Art. 124(4):

The manner of removal of a Supreme Court judge which is an impeachment like process. A judge may be removed from his office on the ground of (a) misbehavior or (b) incapacity. The removal involves the following steps:

- A motion for presenting an address to the President praying for the removal of a judge must be signed by at least 100 members of the Lok Sabha (if notice is given in the Lok Sabha).
- The Chairman or the Speaker (as the case may be) may consult such persons as he thinks fit and consider such material as may be available and may admit the motion or refuse to admit it.
- If the motion is admitted, a committee consisting of 3 persons will be constituted of whom,
 - One shall be from among the Chief Justice and judges of the Supreme Court.
 - One shall be from among the Chief Justice and the judges of the High Court.
 - One shall be a person who is a distinguished jurist.
- If the committee arrives at a finding that the judge is guilty of misbehaviour or suffers from an incapacity, then the motion for removal of the judge together

with the report of the committee will be taken up for consideration in the House in which it is pending.

- The motion must be passed by each House by a majority of the total membership of that House and by a majority of not less than two-third of the members of that House present and voting. After being so passed, the address is presented to the President.
- The President passes an order removing the judge.
- By order of President, after an address in each house of parliament, supported by a majority of total membership of the house & passed by a resolution supported by not less than 2/3rd of the members present & voting.
 - Lok Sabha: A motion can be preferred before the house if signed by 100 members
 - Rajya Sabha: A motion can be preferred before the house if signed by 50 members
- Only on grounds of proven misbehavior or incapacity
- Only after giving 14 days prior notice to said Judge against whom the motion is passed
- A 3 persons judicial committee is formed headed by serving judge of SC and 2 others from (SC or HC or eminent jurists)
- Report of same must be passed by both the houses & President

Acting CJ & Ad Hoc Judges

- Appointment of Acting CJ - By President if CJ is ill or incapable to serve
- Appointment of Ad-hoc Judges - IF there is lack of quorum of Judges of SC to hold or continue any session in court, CJ of India with previous consent of President & after consultation with CJ of HC concerned, request in writing the attendance of judges to sit in SC as ad-hoc judges for certain period (Judges shall be qualified to be judges of SC) Retired judges of SC can sit in SC as Ad-hoc Judges on request of CJ after consent of President, provided they fulfill the criteria of SC"
- Criminal proceedings initiation against a judge of SC or HC requires CJs consent
- After retirement, a Judge of SC is prohibited from practising or acting as a judge in any court.

Independence of Supreme Court:

The Constitution secures the independence of the judges of the Supreme Court by the following provisions:

- The appointments are made by the President in consultation with the Chief Justice of India.
- The judges are to be removed by Parliament through a tough impeachment process. They cannot be removed by the executive.

- Salaries, allowances and pensions of Supreme Court judges are charged on the Consolidated Fund of India (CFI) and shall not be varied to their disadvantage.
- The conduct of a judge cannot be discussed in the parliament or any legislature (Art.121 and 211).
- A retired judge of the Supreme Court is prohibited from pleading or acting in any Court or authority in India.

Supreme Court to be a court record:

The Supreme Court is a Court of record (Art. 129). It means that its record has evidentiary value and cannot be questioned when produced in a Court. It also means that it has the power to punish for contempt.

JURISDICTION AND POWER OF SUPREME COURT:

A. Original Jurisdiction

- Original jurisdiction of SC is power to hear a case for the 1st time unlike Appellate jurisdiction
 - Purely federal in character i.e. have exclusive authority to decide any dispute involving a question of law between:
 - GOI (Union) v/s state or states
 - GOI & any state / states on one side & state / states on the other
 - Two or more states
- However, according to 7th amendment, 1956, original jurisdiction of SC does not extend to disputes, arising out of provisions of a treaty, agreement etc. which was executed before 26th Jan 1950 & is in operation ever since.
- As per article 71, all disputes regarding election of President & vice President are handled by SC Exclusion to original jurisdiction of states (Art.131)
- In disputes between center & state due to disputes arising out of provisions of a treaty, agreement etc. which was executed before 26th Jan 1950 & is in operation ever since
 - Parliament may by law exclude SC's jurisdiction in disputes with respect to use, distribution & control of water in any interstate river Exclusive jurisdiction in following cases:
 - Between the government of India and one or more states.
 - Between the government of India and one or more states on one side, and one or more states on the other.
 - Between two or more states.
- The dispute must involve any question of law or fact on which the existence or extent of a legal right depends.

–A legal right is one which is capable of enforcement by a Court law. It must be based on a rule of positive law and not be a matter of political considerations.

Writ Jurisdiction (Art.32)

- A type of original jurisdiction of Supreme court
- Jurisdiction of SC to enforce FRs - Every individual has a right to move to SC directly by appropriate proceedings for the enforcement of his FR, without coming via HC, by means of writs.

B. Appellate Jurisdiction:

Constitutional Matters (Art.132):

- Appeal lies to SC if HC certifies that the case involves a substantial question of law as to interpret the constitution
- If HC refuses to give certificate, SC may grant a special leave for appeal if it is satisfied that case does involve such question

Civil Matters:

An appeal lies to SC from any judgement in civil proceeding of HC if it certifies :

- that the case involves a substantial question of law of general importance
- that in opinion of HC, the said question needs to be decided by SC Thus, No appeal in case of civil matters lies to SC as a matter of right as it lies only when HC issues a certificate on above 2 conditions

Criminal Matters (Art.134):

Constitution provides the following provisions as to appeal in criminal matters:

- If HC has sentenced someone to death
- If HC has withdrawn for trial before itself a case from the lower court & in such trial, lower court has sentenced the accused to death
- If HC certifies that the case is fit for appeal to SC, even if HC on appeal has reversed an order of acquittal of accused & sentenced him to death or life imprisonment or for period not less than 10 years (Appellate Jurisdiction is not Applicable in cases of Court Martial)

Grant of special leave to appeal - Article 136

Articles 131, and 133 provide for appeals to the Supreme Court from constitutional, civil and criminal matters respectively.

- Under Article 136, the Supreme Court has the power to grant special leave to appeal from any judgement, decree, determination, sentence or order of a Court or tribunal except military tribunals. In the earlier articles, the appeals flow only from the determinations of a High Court.
- Article 136 puts no such restrictions. Under this article, the Supreme Court may hear an appeal even

from a subordinate court or tribunal. Even where the law does not provide for any appeal, e.g., from Industrial Tribunals, Election Tribunals, the Central Board of Revenue, the Central Government, the Railway Rates Tribunal, etc.

Advisory Jurisdiction (Only consultative Role):

- President can refer to court either on a question of law or on a question of fact provided it is of public importance. However, it is not compulsory for court to give its advice.
- Further, President is empowered to refer to SC for its opinion regarding disputes, arising out of provisions of a treaty, agreement etc. which was executed before 26th Jan 1950 & is in operation ever since. In such case, it is obligatory for the court to give its opinion to President (In this cases, opinion expresses by SC is only advisory in nature & not binding on President)

C. Revisory Jurisdiction:

- Empowered to review any judgment or order made by it with a view to remove any mistake or error that might have crept in judgment
- Even though, judgment have been passed by SC has a binding effect on all the courts of India, but not on SC itself.

D. Supreme Court as Court of Record:

- Records & judicial proceedings are of evidentiary value before any court
- Has power to determine its own jurisdiction Review of judgements for orders by the Supreme Court (Article 137) Under this provision the Supreme Court has the power to review its own judgement. Since there is no court above Supreme Court, its judgement can be reviewed by no court but by itself. A review will lie on the following grounds:
 - Discovery of new and important matters or evidence;
 - Mistake or error apparent on the face of the record; and
 - Any other sufficient reason.

Transfer of certain cases (Article 139 A):

In cases involving the same questions of law having general importance, the Supreme Court may withdraw such cases and dispose them itself.

Advisory jurisdiction (Article 143):

- The power of consulting the Supreme Court by the President on a matter affecting the nation is known as advisory jurisdiction of the Supreme Court.
- If the President at any time feels that a question of law or fact of public importance has arisen which requires the opinion of the Supreme Court, he may refer the matter to the Supreme Court to seek its advice.

- However, the President is not bound by the advice given by the Supreme Court nor Supreme Court is bound to tender its advice always.

Transfer of Certain Cases to High Court (Article 228):

If the High Court is satisfied that a case pending in a subordinate Court involves a substantial question of law as to the interpretation of the Constitution, the High Court will withdraw the case and either determine the question of law and return the case to the court from where it was withdrawn or dispose of the case itself.

Contempt of court:

(Supreme Court has power to punish its own contempt)

- **Civil** - Willful disobedience to any judge or other processes of the court
- **Criminal** - Publication of any matter or doing any act whatsoever which scandalizes or tend to scandalize authority of the court or tend to interfere course of any judicial proceedings

Curative Petition:

- A review petition may be filed in SC after delivery of its judgment; Court may review the case under its inherent power but on very restricted grounds
- The petition 1st has to circulate to a bench of 3 senior most judges & judges who passed the judgment complained of

Others Powers of SC:

- Make rules regarding procedure & practice of court
 - Can recommend removal of members of UPSC to the President
 - Power to review the laws passed by the legislature & orders issued by executives & to declare them ultra vires if they contravene any of the provisions of the constitution
 - It must be noted that SC cannot pronounce upon the constitutionality of any law or executive's action on its own. It can only pronounce judgment, when said law or executive action is actually challenged by someone
 - The ultimate authority to interpret the constitution also rest with SC, which has been described as mouth piece of Indian constitution.
- APPOINTMENT & TRANSFER OF JUDGES - BY NATIONAL JUDICIAL APPOINTMENTS COMMISSION**
- Composition of the NJAC - 6 members:**
- Chief Justice of India (Chairperson, ex officio)
 - Two other senior judges of the Supreme Court next to the Chief Justice of India - ex officio

- The Union Minister of Law and Justice, ex-officio
- Two eminent persons (one of which would be from the SC or ST or OBC or Minority communities or a woman), for 3 yrs, not eligible for re-nomination, to be nominated by a committee consisting of :

–Chief Justice of India

–Prime Minister of India

–Leader of opposition in the Lok Sabha (where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha)

Functions of the Commission:

- Recommending persons to president for appointment as:
 - Chief Justice of India,
 - Judges of the Supreme Court,
 - Chief Justices of High Courts and other Judges of High Courts.
- Recommending transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court.
- Ensuring that the persons recommended are of ability and integrity.

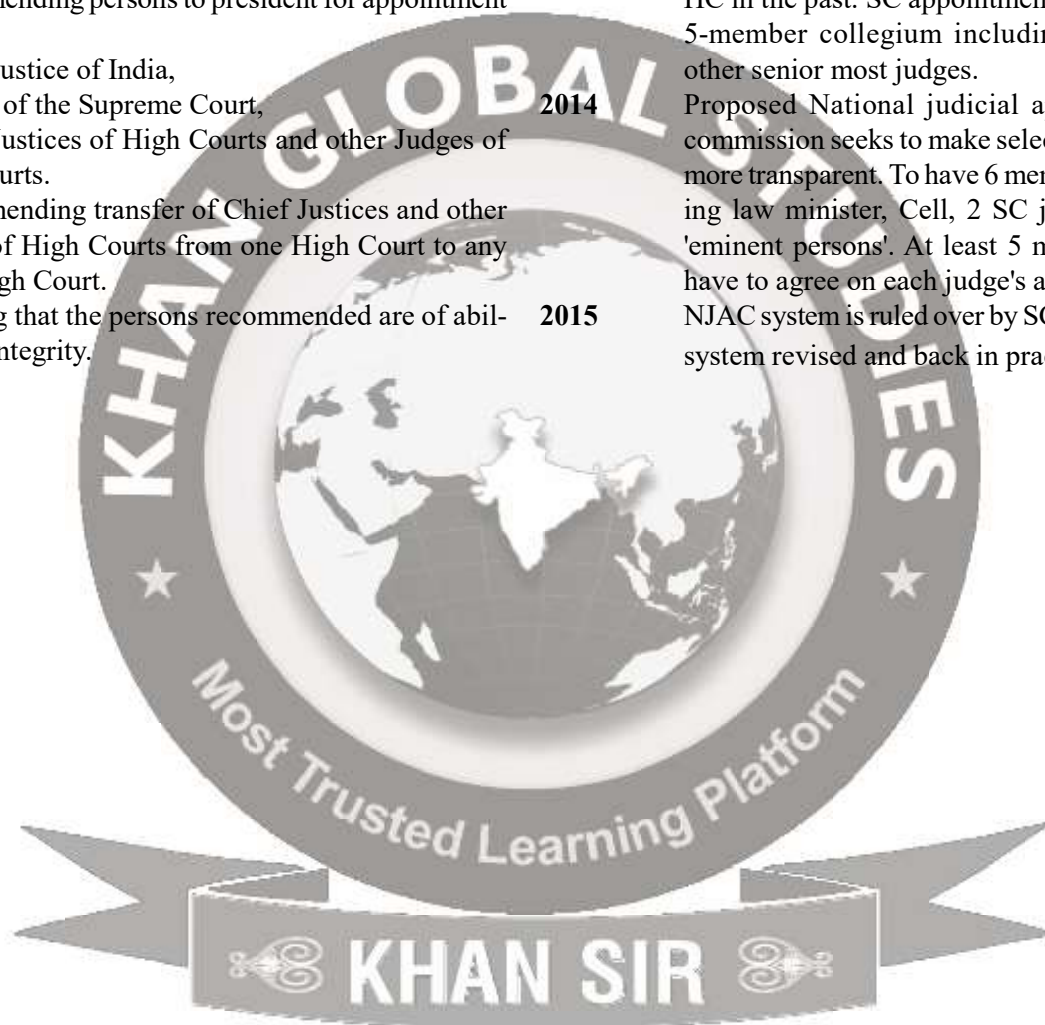
Evolving System:

Pre- 1993 Law ministers selected judges in' consultation with' judiciary.

Post-1993 Judiciary assumed 'primacy' by creating collegiums in Supreme Court and high courts. NC judge is appointed after a collegium of judges of that court suggests his/her name, which then has to be cleared by a three-member SC collegium. The 3 judges include the CJI and at least one SC judge who has been associated with that particular HC in the past. SC appointments cleared by 5-member collegium including CJI and 4 other senior most judges.

2014 Proposed National judicial appointments commission seeks to make selection process more transparent. To have 6 members, including law minister, CJI, 2 SC judges and 2 'eminent persons'. At least 5 members will have to agree on each judge's appointment.

2015 NJAC system is ruled over by SC, collegiums system revised and back in practice



35. High Courts

- The judiciary in the states consists of a High Court and a system of subordinate courts below it.
- The High Court is at the apex of the judiciary in the state.
- Article 214 provides for High Court for each state but there can be common High Courts for two or more states established by Parliament under Article 231.
- Under Article 230 the jurisdiction of High Court can be extended to the Union Territories also.
- At present there are only 24 High Courts covering all the 29 states and 7 Union Territories.

Jurisdiction and Seats of Courts in India

Court Supreme Court		Jurisdiction	Seat
		All India High Courts	New Delhi
Name of High Court	Year Established	Jurisdiction	Seat
Allahabad High Court	1866	Uttar Pradesh	Allahabad (<i>with Bench at Lucknow</i>)
Hyderabad High Court	1956	Andhra Pradesh, Telangana	Hyderabad
Bombay High Court	1862	Maharashtra, Dadra and Nagar Haveli, Goa, Daman and Diu	Bombay (<i>Bench at Nagpur, Panaji and Aurangabad</i>)
Calcutta High Court	1862	West Bengal, Andaman and Nicobar	Kolkata (<i>Circuit Bench at Port Blair</i>)
Chhattisgarh High Court	2000	Chhattisgarh	Bilaspur
Delhi High Court	1966	Delhi	New Delhi
Guwahati High Court	1948	Assam, Nagaland, Mizoram and Arunachal Pradesh	Guwahati (<i>Bench at Itanagar, Aizawl and Kohima</i>)
Gujarat High Court	1960	Gujarat	Ahmedabad
Himanchal Pradesh High Court	1971	Himanchal Pradesh	Shimla
Jammu & Kashmir High Court	1928	Jammu and Kashmir	Srinagar and Jammu
Jharkhand High Court	2000	Jharkhand	Ranchi
Karnataka High Court	1884	Karnataka	Bengaluru (<i>Benches at Dharwad and Kalburgi</i>)
Kerala High Court	1956	Kerala and Lakshadweep	Ernakulam
Madhya Pradesh High Court	1956	Madhya Pradesh	Jabalpur (<i>Benches at Gwalior and Indore</i>)
Madras High Court Puducherry	1862	Tamil Nadu and	Chennai (<i>Bench at Madurai</i>)
Manipur High Court	2013	Manipur	Imphal
Meghalaya High Court	2014	Meghalaya	Shillong
Orissa High Court	1948	Odisha	Cuttack
Patna High Court	1916	Bihar	Patna
Punjab and Haryana High Court	1975	Punjab, Haryana and Chandigarh	Chandigarh
Rajasthan High Court	1949	Rajasthan	Jodhpur (<i>Bench at Jaipur</i>)
Sikkim High Court	1975	Sikkim	Gangtok
Tripura High Court	2013	Tripura	Agartala
Uttarakhand High Court	2000	Uttarakhand	Nainital

- A High Court may also have one or more benches of itself within the area of its territorial jurisdiction.

Indian High court Act, 1861

- High courts established at Calcutta, Bombay & Madras
- Constitution states that there shall be HC in every state, but, parliament has the power to establish a common HC for 2 or more states (At present 24 HC for 29 states & 7 UTs)
- Strength of HC is flexible (Unlike SC - which can be increased by parliament)
- President may from time to time appoint judges of HC, keeping in view amount of work before HC.

Appointment of High Court Judges:

Initiation of proposal for appointment of judges of HC must invariably be made by CJ of that HC Appointment is made with respect to recommendations of NJAC

Composition of the NJAC - 6 members

- Chief Justice of India (Chairperson, ex officio)
- Two other senior judges of the Supreme Court next to the Chief Justice of India - ex officio
- The Union Minister of Law and Justice, ex-officio
- Two eminent persons (one of which would be from the SC or ST or OBC or Minority communities or a woman), for 3 yrs, not eligible for re-nomination, to be nominated by a committee consisting of :
 - Chief Justice of India
 - Prime Minister of India

–Leader of opposition in the Lok Sabha (where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha)

Functions of the Commission:

Recommending persons to president for appointment as:

- Chief Justice of India,
- Judges of the Supreme Court,
- Chief Justices of High Courts and other Judges of High Courts.
- Recommending transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court
- Ensuring that the persons recommended are of ability and integrity Appointment of Acting CJ, Additional Judges & Ad Hoc Judges - High Court

Appointment of acting CJ	By President if CJ is ill or incapable to serve
Appointment of additional judges	Duly qualified persons as additional judges , for a period of not extending 2 years (when President thinks that there is temporary increase in business of HC)
Ad hoc judges	CJ of HC with prior permission to President may request retired HC judges to sit & act as a judge of HC for a temporary period

Tenure of High Court Judges

- 62 Years
- Any dispute regarding the age of judge of HC is decided by President in consultation with CJ of India
- Removal of High Court Judges
- HC judge can resign by writing to President; or
- By same removal process as in case of SC judges
- Salary of High Court Judges
- CJ - Rs. 90,000
- Others - Rs.80,000
- From consolidated fund of State

Oath - before Governor (Unlike before President as in case of Supreme Court)

Qualification for High Court Judges

- Must be citizen of India
- Must have held a judicial office in territory of India for atleast 10 years or
- Must have been an advocate of HC in succession for 10 years After retirement a judge of HC cannot plead in a court or before any authority in India except in SC or HC other than in which he held office

Jurisdiction of High Court**A. Original Jurisdiction**

- In civil cases with amount > 2000
- In criminal cases, authorised to them by President Magistrates

B. Appellate Jurisdiction

All HCs entertain appeals in civil & criminal cases from their subordinate courts.

They have, however, no jurisdiction over tribunals established by the law relating to armed forces of the country

C. Writ Jurisdiction:

- Jurisdiction to issue writs under HC is larger than the SC.
- SC can issue them only where a FR has been infringed whereas a HC can issue them, not only in such cases but also where an ordinary legal right has been infringed

D. Administrative & supervisory Functions of HC:

- HC supervise & controls the working of courts subordinate to them
- Frame rules & regulations for transactions of their business. For ex. Transfers, Postings, Promotions etc.
- Not applicable in case of tribunals dealing with armed forces (HC acts as court of records & has power to punish its own contempt)

Superintendence over Courts:

- Under Article 227 every High Court has a power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Superintendence covers both administrative as well as judicial.

- The power of superintendence is an extraordinary power to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for making trifling corrections.
- The High Court should intervene in cases of gross injustice or non-exercise or abuse of jurisdiction even though there is no provision for appeal or revision.

Transfer of Certain Cases to High Court (Article 228):

If the High Court is satisfied that a case pending in a subordinate Court involves a substantial question of law as to the interpretation of the Constitution, the High Court will withdraw the case and either determine the question of law and return the case to the court from where it was withdrawn or dispose of the case itself.

Control over the Subordinate Judiciary:

As the head of the judiciary in the State, the High Court has got an administrative control over the subordinate judiciary in respect of certain matters. The subordinate courts include District Judges of the city, Civil Courts as well as the Metropolitan Magistrates and Members of the Judicial Services. The control over the judges of these subordinate courts is exercised by the High Court in the following matters-

- The High Court is to be consulted by the Governor in the matter of appointing, posting and promoting district judges.
- The High Court is consulted along with the state Public Service Commission, by the Governor, in appointing persons to the judicial service of the state.
- The control over district courts and courts subordinate thereto, including the posting and promotion of and the grant of leave to persons belonging to the judicial service and holding any post inferior to the post of a district judge is vested in the High Court. The initial appointment of a District Judge or Additional District Judge is made by the Governor who has to act in consultation with the High Court. After he is appointed his posting and promotion is done by the Governor in consultation with the High Court (Article 233). Normally the High Court's recommendation must be accepted. Departure from it must be rare and for cogent and compelling reasons. The posting and promotion of the district judge is done by the Governor in consultation with the High Court but posting and promotion of persons belonging to state judicial service (other than district judges) exclusively rests with the High Court (Article 235).

Article 235 expressly states that the control over district court and courts below it vest in the High Court. The control is administrative, removal or reduction in rank. In the matter of dismissal, removal and reduction also the High Court may recommend such punishment to the Governor.

Powers to issue writs:

- The Supreme Courts and High Courts can issue writs to ensure that rights of the people are not violated either by State or otherwise.
- The Constitution has specifically given the power „to issue certain writs" to the High Courts.
- These Courts can issue writs (which are binding directions of the Court) to any person or authority, including government of the State concerned.
- The writs in the nature of Habeas, Corpus, mandamus, prohibition, quo warranto, and certiorari (explained in lesson 6) for the enforcement of rights of the people.
- This power is exercised in the original jurisdiction of the High Court, and is not derogatory to similar power of the Supreme Court.

Transfer of Cases to the High Court

- If a High Court is satisfied that a case pending in a subordinate court involves a substantial question of law as to the interpretation of the Constitution, the High Court may withdraw such a case from the lower court.
- After examining the case, the High Court may either dispose it off itself, or may return it to the lower court with instructions for disposal of the case.

Superintendence of Subordinate Courts

- A High Court has the right of superintendence and control over all the subordinate courts in all the matter of judicial and administrative nature.
- In the exercise of its power of superintendence, the High Court may call for any information from the lower courts; may make and issue general rules and prescribe norms for regulating the practice and proceedings of these courts; and it may issue such directions, from time to time, as it may deem necessary.
- It can also make rules and regulations relating to the appointment, demotion, promotion and leave of absence for the officers of the subordinate courts.

Court of Record

- A High Court is also a court of record, like the Supreme Court.
- Lower courts in a State are bound to follow the decisions of the High Court which are cited as precedents.
- A High Court has also the power to punish for its contempt or disrespect

36. DISTRICT JUDICIARY

Subordinates courts - district courts

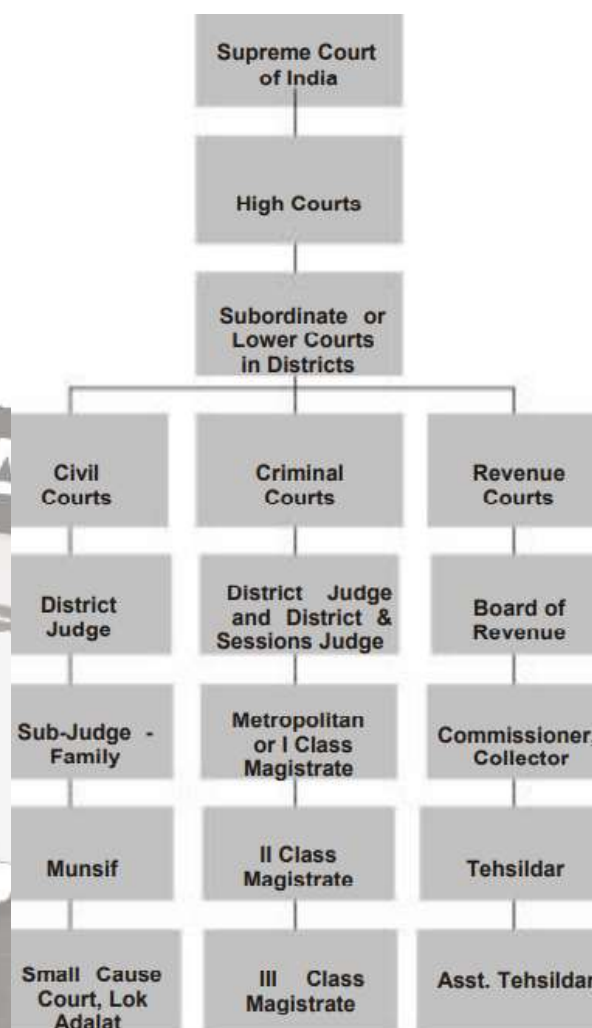
- Civil cases- district judges,
- Criminal cases- session judges
- Appointed by Governor in consultation with CJ of HC In each district of India there are various types of subordinate or lower courts. They are civil courts, criminal courts and revenue courts. These Courts hear civil cases, criminal cases and revenue cases, respectively.
- Civil cases pertain to disputes between two or more persons regarding property, breach of agreement or contract, divorce or landlord - tenant disputes. Civil Courts settle these disputes. They do not award any punishment as violation of law is not involved in civil cases.
- Criminal cases relate to violation of laws. These cases involve theft, dacoity, rape, pickpocketing, physical assault, murder, etc. These cases are filed in the lower court by the police, on behalf of the state, against the accused. In such cases the accused, if found guilty, is awarded punishment like fine, imprisonment or even death sentence.
- Revenue cases relate to land revenue on agriculture land in the district.

Qualifications and Appointment of Judges

- The judges of subordinate courts are appointed by the Governor in consultation with the Chief Justice of the High Court of the concerned State.
- These days, in most of the States judicial service officers including the magistrates are selected through competitive examinations held by the State Public Service Commission. They are finally appointed by the Governor.
- Any person who has been an advocate for at least seven years or one who is in the Structure of Government service of the State or the Central Government is eligible to be a judge of the District Court provided he/she possess the required legal qualifications.

The Designation System:

- As per the direction of the Supreme Court, a uniform designation has been brought about in the subordinate judiciary's judicial officers all over the country, namely, district or Additional District Judges, Civil Judge (Senior Division) and Civil Judge (Junior Division) in the Civil Courts and in Criminal Courts, Sessions Judge, Additional Sessions Judge, Chief Judicial Magistrate and Judicial Magistrate, etc.



- The next set of courts is described as courts of District and Sessions Judge, which also includes courts of the Additional Judge, Joint Judge, or Assistant Judge. The court of the District and Sessions Judge at the district level is the principal court of original jurisdiction.
- It is presided over by an officer called the District and Sessions Judge. As a rule, the same officer is invested with power under both the statutes and presides over the court, known as the District and Sessions Court.
- Depending upon workload, a district court may have jurisdiction over more than one district- In some states, there is a court called the Court of Civil and Sessions Judge.
- These courts generally have unlimited pecuniary jurisdiction and depending upon the power conferred on the incumbent officer-in-charge of the court, it can handle criminal cases. In some states, these courts with unlimited pecuniary jurisdiction are called Courts of Civil Judge (Senior Division) while in other

states they are described as Courts of Subordinate Judge. In addition there are courts known as Small Causes Courts.

- These are set up either under the Provisional Small Causes Act at the district level or under the Presidency Town Small Causes Court Act in presidencies/ metropolitan towns



37. Judiciary Terms

A. Judicial Activism

- Judiciary plays an assertive role to force the other organs of the state to discharge their constitutional duties towards public
- Judicial activism basically has been forced upon the judiciary by insensitive & unresponsive administration that disregards the interest of the people, to ensure that administration of country does not suffer because of the negligence on the part of executive & the legislature
- Concept of Judicial activism emerged when SC started playing assertive role by giving some landmark judgments & issued some stern directives to legislature & executives concerned
- Phenomenon of judicial activism is welcome step only in short run & if it is carried out for long, it may destroy the very essence of separation of powers, with the judiciary assuming greater powers compared to legislature & executive in the absence of proper checks & balance mechanism.

B. Public interest litigation (PIL) - Appellate Jurisdiction

- Right to entertain PIL cases lies with Supreme Court and High Court only.
- A tool of judiciary to enforce legal & constitutional obligations towards executives & legislatures in interest of public at large.
- Basic aim of PIL is to render justice & help in promotion of well-being of public interest (not of individual's interest -In individual's case, writ petition for FR).
- Usually, relief provided by court is in form of directions or order of state including compensation to affected parties.
- A PIL may also be introduced in a court of law by the court itself (suo motu), rather than the aggrieved party or another third party. It is a result of judicial activism, not mentioned in constitution or any law enacted by Parliament.

C. Judicial Review

- Both Supreme Court & High Court enjoys the power of judicial review in India
- It is based on the concept of supremacy of the constitution
- Judicial Review means the power of the Supreme Court to examine the constitutionality of any law; so, if the Court arrives at the conclusion that the aforesaid law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional and inapplicable.

- The Supreme Court (and the High Courts) has the power to check the Constitutional validity of any legislation or action of the executive, when it is challenged before them. This power is called judicial review.
- For any law or executive order to be valid, it must confirm to the provisions of the constitution.
- The chief instrument through which judicial activism has come into existence in India is Public Interest Litigation (PIL) or Social Action Litigation (SAL)
- When a case is filed not by aggrieved people, but rather on their behalf, someone else, as it involves a consideration of an issue of public interest, hence, it is known as Public Interest Litigation (PIL) or Social Action Litigation (SAL).

D. Procedure established by law (India) v/s Due process of Law (US)

Procedure established by law:

- The court examines a law only from the point of view of legislature's competence
- Court sees that the prescribed procedure has been followed by the executive
- Court examines only procedural aspect not the motive behind the law or reason behind it, hence can not pronounce it unconstitutional unless the law is passed without the authorities competence Due process of Law:
- Court can examine the law, not only from the point of view of legislature's competence, but also from the aspect of motive behind the law
- Though constitution of India follows procedure established by the law, but in case of Maneka Gandhi case, SC interpreted Article 21 to include the expression of due process of law in it.

Hence, Article 21 protects an individual both against the legislature & executives action. However, it does not mean that due process of law has come in form under judicial review of India.

E. Prominent Doctrines associated with Supreme Court

1. Doctrine of Severability:

- While interpreting an impugned law, court has to see whether the law as a whole or some part of it is unconstitutional.
- Court can declare impugned law as a whole or some part of it unconstitutional as the case may be.

2. Doctrine of Progressive Interpretation:

- Court interpret the provisions of the constitution in the light of social, economic & legal conditions prevailing at that point of time.

3. Doctrine of Prospective Over-ruling:

- Judicial invalidation or new view of interpretation

of law will not affect the past transactions or vested rights, but will be effective with regards to future transactions only.

4. **Doctrine of Empirical Adjudication:**

- While exercising the power of judicial review, courts are not supposed to deal with hypothetical cases; therefore it is essential that the matter brought before the court must be of concrete nature.
- Court seeks to confine its decisions, as far as possible; within the narrow limits of controversy b/w the parties concerned in particular case

F. **Presumption in favor of Constitutionality:**

- Whenever the constitutional validity of a law is challenged, court will not hold it ultra vires until the invalidity is clear from all doubts which means there is always presumption by the court, in favour of law's validity
- However, despite the extensive power of judicial review enjoyed by SC & HC, scope of judicial review in India is limited, as while interpreting a law, SC will not self-legislate
- SC is not supposed to question the reasonableness of any law except where the constitution has expressly authorised the court to exercise its power.

G. Lok Adalat (People's court)

- Legal services authority act, 1987 gave Statutory status to Lok Adalats Alternative dispute resolution system developed in India.
–Works under NALSA
- To provide speedy & economic justice to weaker sections of the society
- Focus in Lok Adalat is on compromise, When no compromise is reached, matter goes back to the court
- No advocate, No witnesses examined, No court fee is levied.
- Resolves cases which have not yet gone to courts or are pending in courts
- Established at Central, state & district level - have their own funds

Powers of LOK ADALATS:

The summoning and enforcing the attendance of any witness and examining him on oath The discovery and production of any document The reception of evidence on affidavits The requisitioning on any public record of document or copy of such record or document from any court or office and Such other matters as may be prescribe. All the proceedings before LOK ADALATS shall be deemed judicial civil court. It can specify its own procedure for the determination of any dispute coming before it.

- A Lok Adalat has the jurisdiction to settle, by way of effecting compromise between the parties. Any mat-

ter which may be pending before any court, as well as matters at pre-litigative stage, that is, disputes which have not yet been formally instituted in any Court of Law.

- Such matters may be civil or criminal in nature, but any matter relating to an offence not compoundable under any law cannot be decided by the Lok Adalat even if the parties involved therein agree to settle the same.
- Lok Adalats can take recognisance of matters involving not only those persons who are entitled to avail free legal services but of all other persons also, be they women, men, or children and even institutions.
- Any civil dispute with a public utility service and where the value of the property in dispute does not exceed 10-lakh: or any criminal dispute which does not involve an offence not compoundable under any law, can be taken up in the Permanent Lok Adalat. For eg. - transport services for the carriage of passengers or goods by air, road or water, postal, telegraph or telephone services; insurance service, as also services in hospital or dispensary, supply of power, light or water to the public, besides systems of public conservancy or sanitation.
- Lok Adalats have been held and therein regularly held in India end millions of cases have been settled, and interestingly majority of these cases are motor accident claim cases.
- An important feature of this amendment is that after an application is made to the Permanent Lok Adalat, no party to that application can invoke jurisdiction of any court in the same dispute.
- Such disputes involving public utility services shall be attempted to be settled by the Permanent Lok Adalat by way of conciliation and failing that, on merit, and in doing so the Permanent Lok Adalat shall be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice without being bound by the Code of Civil Procedure and the Indian Evidence Act.

H. Nyaya Panchayats

- The Nyaya Panchayats are the judicial bodies in village, which provide speedy and inexpensive justice on all petty civil suits and minor offences within their domain of operations. Usually their domain of jurisdiction is limited to four to five villages only-They can impose only monetary fines at the most as punishments and are barred from the power to award imprisonment sentences (except in Bihar).

I. Family courts

- The Family Courts Act (1984) aims at promoting conciliation in and securing speedy settlement of dis-

putes relating to marriage, family affairs and related matters.

- It envisages that courts shall be set up in a city or town with a population of more than 10 lakh and at such other places as the state government may deem necessary. Family courts have been set up in Andhra Pradesh (7), Assam (1), Bihar (2), Karnataka (8), Kerala (7), Maharashtra (16), Manipur (1), Orissa (2), Puducherry (1), Rajasthan (6), Sikkim (1), Tamil Nadu (6), Uttar Pradesh (16) and West Bengal (1).
- The Governments of Gujarat (1) and Punjab (2) have also decided to establish Family Courts. Besides, necessary notifications extending the jurisdiction of the Family Courts, Act have also been issued by the Government of India in respect of Haryana, Madhya Pradesh and the Union Territory of Andaman and Nicobar Islands.

Revenue courts

- Land Revenue - Important source of income for government
- Since India is an agrarian country, therefore disputes relating to land revenue are quite common.
- Each district has separate courts for its land revenue system
- Every dispute relating to land revenue 1st comes before Tehsildar
- An appeal against decision of Tehsildar court lies in court of Deputy commissioner /Collector (DM)
- An appeal against the decision of DM can be made in court of commissioner / Magistrate
- Further appeal can be made in Board of revenue, which forms highest court of land in revenue matters

Full faith & Credit:

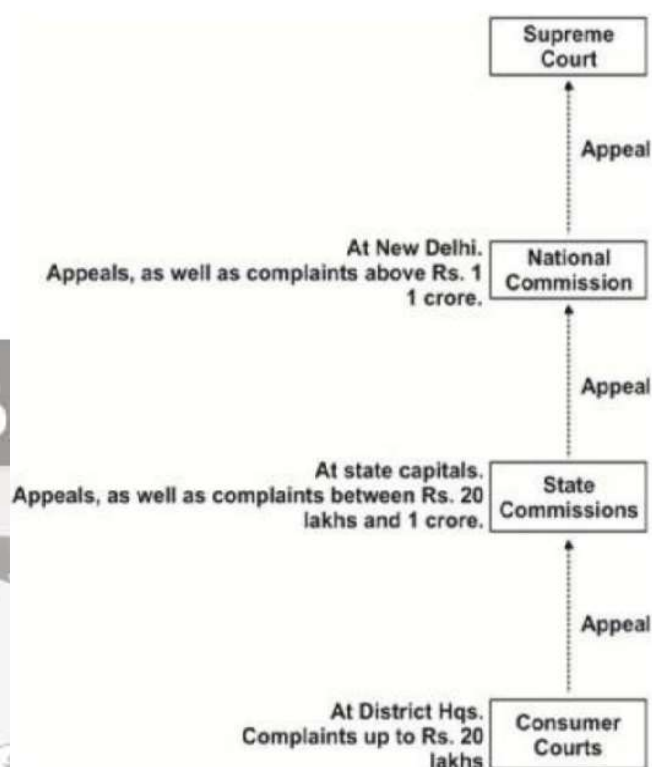
Final judgment or orders delivered by civil courts in any part of the territory of India shall be capable of execution anywhere in India. Clause only applicable to civil courts not on criminal courts.

J. Consumer Forum:

The Parliament has enacted the Consumer Protection Act, 1987 which provides a consumer protection against deficiency in a service or goods. The Act has provided for the following three types of consumer courts with defined jurisdictions:

- District Consumer Forum: It is presided by the District Judge. It can hear cases upto worth Rs. 20 lakh.
- State Consumer Commission: It is presided by a High Court Judge. It can hear cases between Rs. 20 lakh and Rs. 1 crore. It can also appeals against the judgment of the District Consumer Forum.
- National Consumer Commission: It is presided by a Supreme Court judge. It can hear cases worth Rs. 1 crore and above. It can also hear appeals against the

judgment of the State Consumer Commission



K. Fast Track Courts:

- Set up under the recommendations of the 11th Finance Commission, Fast Track Courts have been set up to expedite long pending cases in various courts on priority basis. It is a completely centrally funded scheme.
- These courts take up matters pending for three years or more and expeditiously dispose them within a given time frame. The state are supposed to give priority to cases relating to offences against senior citizens, women and physically handicapped.
- So far 1711 fast track courts have been established. Initially they had tenure of five years, but in 2006, their tenure was extended for another five years.

L. Concept of plea Bargaining:

- The concept of plea bargaining has been newly introduced in the Indian Judicial system. It has been in practice in USA for a long time. A plea bargain is an agreement in a criminal case in which a prosecutor and a defendant arrange to settle the case against the defendant.
- The defendant agrees to plead guilty in exchange for some agreement from the prosecutor as to the punishment
- In plea bargaining, the prosecutor agrees to reduce the charges against the defendant and may dismiss some of the charges against him. The effects of plea

bargaining are manifold.

–It saves the litigation costs of both the parties.

–It saves the time of the court.

–The under-trial gets lesser punishment.

- In India, plea bargaining has been introduced by inserting a new chapter-Chapter XXIA in the Criminal Procedure Code (1973).
- Plea bargaining was introduced through the Criminal Law (Amendment) Act, 2005. The provision is likely to bring relief to a large number of under-trials lodged in various jails of the country and help reduce the long pendency in the courts.
- The application for plea bargaining should be filed by the accused voluntarily, a person accused of an offence may file an application for plea bargaining in the court in which such offence is pending for trial and the complainant and the accused are given time to work out a mutually satisfactory disposition of the case. It is applicable only in respect of those offence for which punishment of imprisonment is up to a period of 7 years, which may include giving to the victim by the accused, compensation and other expenses incurred during the case.
- It does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman or a child below the age of 14 years.
- In the event of a satisfactory disposition of the case being worked out, the Court shall dispose of the case by sentencing the accused to one-fourth of the punishment provided or extendable, as the case may be for such offence.
- The statement or facts stated by an accused in an application for plea bargaining shall not be used for any other purpose other than for plea bargaining; the judgment delivered by the Court in the case of plea-bargaining shall be final and no appeal shall lie in any court against such judgment.

M. National Litigation Policy:

- The Centre has formulated a National Litigation Policy to reduce the cases pending in various courts in India under the National Legal Mission to reduce average pendency time from 15 years to 3 years.
- The National Litigation Policy is based on the recognition that Government and its various agencies are the pre-dominant litigants in courts and Tribunals in the country.
- Its aim is to transform Government into an Efficient and Responsible litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and those in charge of the

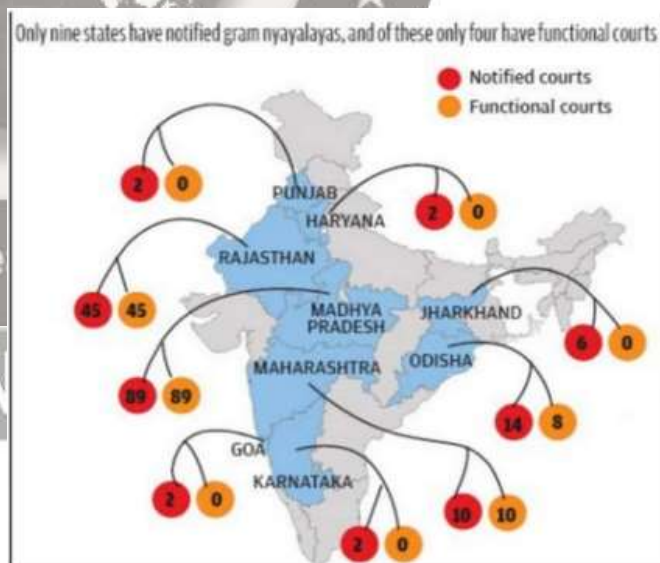
conduct of Government litigation should never forget this basic principle.

- Litigators on behalf of Government have to keep in mind the principles incorporated in the National mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary Government cases.
- Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority

Salient Features:

- Its aims to transform Government into an Efficient and Responsible litigant.
- It instructs to place correct facts, all relevant documents before the court/tribunal and not to mislead them.
- Pending cases with government as party to be reviewed on priority basis to enable quick disposal.
- Propose a monitoring and review mechanism to sensitize government in important cases and avoid delay and neglect of the same.
- It gives recognition to the principle that government is responsible for the protection of the rights of the citizens.

N. Rural Courts for Speedy Justice



- Perhaps the most important practical reform would be constitution of rural courts for speedy justice. As already stated, the number of judges in our society is slightly over 10 per million population.
- This density is roughly 10% of the density of judges (per unit population) in more advanced and law abiding societies. Even this low number is highly skewed

- with pitiful shortages in subordinate judiciary and ridiculously large numbers in higher courts.
 - Obviously what is needed is a substantial increase in the number of judges at the local level giving access to the ordinary people.
 - In addition to the number and access, the procedures of these local courts should be simple and uncomplicated giving room for sufficient flexibility to render justice.
 - These courts should use only the local language and they should be empowered to visit the villages and hear the cases and record evidence locally.
 - Above all they should be duty bound to deliver the verdict within the specified time frame. There could be several models like the "gram nyayalaya" advocated by the Law Commission in its 114th report.
 - Essentially, there should be such rural courts with special magistrates with jurisdiction over a town, or a part of a city or a group of villages.
 - These special magistrates should be appointed by District Judge for a term of 3 years. They should have exclusive civil and criminal jurisdiction of all civil disputes up to Rs one lakh in civil cases and up to an imprisonment of one year in criminal cases. In addition, certain civil disputes arising out of implementation of agrarian reforms and allied statutes, property disputes, family disputes and other disputes as recommended by the Law Commission could be entrusted to these rural courts. In civil cases there should be only a provision on ground of revision by the District Judge on grounds of application of law and on no other ground. In criminal cases where imprisonment is awarded, there could be a provision for appeal to the session judge. The procedure must be simplified and these courts should be duty bound to deliver a verdict within 90 days from the date of complain
- E- Court Mission Mode Project**

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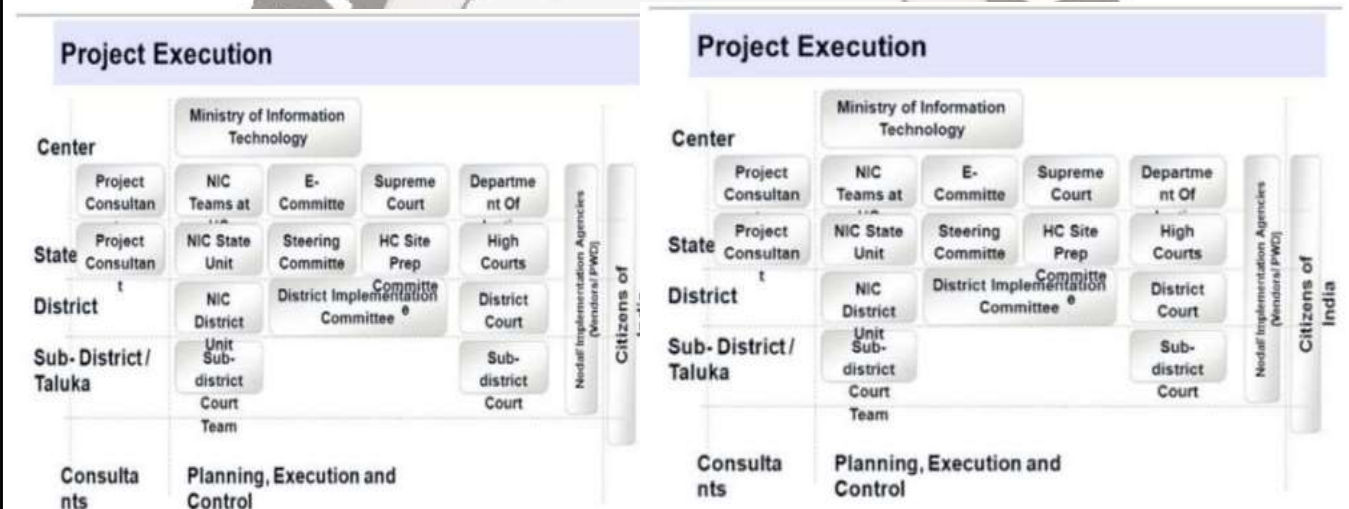
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E- Court Mission Mode Project



The E-court project was established in 2005. According to the project, all the courts including taluk courts will get computerised. As per the project in 2008, all the District courts were initialised under the project. In 2010, all the District courts were computerised. The entry of back log cases has started. The IT department had one system officer and two system assistants in each court. They initiated the service in the Supreme Court in June 2011.

- The case lists and the judgements of most district courts is used to connect all High Courts and Supreme Court judgements and cause list. The special websites are updated daily by a technical team. Now the establishment work is going on taluk courts.

- The project also includes producing witnesses through video conferencing. Filing cases, proceedings, and all other details will be in computers. Each district court contains 1 system officer and 2 system assistants. This technical manpower is involved in training the staff, updating web sites.

P. Judicial Service Centre

- This is a part of e-court project. The judicial service centres are available in all court campus. The Public as well as the advocates can walk in directly and ask for the case status, stage and next hearing dates. This service is provided for free.

Other Constitutional Provisions

38. Local Government

One of the Directive Principles of State Policy in the Constitution directed the Union and State Governments to try to take steps to organise village panchayats and give them such powers and authority as may be necessary to enable them to act as units of self-government panchayati raj was not taken up seriously by the states. However, they are now given Constitutional status.

73rd Constitutional Amendment Act, 1992 - 11th Schedule

Compulsory Provisions:

Organisation of Gram sabha

- Creation of 3 tier panchayat at District, Block & Village level
 - All the seats in panchayati raj shall be filled by people chosen by direct elections from territorial constituencies in panchayat areas.
 - Minimum age for contesting for elections to panchayats is 21 years, for fixed 5 years tenure.
 - Reservation of seats for SC/ ST in panchayats shall be in proportion of their population
 - Reservation of women in Panchayats is upto 33 %.
 - Each state is to constitute a state election commission to conduct elections & state finance commission every 5 years to review financial positions of the panchayats.

Voluntary Provisions:

- Providing reservation for backward classes
- Giving voting rights to members of union & state legislatures in these bodies
- Giving panchayats financial autonomy & powers to levy taxes, fees etc.

SALIENT FEATURES OF THE ACT

Gram Sabha

- Adult people (above 18 years) register in electoral rolls relating to a village comprised within the area of Panchayat.
- Meet twice a year (April 13 & Oct 3) & exercise functions as state legislature determines.
- In other words, Gram sabha is village assembly of registered voters within panchayat area to discuss issues related to their areas.

3 Tier Systems

- PART IX of the Constitution envisages a three-tier system. Act provides for a 3 tier system of panchayati raj in every state that is Panchayats at village, intermediate & district level.

- To introduced the democracy at grass root level all the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area. The electorate has been named Gram Sabha consisting of persons registered in the electoral rolls relating to a village comprised within the area of a Panchayat.
- However, a state having population less than 20 lakhs may not have intermediate level.
- Members of Rajya Sabha, Lok Sabha & state assembly in district may be included in intermediate level panchayat, in which they are registered as an elector

(i) Functions of Gram Panchayat: The civic functions relating to sanitation, cleaning of public roads, drains and ponds, public toilets and lavatories, primary health care, vaccination, supply of drinking water, constructing public wells, street lighting, social health and primary and adult education, etc. are obligatory functions of village panchayats. The optional functions depend on the resources of the panchayats. After the 73rd Amendment, the scope of functions of Gram Panchayat was widened. Such important functions like preparation of annual development plan of panchayat area, annual budget, relief in natural calamities, removal of encroachment on public lands, implementation and monitoring of poverty alleviation programmes are now expected to be performed by Structure of Government panchayats.

(ii) Panchayat Samitis are at the hub of developmental activities. They are headed by Block Development Officers (B.D.Os). Some functions are entrusted to them like agriculture, land improvement, watershed development, social and farm forestry, technical and vocational education, etc. The second type of functions relates to the implementation of some specific plans, schemes or programmes to which funds are earmarked.

(iii) Zila Parishad links panchayat samitis within the district. It coordinates their activities and supervises their functioning. It prepares district plans and integrates samiti plans into district plans for submission to the State Government. Zila Parishad looks after development works in the entire district. It also performs welfare functions like relief during natural calamities and scarcity, establishment of orphanages and poor homes, night shelters, welfare of women and children, etc

Election of Members & Chairperson

- All the members of the panchayat at village, intermediate & district levels shall be elected directly by the people.

- Chairperson of panchayat (at intermediate & district levels) shall be elected indirectly by & among the elected members thereof.
- Chairperson of panchayat at village level shall be elected in such a manner as the state legislature determines.

Reservation of Seats

- Article 243D provides that -Reservation of seats of SC & ST (at all 3 levels) shall be in proportion of, their population to total population in panchayat area. If, for example, the Scheduled Castes constitute 30% of the population and the Scheduled Tribes 21%, then 30% and 21% seats shall be reserved for them, respectively.
- Further, state legislature shall provide for reservation of offices of chairperson in panchayat at all levels for SCs & STs.
- Reservation of not less than 1/3rd of total no. of seats for women, including number of seats reserved for women belonging to SCs & STs.
- Further, not less than 1/3rd of total no. of offices of chairperson in the panchayats at each level shall be reserved for women.
- Reservation of offices of Chairpersons, These reservations favouring the Scheduled Castes and Scheduled Tribes shall cease to be operative when the period specified in Article 334. A State may by law also reserve seats or offices of Chairpersons in the Panchayat at any level in favour of backward classes of citizens.

Reservation of offices of Chairpersons:

Duration of Panchayats

- Every panchayat shall continue for 5 yrs from the date of its 1st meeting
- It can be dissolved earlier in accordance with the procedure prescribed by the state legislature
- In case, it is dissolved earlier, elections must take place within 6 month of its dissolution.

Qualification (Art. 243 F):

- Same as state legislature but must have attained a minimum age of 21.
- The only difference is that a person who has attained the age of 21 years will be eligible to be a member (in case of State Legislature the prescribed age is 25 years-Article 173).
- Shall be qualified as a member of panchayat by any law made by state legislature

Powers & Functions (Arts. 243G-243H):

- It is for the state legislature to determine as to what powers are to be assigned to the panchayats to enable them to function as an institution of self-government.

- Powers shall be assigned mainly for social justice & economic development with regards to 29 matters, included in 11th schedule.

Financial matters (Art. 280):

State legislature may:

- Authorise a panchayat to levy, collect & appropriate taxes, duties tolls & fees
- Assign to panchayat to appropriate taxes, duties, tolls & fees levied & collected by state government
- Provide for making grants in aid to panchayats from consolidated fund of India
- Provide for constitution of funds for crediting money to panchayats.

Panchayat Finance Commissions:

Every five years, the State Government has to appoint a Finance Commission to review the financial position of the Panchayats and to make recommendations as to-

- The distribution between the State and the panchayats of the net proceeds of taxes, duties, tolls and fees leviable by the State which may be divided between them and how allocation would be made among various levels of Panchayats;
- What taxes, duties, tolls and fees may be assigned to the Panchayats;
- Grant-in-aid to the Panchayats.

The report of the Commission, together with a memorandum of action taken on it, shall be laid before the State Legislature. These provisions are modeled on Article 280 which contains provisions regarding appointment of a Finance Commission for distribution of finances between the Union and the States.

State Finance commission:

- Within 1 year of coming into force of this Act & henceforth every 5 years, state government (Governor) shall appoint a state finance commission, to review the financial positions of the panchayats & to suggest different means to enhance the same.

State Election commission (Art. 243k):

State election commissioner shall be appointed by governor to supervise, direct & control elections of panchayats including preparation of electoral rolls. He can be removed on the same grounds as a judge of HC & his tenure shall be determined by the Governor.

To ensure the Independence of the Commissioner it is laid down that State Election Commissioner can be removed only in the same manner and on the same grounds as Judge of a High Court. The State Legislatures have the power to legislate on all matters relating to elections to Panchayats.

Bar on interference by the courts (Art. 329):

- The act bars the interference by courts in electoral matters of the panchayats.
- It declares that validity of any law relating to delimitation of constituencies or allotment of seats to such constituencies cannot be questioned in any court.
- Further, no election to any panchayat is to be questioned except by an election petition, presented to such authority & in a manner provided by state legislature.

Exempted states & Areas

- Act does not apply to J & K, Nagaland, Meghalaya, Mizoram, Hill areas of Manipur, Darjeeling & certain other areas.
- However, parliament may extend its provisions to these areas under PESA, 1996 (Provision to panchayat extension to scheduled areas).

39. Urban Government

In our towns and cities, we have local government institutions that are called Municipalities and Municipal Corporations. An urban area is usually a compact and densely populated area. Municipal administration is necessary to provide basic civic facilities like water supply, drainage, garbage disposal, public health, primary education, construction and maintenance of roads and sanitation.

74th Amendment Act, 1992 - 12th Schedule

PART IXA gives, a constitutional foundation to the local self-government units in urban areas.

Institutions of self-government, called by a general name „municipalities" are of three types:

Municipal councils For smaller urban areas
(Nagar Palika)

Nagar Panchayats For semi urban areas (an area which is being transformed from a rural area to an urban area)

Municipal corporations For larger urban areas

Article 243Q makes it obligatory for every State to constitute such units. But if there is an urban area or part of it where municipal services are being provided or proposed to be provided by an industrial establishment in that area then considering also the size of the area and other factors the Governor may specify it to be an industrial township. For such an area it is not mandatory to constitute a Municipality.

Composition of Municipalities:

The members of a municipality would generally be elected by direct election. The Legislature of a State may by law provide for representation in a municipality of:

- Persons having special knowledge or experience in municipal administration,
 - Members of Lok Sabha, State Assembly, Rajya Sabha and Legislative Council, and
 - The Chairpersons of Committees constituted under Cl. (5) of Art. 243S. The Chairperson shall be elected in the manner provided by the Legislature.
- All the members of municipality shall be elected directly by people of municipal area.
- For this purpose, each municipal area shall be divided into territorial constituencies known as wards
 - State legislature may provide a manner of election of chairperson of municipality

Ward committees:

Consisting of 1 or more wards within the territorial area of municipality having population of 3 lakh or more. The State Legislature shall make provision with respect to its composition, territorial area and the manner in which the seats in a ward committee shall be filled.

Other Committees:

It is open for the State Legislature to constitute Committees in addition to the wards committees.

Reservations of seats:

- (a) For Scheduled Castes and Scheduled Tribes: As in Part IX reservations of seats are to be made in favour of the Scheduled Castes and Scheduled Tribes in every Municipality. For SC, ST in every municipality, in proportion of their population, to total population in municipal area.
- (b) Reservation for women: Out of the total number of seats to be filled by direct elections at least 1/3rd would be reserved for women. This includes the quota for women belonging to Scheduled Castes and Tribes.

- (c) Reservation of offices of Chairpersons:

- It has been left to the State legislature to prescribe by law the manner of reservation of the offices of the Chairpersons of Municipalities.
- All reservations in favour of Scheduled Castes and Tribes shall come to an end with the expiry of the period specified in Art. 334.
- It is permissible for a State Legislature to make provisions for reservation of seats or offices of Chairpersons in favour of backward classes.

Duration - 5 years (Art. 243Q):

- Elections to constitute a municipality shall be completed well before the expiry of duration of 5 years (same as panchayats) & in case of dissolution, within 6 months from date of dissolution.

- A municipality constituted upon the dissolution of municipality before the expiration of its duration, it shall continue only for the remainder period, for which the dissolved municipality would have constituted, had it not been dissolved.
- 74th amendment also envisages setting up of committees for district planning, to consolidate the plans prepared by panchayats & municipalities in district & to prepare a draft development plan for the district as a whole.

Qualification for membership (Art. 243V):

- All persons who are qualified to be chosen to the State legislature shall be qualified for being a member of a Municipality.
- There is an important difference. Persons who have attained the age of 21 years will be eligible to be a member.
- While the constitutional requirement is that for election to the State legislature of a State a person must have attained the age of 25 years.

Powers, authority and responsibilities of Municipalities (Art. 243W):

Legislatures of States have been conferred the power to confer on the Municipalities all such powers and authority as may be necessary to enable them to function as institutions of self-government. It has specifically been mentioned that they may be given the responsibility of:

- Preparation of plans for economic development and social justice,
- Implementation of schemes as may be entrusted to them, and
- In regard to matters listed in the 12th Schedule. This schedule contains 18 items, e.g., Urban Planning, Regulation of Land Use, Roads and Bridges, Water Supply, Public Health, Fire Services Urban Forestry, Slums, etc.

Powers to impose taxes and financial resources:

A State Legislature may by law authorise a Municipality to levy, collect and appropriate taxes, duties, tolls etc. The law may lay down the limits and prescribe the procedure to be followed. It can also assign to a Municipality various taxes, duties etc. collected by the State Government. Grants-in-aid may be given to the Municipalities, from the Consolidated Fund of the State.

Panchayat Finance Commission (Art. 243-D):

The financial position of the Municipalities and make recommendations as to-

- The distribution between the State and the Municipalities of the net proceeds of taxes, duties, tolls and

fees leviable by the State which may be divided between them and how allocation of shares amongst various levels of Municipalities.

- The taxes, duties, tolls and fees may be assigned to the Municipalities.
- Grant-in-aid to the Municipalities
- The measures needed to improve the financial position of the Municipalities.
- Any other matter that may be referred to it by the Governor.

Elections of Municipalities (Art. 243K):

The power of superintendence, direction and control of:

- The preparation of electoral rolls for, and
 - The conduct of all elections to the Municipalities.
- State Legislatures have been vested with necessary power to regulate by law all matters relating to elections to Municipalities.

Bar to interference by courts in electoral matters (Art. 243 ZA):

- The courts shall have no jurisdiction to examine the validity of a law, relating to delimitation of constituencies or the allotment of seats made under Art. 243ZA.
- An election to a Municipality can be called in question only by an election petition which should be presented to such authority and in such manner as may be prescribed by or under any law made by the State Legislature.

Committees for (a) District Planning and (b) Metropolitan Planning:

Apart from giving constitutional recognition to Municipalities the 74th Amendment lays down that in every State two committees shall be constituted.

At the district level a District Planning Committee. At the district level a District Planning Committee (Art.243ZD).

In every metropolitan area a Metropolitan Planning Committee (Art.243 ZB):

The composition of the committees and the manner in which the seats are to be filled are to be provided by a law to be made by the State Legislature. But it has been laid down that,-

- In case of the District Planning Committee at least 4/5th of the members shall be elected by the elected members of the district level Panchayat and of the Municipalities in the district from amongst themselves.

Their proportion would be in accordance with the ratio of urban and rural population of the district

- In case of Metropolitan Planning Committee at least

2/3rd of the members of the committee shall be elected by the Members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area from amongst themselves. The proportion of seats to be shared by them would be based on the ratio of the population of the Municipalities and the Panchayats in the area.

The State legislature would by law make provision with respect to:

- The functions relating to district planning that may be assigned to the district committees, and
- The manner in which the Chairperson of a district committee may be chosen.

The Committee shall prepare and forward the development plan to the State Government. In regard to the Metropolitan Planning Committee which is to prepare a development plan for the whole Metropolitan area the

State Legislature may by law make provision for:

- The representation of the Central and State Governments and of such organisations and institutions as may be deemed necessary,
- The functions relating to planning and co-ordination for the Metropolitan area,
- The manner in which the Chairpersons of such committees shall be chosen.
- The development plan shall be forwarded to the State Government.

Addition to the duties of the Finance Commission under Article 280:

This part adds one more function to the duties cast on the Finance Commission appointed by the President under Art.280. The Commission will make recommendations in regard to the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the State Finance Commission.

(Finance commission, Election commission, duties same as Panchayats)

Financial Resources of Urban Local Bodies

Municipal corporations and municipalities raise their own resources from a variety of sources, as provided for in the respective municipal laws. Their own revenue sources are income from (i) taxes, (ii) fees and fines, and (iii) earning from municipal enterprises like land, tanks, markets, shops, etc. Besides these bodies receive grants from the State.

Some of the taxes and rates collected by urban bodies are:

Property Tax; Water tax for water supplied;

Sewerage Tax, Fire Tax; Taxes on animals and vehicles; Theatre Tax; Duty on transfer of Property; Octroi Duty on certain items brought into the city; Education Cess (Tax); and Professional Tax.

Some other sources of income are fines and fees such as Fees on Tehbazari on takhats and chabutras; licence fees - on cycle rickshaw, bicycles etc.; rent from municipal shops; and fines imposed for violation of municipal by laws.

40. Emergency Provisions

Emergency Provisions have been inserted in the Constitution for dealing with extraordinary situations that may threaten the peace, security, stability and governance of the country or a part thereof. They are included in part XVIII from articles 352 to 360.

There are three types of extraordinary or crisis situations that are envisaged.

- An emergency due to war or external aggression or armed rebellion i.e National emergency
- An emergency due to failure of constitutional machinery in a State i.e. State Emergency
- An emergency due to a threat to credit or financial stability of the country i.e. Financial Emergency.

National Emergency (Article 352)

- The Constitution of India originally provided for imposition of emergency in the event of war, external aggression or internal disturbance but by the 44th Amendment Act the expression "internal disturbance" was replaced by the term "armed rebellion".
- This type of emergency can be declared by the President if he is satisfied that the security of India or any part thereof is threatened or is likely to be threatened. The President can declare such an emergency only after the written advice of the Cabinet.
- Every such proclamation of emergency has to be approved by both the Houses of Parliament by absolute majority of the total membership of the Houses as well as 2/3 majority of members present and voting within one month, failing which the proclamation ceases to operate.
- In case the Lok Sabha stands dissolved at the time of proclamation of emergency or is not in session, it has to be approved by the Rajya Sabha within one month and later on by the Lok Sabha also within one month of the start of its next session.
- Once approved by the Parliament, the emergency remains in force for a period of six months from the date of proclamation. A fresh resolution has to be passed by the Parliament in case the emergency is to be be-

yond six months. In this way, such emergency continues indefinitely. The emergency can be revoked by another proclamation by the President anytime.

- The 44th Amendment of the Constitution provided that ten per cent or more members of the Lok Sabha can requisition a meeting of the Lok Sabha and in that meeting, it can disapprove or revoke the emergency by a simple majority. In such a case emergency will immediately become inoperative.

So far, National Emergency has been declared in our country three times. National Emergency has been declared in our country three times.

- (1) The first emergency was declared on 26 October 1962 after China attacked our borders in the North and East. This National Emergency lasted till 10 January 1968.
- (2) The second emergency was declared on 3 December 1971 in the wake of the second India-Pakistan War and was lifted on 21 March 1977.
- (3) The third National Emergency (called internal emergency) was imposed on 25 June 1975. This emergency was declared on the ground of „internal disturbances“.

Effects of National Emergency

The declaration of National Emergency has far-reaching effects both on the rights of individuals and the autonomy of the states in the following manner:

- During the operation of national emergency the executive power of the centre extends to directing any state regarding the manner in which its executive power is to be exercised.
- Parliament becomes empowered to make laws on any subject mentioned in the state list.
- The tenure of the Lok Sabha extends by a period of one year at a time. But the same cannot be extended beyond six months after the proclamation ceases to operate. The tenure of State Assemblies can also be extended in the same manner. During emergency president is empowered to modify the provisions regarding distribution of revenues between the Union and the States.
- The Fundamental Rights under Article 19 are automatically suspended and this suspension continues till the end of the emergency. But according to the 44th Amendment Article 19 can be suspended only in case of proclamation on the ground of war or external aggression and not on ground of armed rebellion.
- Other fundamental rights may also get suspended except Article 20 and 21.

State Emergency (Article 356)

- According to the Constitution it is the duty of the Union Government to ensure that governance of a State is carried on in accordance with the provisions of the Constitution. Under Article 356, the President may issue a proclamation to impose emergency in a state if he is satisfied on receipt of a report from the Governor of the concerned State, or otherwise, that a situation has arisen under which the administration of the State cannot be carried on according to the provisions of the constitution.

- In such a situation, proclamation of emergency by the President is on account of the failure (or breakdown) of constitutional machinery. Thus it is known as “President's Rule” or “State Emergency” or “Constitutional Emergency”.

- The proclamation imposing state emergency must be placed before both the Houses of Parliament for approval. The approval must be given within two months from the date of its issue failing which the proclamation ceases to operate. If in the meantime Lok Sabha gets dissolved, then the proclamation must be approved within 30 days from the first sitting of Lok Sabha.

- If approved by the Parliament, the proclamation remains valid for six months at a time. It can be extended for a maximum three years with the approval of the parliament, every six months. The 44th Amendment Act added a provision that the emergency beyond one year can be extended by six months at a time only when

- (a) A National Emergency is already in operation; or if
- (b) The Election Commission certifies that the election to the State Assembly cannot be held.

Effects of Imposition of President's Rule in a State

- The President can assume to himself all or any of the functions of the State Government or he may vest or any of those functions with the Governor or any other executive authority.
- The President may dissolve the State Legislative Assembly or put it under suspension. He may authorize the Parliament to make laws on behalf of the State Legislature.
- The Parliament can delegate the power to make laws for the state to the President or any other body specified by him when the state legislature is suspended or dissolved.

Financial Emergency (Article 360)

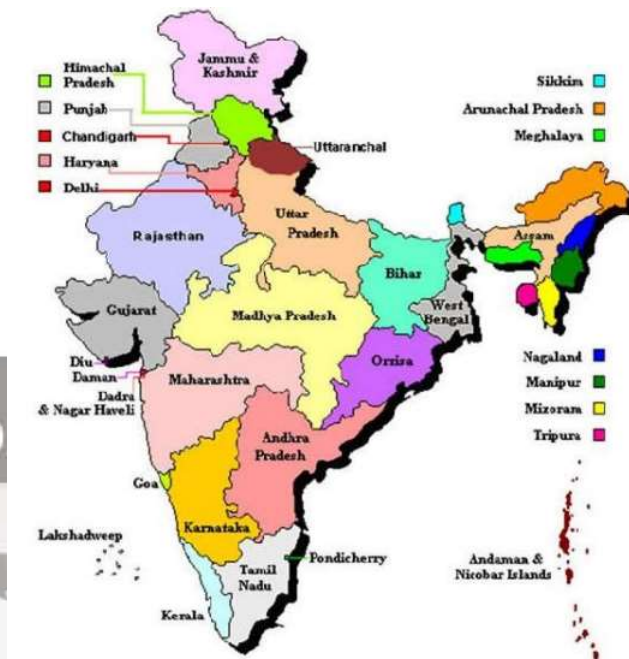
- The third type of Emergency is the Financial Emergency provided under Article 360. It provides that if the President is satisfied that the financial stability or credit of India or any of its part is threatened; he

may declare a state of Financial Emergency.

- A proclamation declaring financial emergency must be approved by the Parliament within two months from the date of its issue. If the Lok Sabha gets dissolved in the mean time then it must be cleared within 30 days from the first sitting of the new Lok Sabha.
- The financial emergency continues indefinitely till it is revoked. The financial emergency has never been proclaimed in India so far.

Effects of Financial Emergency

- The Union Government may give direction to the States regarding financial matters.
- The President may ask the States to reduce the salaries and allowances of all or any class of persons in government service.
- The President may ask the States to preserve all the money bills for the consideration of the Parliament after they have been passed by the State Legislature.
- The President may also give directions for the reduction of salaries and allowances of the Central Government employees including the Judges of the Supreme Court and the High Courts.



41. Union Territories Provisions

The Union Territories:

There are 7 Union territories viz. Chandigarh, Delhi, Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Pondicherry. Due to strategic, political and administrative considerations, the union territories have been placed under central administration.

- Union territories in India qualify as federal territories, by definition. But, do not take part in federal structure of the country.
- No uniform system of administration as parliament has the power to prescribe the structure of administration.
- A union territory is a type of administrative division in the Republic of India. Unlike the states, which have their own elected governments, union territories are ruled directly by the Union Government (Central Government), hence the name „union territory“.
- The Parliament of India can pass a law to amend the Constitution and provide a Legislature with elected Members and a Chief Minister for a Union Territory, as it has done for Delhi and Puducherry. In general, The President of India appoints an administrator or lieutenant-governor for each UT. There are seven union territories, including Delhi, the capital of India, and Chandigarh, the joint capital of Punjab and Haryana.
- Delhi and Puducherry (Pondicherry) operate somewhat differently from the other five. Delhi and Puducherry were given partial statehood and Delhi was redefined as National Capital Territory of Delhi (NCTD). Delhi and Puducherry have their own assemblies and the executive councils of ministers with partially state-like function.

Under direct control of Union based on

Cultural Distinctiveness Puducherry, Daman

Strategic Importance & Diu, Dadar and Nagar Haveli
A & N islands, Lakshadweep

Polity and administrative consideration Delhi & Chandigarh

President may appoint Governor of a state as administrative of adjoining UT, who shall exercise his functions independent of his COMs.

Lieutenant Governor Delhi, Pondicherry & A&N islands

Administrator (IAS Officer) Chandigarh, Dadar & Nagar Haveli, Daman & Diu & Lakshadweep

Important Points to Remember:

- UT of Pondicherry & Delhi - Legislative assembly with Council of Ministers & Chief Minister.
- Size of CoMs is to be 10 % maximum of legislative assembly.
- Parliament can make laws on any subject given in 3 lists (Power also extends to Delhi & Pondicherry even though they have their own legislature).
- Pondicherry & Delhi can also make laws on any subject of state list & concurrent list except laws related to Public order, Police & land.
- President may frame regulations for peace, progress & good governance for all UTs except Delhi & Pondicherry
- Parliament is empowered to constitute a high court for any of the UT or even can declare an existing court there as high court.

Advisory Committee:

Link between Parliament & UT, consulted by Government in regards to:

- General questions of policy relating to administration of subjects in state list.
- All legislative proposals in state list pertaining to the territories.
- Matters relating to annual financial statement of territories.

Administration of Union Territories (Art. 239):

A Union Territory is administered by the President acting through an administrator to be appointed by him with such designation as he may specify. There is no uniformity in the designation of the administrator. It is at some places Lieutenant Governor (e.g., Delhi and Puducherry) at other Chief Commissioner or Administrator. The Governor of state may be appointed as Administrator of an adjoining Union Territory. An Administrator of Union Territories is not a

head of state like a Governor but is an agent of the President.

Legislatures and Council of Ministers in Union Territories (Art. 239A):

In 1962 Art. 239A was inserted in the constitution empowering Parliament to create legislature or a Council of Ministers or both for some of the Union Territories. In exercise of this power the Parliament passed the government of Union Territories Act, 1963, which created a legislature as well as a Council of Ministers for some of the Union Territories. As some of the territories have become states now, only Delhi and Puducherry are now left in this class. Creation of legislative Assembly or a Council of Ministers by enacting a law is not treated as an amendment of the constitution for the purpose for Art 368.

Special Provisions for Delhi:

The 69th Amendment Act, 1992 has added two new Art.239AA and Art.239AB under which the Union Territory of Delhi has been given a special status.

Art. 239AA and Art. 239AB under which the Union Territory of Delhi has been given a special status.

- Art. 239AA provides that the Union Territory of Delhi shall now be called the National Capital Territory of Delhi and its administrator shall be known as Lt. Governor.
- It also creates a legislative assembly for Delhi which can make laws on the state list and concurrent list except on these matters: public order, land and police.
- It also provides for a Council of Ministers for Delhi consisting of not more than 10% of the total number of members in the assembly. Ministers including the Chief Minister.

Position of President and Administer:

Union Territories are Centrally administered under Art. 239. They do not get merged with the central government and form part of no state. They do not lose their existence as a separate entity though the not central government controls them. The administrator functions as delegate of the President and will have to Act under the orders of the President that is the Central Government.

Constitutional break down (Art.239 AA):

If a situation arises in which the administration of the national capital territory cannot be carried on in accordance with Art. 239AA or the Act of 1991 etc. the President may on receipt of a report from the Lieutenant Governor or otherwise suspend the operation of the above laws and make such incidental or consequential provisions as may appear to him nec-

essary. (Art. 239AB).

The President may take action on the report of the Lieutenant Governor or otherwise. This provision resembles Art. 356.

Ordinance making power (Art. 239B):

Article 239 B gives the administrator power to promulgate an ordinance when the legislative assembly of a Union Territory is not in session. An ordinance may be promulgated only after obtaining instructions from the President

Power of the President to make regulations (Art. 240):

The President has the power to make regulations for the peace, order and good government of the Union Territory of:

- (a) Andaman and Nicobar islands
- (b) Lakshadweep
- (c) Dadra and Nagar Haveli
- (d) Daman and Diu.

Since, these territories do not have a legislature; the legislative function is assigned to the President.

In the case of Puducherry also, the president can legislate by making regulations but only when the assembly is suspended or dissolved.

High Court for Union Territory (Art. 241):

- Parliament may by-law constitute a High Court for a Union Territory or declare the High Court of a state having jurisdiction over a Union Territory.
- The Punjab and Haryana High Court has jurisdiction over Chandigarh.
- The Kerala High Court caters to Lakshadweep. The Andaman and Nicobar Islands are under the Calcutta High Court.
- Puducherry falls under Madras High Court.
- The Bombay High Court is the High Court for Dadar and Nagar Haveli as also for Daman and Diu. Delhi is the only Union Territory having its own High Court Since 1966.

Delhi	HC of Delhi	Lakshadweep	Kerala HC
Chandigarh	HC of Punjab & Haryana	A& N Island	Calcutta HC
Pondicherry	HC of Chennai	Dadar & Nagar Haveli, Daman & Diu	Bombay HC

69th AMENDMENT 1991:

- UT of Delhi shall be called National capital territory & shall have a legislative assembly with members, chosen directly by people from territorial constituencies. (Special Provisions related to the Delhi- Art. 239AA).
- The administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor.
- Assembly shall make laws on matter enumerated in state list (Except matters of Public order, Police &

land).

- If any provision of law, made by legislative assembly with respect to any matter which is repugnant to any provision of law made by parliament related to that matter, then law made by parliament shall prevail & law made by LA shall to the extent of repugnancy, be void.
- If law made by LA is preserved for consideration of President & has received his assent, then such law shall prevail in NCT, however, parliament can make laws adding to, varying or repealing laws made by LA.
- There shall be COMs, not more than 1/10 of total members of Legislative Assembly, with CM at its apex to aid & advice Lt. governor in exercise of his functions
- In case of difference between opinions of COMs & Lt. governor, Lt. governor shall refer it to the President for his decision & shall act according to directions given by President.

National Highways crossing through the UTs

NH No	Route	Length (km)
Chandigarh: 21	Chandigarh (NH-22)	15.27
Delhi: 2	Ashram on ring road-Badarpur-Haryana Border	12
1	Rajghat-outer ring road-Transport Nagar-Haryana Border	22
8	Ring Road at Dhaura Kua10n- Haryana Border	13
10	Outer Ring Road-Mundka-Haryana Border	18
24	Ring Road at Nizamuddin bridge-Ghaziपुर crossing-U.P. Border	7
236	Mehrauli- Andheria More-Chattarpur T point-Haryana Border	8
Dadra Nagar Haveli: 848 A	Dadra Border-piparia- silvassa- Ultanfalia - Bhurkudfalia - Khadol - Surangi - Velugam in the Union Territory of Dadra Nagar Haveli / Maharashtra Border	31
Daman & Diu: 251 (New)	NH-51 near Una in the State of Gujarat connecting Ghoghla- Gujarat Border	10
848 B	Ambawadi- Patalia Coastal Highway- Gujarat Border	12

–Union territories of India have special rights and status due to their constitutional formation and development.

–The status of „Union Territory" may be assigned to an Indian sub-jurisdiction for reasons such as safeguarding the rights of indigenous cultures, averting political turmoil related to matters of governance, and so on.

–These union territories could be changed to states in the future for more efficient administrative control.

42. Provisions Related to the Amendment

Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure. It states that the Parliament may, in exercise of its constituent power, amend by way of addition, variation or repeal any provision of the Con-

stitution in accordance with the procedure laid down for the purpose.

The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

1. An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.
2. The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
3. The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
4. Each House must pass the bill separately. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
5. If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
6. After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
7. The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament.²
8. After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

The constitution can be amended through the following methods:

1. Amendments by Simple Majority (ordinary legislative process):

A large number of provisions contained in the constitution are open to change by a simple majority. These may be divided into two classes.

- (a) Where the text of the constitution is not altered but the law is changed.

Article 11 confers on the Parliament power to enact a law regarding citizenship. An Act made in pursuance of that power will change the law relating to citizenship without altering the text of Article 5 to 10. Article 124 still refers to the Supreme Court as consisting of the Chief justice and 7 judges. But in exercise of its power the Parliament has increased the

strength of the judges from 7 to 25.

- (b) Where the text of the constitution is changed:

1. Formation of new state.
2. Creation or abolition of legislative council
3. Creation of council of ministers for Union territories
4. Extending the period of 15 years fixed for the use of English in Article 343.
5. Defining Parliamentary privileges [Article 105(3)]
6. Salaries and allowances of President, Vice-President, Judges, etc.

2. Amendments requiring special majority only:

Except those provisions which are amendable by an ordinary majority, the rest of the provisions require a special majority for amendment. The Amendment Bill must be passed by a majority of two-thirds of the members of each House present and voting and such majority must exceed 50% of the total membership of the House.

3. Amendments requiring special majority and ratification by States:

Those provisions which relate to the federal structure of the constitution require special majority in Parliament as well as ratification by at least half of the state legislatures. This procedure is required in the following provisions:

- (a) Manner of election of President
- (c) The Supreme Court and the High Courts
- (d) Distribution of legislative power between the Union and the States
- (e) Representation of states in Parliament
- (f) Article 368 itself

Apart from these provisions for formal amendments of the constitution, the constitution also gets amended through constitutional practices, conventions and by judicial interpretation. Judicial interpretation has played especially important role in our constitution insofar as the Supreme Court has held that the basic structure or framework of the constitution cannot be changed by an amendment and court's power to examine whether that limit has been exceeded have been held to be part of the basic structure of the Constitution.

Various types of Majorities as described in the Constitution

Simple Majority: This refers to majority of more than 50% of the members present and voting. For example if 200 members are present and voting then simple majority will be considered as 101, as it is more than 50% of members presenting and voting. It

does not matter what is the total membership or how many are absent in the house, what matters is present and voting. Most of the normal motions in the house such as No-confidence Motion, Vote of thanks (to the President or Governor), Adjournment Motion, Censure Motion, Cut motions etc. need simple majority.

Absolute Majority: It refers to a majority of more than 50% of the total membership of the house. For example if the total strength of Rajya Sabha or Upper house is 250 then the absolute majority will be considered as 126 irrespective of voting number. It is not used anywhere in constitution as standalone requirement.

Effective Majority: Effective Majority of house means more than 50% of the effective strength of the house. This implies that out of the total strength, we deduct the absent and vacant seats. Our Constitution writes "all the then members" which refers to effective majority.

Special Majorities: This is a special kind of majority required in certain cases. The majority votes of 2/3rd members present and voting and also these votes should exceed 50% of the total strength of house. Now let's assume a scenario: The strength of the house is 250 and let's assume 230 are present.

Now the absolute majority will be considered : if the positive votes will exceed both condition - 2/3rd of present and voting that is 154 and more than 50% of total strength of the house that is 126. So in this condition 154 votes will be required

43. Political Parties in India

A political party is generally described as an organized body of people who share common principles and cherish certain common goals regarding the political system. A political party operates and seeks political power through constitutional means to translate its policies into practice. It is a body of like-minded people having similar views on matters of public concern.

Following can be identified as the main characteristics of political parties:

- A political party is an organized group of people;
- The organized group of people believe in common principles and common goals;
- Its objectives revolve around seeking political power through collective efforts;
- It employs constitutional and peaceful methods in seeking control over the government through elections; and
- While in power, it translates its declared objectives

into governmental policies. The functions performed by the political parties, especially in the context of India, are as under:

- They nominate candidates during elections;
- They campaign to obtain support for their candidates in the elections;
- They place objectives and programmes before the voters through their manifestos;
- Those securing the majority in elections form the government and enact and implement the policies;
- Those not in power form opposition and keep a constant check on the government;
- They form opposition when they are in minority in the legislature and constantly put pressure on the government for proper governance;
- They educate people and help in formulating and shaping public opinion;
- They articulate peoples' demands and convey them to the government; and
- They provide a linkage between people and governmental institutions

Types of Political parties

Political parties in India are classified by the Election Commission for the allocation of symbols. The Commission classifies parties into three main heads: National Parties, State Parties, and Registered (un-recognized) Parties.

A political party shall be treated as a recognised political party in a State, if and only if either the conditions specified in Clause (A) are, or the condition specified in Clause (B) is, fulfilled by that party and not otherwise, that is to say-

(A) that such party -

- Has been engaged in political activity for a continuous period of five years; and
- Has, at the last general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly of the State, returned either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number from that State; or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

- (B) That the total number of valid votes polled by all the contesting candidates set up by such party at the last general election in the State to the House of the People, or as the case may be, to the Legislative Assembly of the State, is not less than six per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State.

1. The conditions in Clause (A) or Clause (B) above shall not be deemed to have been fulfilled by a political party, if a member of the House of the people or the legislative assembly of the state becomes a member of that political party after his election to that House or, as the case may be, that Assembly.
2. 'State' includes the National Capital Territory of Delhi and the Union Territory of Pondicherry.
3. If a political party is treated as a recognised political party in four or more States, it shall be known as a 'National Party' throughout the whole of India, but only so long as that political party continues to fulfill thereafter the conditions for recognition in four or more States on the results of any subsequent general election either to the House of the People or to the Legislative Assembly of any State.
4. If a political party is treated as a recognised political party in less than four States, it should be known as a 'State Party' in the State or States in which it is so recognised, but only so long as that political party continues to fulfill there after the conditions for recognition on the results of any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the State, in the said State or States.

Issues in the working of political parties

- The first challenge is lack of internal democracy within parties. All over the world there is a tendency in political parties towards the concentration of power in one or few leaders at the top. Parties do not keep membership registers, do not hold organisational meetings, and do not conduct internal elections regularly. Ordinary members of the party do not get sufficient information on what happens inside the party. They do not have the means or the connections needed to influence the decisions. As a result the leaders assume greater power to make decisions in the name of the party. Since one or few leaders exercise paramount power in the party, those who disagree with the leadership find it difficult to continue in the party. More than loyalty to party principles and policies, personal loyalty to the leader becomes more important.
- The second challenge of dynastic succession is related to the first one. Since most political parties do not practice open and transparent procedures for their functioning, there are very few ways for an ordinary worker to rise to the top in a party. Those who happen to be the leaders are in a position of unfair advantage to favour people close to them or even their family members. In many parties, the top positions are always controlled by members of one family. This is unfair to other members of that party. This is also bad for democracy, since people who do not have adequate experience or popular support come to occupy positions of power. This tendency is present in some measure all over the world, including in some of the older democracies.
- The third challenge is about the growing role of money and muscle power in parties, especially during elections. Since parties are focussed only on winning elections, they tend to use short-cuts to win elections. They tend to nominate those candidates who have or can raise lots of money. Rich people and companies who give funds to the parties tend to have influence on the policies and decisions of the party. In some cases, parties support criminals who can win elections. Democrats all over the world are worried about the increasing role of rich people and big companies in democratic politics. Thus law is needed to curb the growth of valueless politics.

44. Electoral System in India

Elections in India are conducted according to the procedure laid down by law. The following process is observed.

Notification for Election

The process of election officially begins when on the recommendation of Election Commission, the President in case of Lok Sabha and the Governor in case of State Assembly issue a notification for the election. Seven days are given to candidates to file nomination.

The seventh day is the last date after the issue of notification excluding Sunday. Scrutiny of nomination papers is done on the day normally after the last date of filing nominations. The candidate can withdraw his/her nomination on the second day after the scrutiny of papers. Election is held not earlier than twentieth day after the withdrawal.

Filing of Nomination Structure of Government

A person who intends to contest an election is required to file the nomination paper in a prescribed form indicating his name, age, postal address and serial number in the electoral rolls. The candidate is required to be duly proposed and seconded by at least two voters registered in the concerned constituency. Every candidate has to take an oath or make affirmation. These papers are then submitted to the Returning Officer designated by the Election Commission.

Security Deposit

A general candidate has to pay a security deposit of Rupees Twenty Five Thousand (Rs. 25,000) for Lok Sabha Election. Candidates belonging to the Scheduled Caste or Scheduled Tribe (SC/ST) are eligible for concession of Rupees Twelve Thousand Five Hundred Only (Rs. 12,500). As for Assembly Elections, general candidates have to pay Rupees Ten Thousand Only (Rs. 10,000), and those belonging to SC/ST have to pay Rupees Five Thousand Only (Rs. 5,000).

● **Scrutiny and Withdrawal**

All nomination papers received by the Returning Officer are scrutinised on the day fixed by the Election Commission. This is done to ensure that all papers are filled according to the procedure laid down and accompanied by required security deposit. The Returning Officer is empowered to reject a nomination paper on any one of the following ground:

- (i) If the candidate is less than 25 years of age.
- (ii) If he/she has not made security deposit.
- (iii) If he/she is holding any office of profit.
- (iv) If he/she is not listed as a voter anywhere in the country

The second day after the scrutiny of nomination papers is the last date for the withdrawal of the candidates. In case that day happens to be a holiday or Sunday, the day immediately after that is fixed as the last day for the withdrawal.

● **Election Campaign**

Campaigning is the process by which a candidate tries to persuade the voters to vote for him rather than others. During this period, the candidates try to travel through their constituency to influence as many voters as possible to vote in their favour. In the recent times, the Election Commission has granted all the recognised National and Regional Parties, free access to the State-owned electronic media, the All India Radio (AIR) and the Doordarshan to do their campaigning. The total free time is fixed by the Election Commission which is allotted to all the political parties. Campaigning stops 48 hours before the day of polling. A number of campaign techniques are involved in the election process. Some of these are:

- i. Holding of public meetings
- ii. Distribution of handbills, high lighting the main issues of their election manifesto (election manifesto is a document issued by political party.
- iii. Door to door appeal by influential people in the party.
- iv. Broadcasting and telecasting of speeches by various political leaders.

● **Model Code of Conduct**

During the campaign period the political parties and the contesting candidates are expected to abide by a model code of conduct evolved by the Election Commission of India on the basis of the consensus among political parties. It comes into force the moment schedule of election is announced by the Election Commission. The code of conduct is as follows :

- (i) Political Parties and contesting candidates should not use religious places for election campaign.
- (ii) Such speeches should not be delivered in a way to create hatred among different communities belonging to different religions, castes and languages, etc.
- (iii) Official machinery should not be used for election work.
- (iv) No new grants can be sanctioned, no new schemes or projects can be started once the election dates are announced.
- (v) One cannot misuse mass media for partisan coverage.

● **Scrutinisation of Expenses**

Though the Election Commission provides free access for a limited time to all the recognized National and State parties for their campaign, this does not mean that political parties do not spend anything on their elections campaign. The political parties and the candidates contesting election spend large sum of amount on their election campaign. However, the Election Commission has the power to scrutinise the election expenses to be incurred by the candidates. There is a ceiling on expenses to be incurred in Parliamentary as well as State Assembly elections. Every candidate is required to file an account of his election expenses within 45 days of declaration of results. In case of default or if the candidate has incurred (expenses) more than the prescribed limit, the Election Commission can take appropriate action and the candidate elected may be disqualified and his election may be countermanded.

● **Polling, Counting and Declaration of Result**

In order to conduct polling, large number of polling booths are set up in each constituency. Each booth is placed under the charge of a Presiding Officer with the Polling Officers to help the process.

A voter casts his/her vote secretly in an enclosure, so that no other person comes to know of the choice he/she has made. It is known as secret ballot.

After the polling is over, ballot boxes are sealed in the presence of agents of the candidates. Agents ensure that no voter is denied right to vote, provided the voter turns up comes within the prescribed time limit.

Administrative officers involved in design of electoral rolls:

● **Chief Electoral Officer:**

For each State a chief electoral officer is appointed who shall be such officer of Government as the Election Commission may, in consultation with that Government, designate or nominate in this behalf. The Chief Electoral Officer of a State/ Union Territory is authorised to supervise the election work in the State/ Union Territory subject to the overall superintendence, direction and control of the Election Commission. The chief electoral officer of each State shall also supervise the conduct of all elections in the State.

● **District Electoral Officer:**

For each district in a State the Election Commission shall, in consultation with the Government of the State, designate or nominate a district election officer who shall be an officer of Government. The Election Commission may designate or nominate more than one such officer for a district if the Election Commission is satisfied that the functions of the office cannot be performed satisfactorily by one officer. , the District Election Officer shall coordinate and supervise all work in the district or in the area within his jurisdiction in connection with the conduct of all elections to Parliament and the Legislature of the State.

● **Electoral registration officers:**

The electoral roll for each parliamentary constituency in the State of Jammu and Kashmir or in a Union territory not having a Legislative Assembly, each assembly constituency and each Council constituency shall be prepared and revised by an electoral registration officer who shall be such officer of Government or of a local authority as the Election Commission may, in consultation with the Government of the State in which the constituency is situated, designate or nominate in this behalf. An electoral registration officer may, subject to any prescribed restrictions, employ such persons as he thinks fit for the preparation and revision of the electoral roll for the constituency.

● **Assistant electoral registration officers:**

The Election Commission may appoint one or more persons as assistant electoral registration officers to assist any electoral registration officer in the performance of his functions. Every assistant electoral registration officer shall, subject to the control of the electoral registration officer, be competent to perform all or any of the functions of the electoral registration officer.

Officers on Election Duty:

To ensure that elections are held in free and fair manner, the Election Commission appoints thousands of polling personnel to assist in the election work. These personnel are drawn among magistrates, police officers, civil servants, clerks, typists, school teachers, drivers, peons etc. Out of these there are three main officials who play very important role in the conduct of free and fair election. They are Returning Officer, Presiding Officer and Polling Officers.

● **Returning Officer**

In every constituency, one Officer is designated as Returning Officer by the Commission in consultation with the concerned State government. However, an Officer can be nominated as Returning Officer for more than one constituency. All the nomination papers are submitted to the Returning Officer. Papers are scrutinised by him/her and if they are in order, accepted by him/her. Election symbols are allotted by him/her in accordance with the directions issued by the Election Commission. He/she also accepts withdrawal of the candidates announces the final list. He/she supervises all the polling booths, votes are counted under his/her supervision and finally result is announced by him/her. In fact, the Returning Officer is the overall incharge of the efficient and fair conduct of elections in the concerned constituency.

● **Presiding Officers**

Every constituency has a large number of polling booths. Each polling booth on an average caters to about a thousands votes. Every such booth is under the charge of an officer who is called the Presiding Officer. He/she supervises the entire process polling in the polling booth and ensures that every voter gets an opportunity to cast vote freely. After the polling is over he/she seals all the ballot boxes and deliver them to the Returning Officer.

● **Polling Officers**

Every Presiding Officer is assisted by three to four polling office papers and ensure that votes are secretly cast by each voter.

Allotment of Symbol to political parties

Political Parties have symbols which are allotted by the Election Commission. For example, Hand is the symbol of the Indian National Congress, Lotus is the symbol of the Bharatiya Janata Party (BJP) and Elephant is the symbol of Bahujan Samaj Party. These symbols are significant for the following reasons:

- They are a help for the illiterate voters who cannot read the names of the candidates.
- They help in differentiating between two candidates having the same name

45. Scheduled & Tribal Areas

Article 244 in Part X of the Constitution envisages a special system of administration for certain areas designated as 'scheduled areas' and 'tribal areas'. The Fifth Schedule of the Constitution deals with the administration and control of scheduled areas and scheduled tribes in any state except the four states of Assam, Meghalaya, Tripura and Mizoram.

The Sixth Schedule of the Constitution, on the other hand, deals with the administration of the tribal areas in the four northeastern states of Assam, Meghalaya, Tripura and Mizoram.

- **Article 244 (1)** - Provisions of 5th schedule shall apply to administration & control of scheduled areas in every state other than Meghalaya, Tripura, Assam & Mizoram.

- **Article 244 (2)** - Provisions of 6th schedule shall apply to administration & control of tribal areas of Meghalaya, Tripura, Assam, & Mizoram.

FIFTH SCHEDULE

- The Fifth Schedule of the Constitution deals with the administration and control of Scheduled Areas as well as of Scheduled Tribes in States other than Assam, Meghalaya and Tripura. The main features of the administration provided in this Schedule are as follows:
- The Executive power of the Union shall extend to giving directions to the respective States regarding the administration of the Scheduled Areas.
- The Governors of the State in which there are "Scheduled areas" have to submit reports to the President regarding the administration of such Areas, annually or whenever required by the President.
- Tribes Advisory Councils are to be constituted to give advice on such matters as welfare and advancement of the Scheduled Tribes.
- The Governor is authorised to direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or shall apply, only subject to exceptions or modifications. The Governor is also authorised to make regulations to prohibit or restrict the transfer of land by, or among members of the Scheduled Tribes.
- The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.
- These provisions of the Constitution relating to the administration of the Scheduled Areas and Tribes may be altered by Parliament or by ordinary legislation.
- The Constitution provides for the appointment of a Commission to report on the administration of the

Scheduled Areas and the welfare of the Scheduled Tribes in the States.

- The President may appoint such Commission at any time, but the appointment of such Commission at the end of 10 years from the commencement of the Constitution was obligatory.

SIXTH SCHEDULE

The tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram are separately dealt with and provisions for their administration are to be found in the Sixth Schedule to the Constitution.

Meghalaya: Khasi Hills, Jaintia Hills, Garo Hills Autonomous District council.

Mizoram: Chakma, Lai, Mara Autonomous District Council.

Tripura: Tripura Tribal areas Autonomous District council.

Assam: Dima Hasao, Karbi Anglong Autonomous council, Bodoland Territorial Council.

Salient provisions are:

- The governor is empowered to organise and reorganise the autonomous districts. Thus he can increase or decrease their areas or change their names or define their boundaries and so on.
- If there are different tribes in an autonomous district, the governor can divide the district into several autonomous regions.
- Each autonomous district has a district council consisting of 30 members, of whom four are nominated by the governor and the remaining 26 are elected on the basis of adult franchise. The elected members hold office for a term of five years (unless the council is dissolved earlier) and nominated members hold office during the pleasure of the governor. Each autonomous region also has a separate regional council.
- The district and regional councils administer the areas under their jurisdiction. They can make laws on certain specified matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs and so on. But all such laws require the assent of the governor.
- The district and regional councils within their territorial jurisdictions can constitute village councils or courts for trial of suits and cases between the tribes. They hear appeals from them. The jurisdiction of high court over these suits and cases is specified by the governor.

- The district council can establish, construct or manage primary schools, dispensaries, markets, ferries, fisheries, roads and so on in the district. It can also make regulations for the control of money lending and trading by non-tribals. But, such regulations require the assent of the governor.
- The district and regional councils are empowered to assess and collect land revenue and to impose certain specified taxes.
- The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions.
- The governor can appoint a commission to examine and report on any matter relating to the administration of the autonomous districts or regions. He may dissolve a district or regional council on the recommendation of the commission.

Famous Tribes of India

Andaman	Jarawa, Onge, Sentinelese
Nicobar	Shorn Pens, Holchu
Assam, Meghalaya, Mizoram, Nagaland, Manipur.	Palaeo Mongoloids
Sikkim and Arunachal Pradesh	Tibeto -Mongoloids
Chhotanagpur Plateau	Mundas, Santhals, Oraons
Central Vindhya and Deccan Plateau	Gonds, Kondhs
Himachal Pradesh	Gaddi, Kinner, Phangwal, Lahuli
Uttar Pradesh, Uttarakhand	Jaunsari, Bhotia, Raji, Buxa, Tharu
Maharashtra	Anal, Chiru and Konkanas + Kollam
West Bengal	Mala and Savara tribes
Madhya Pradesh	Bhuiya tribe
Rajasthan	Banjaras, Moghias and Sathiyas
Gujarat	Bhil + Maldhari (Gir lions)
Bihar	Oraon, Munda, Chero, Parchaiya, Santhal, Asuras
Orissa	Bhuiya, Baiga, Dharua, Gaaro, Ho, Koli, Lodha J & K Bakarwal
Tamil Nadu	Oorali, Sholagar, Irular and Badaga
Karnataka	Hakki-Pikki, Korgas, Kurubas, Soliga
Kerala	Kadars, Irulars, Paniyans, Korgas, ooralis

46. Administrative Tribunals

In the Indian judicial system, apart from the judicial bodies, such as the Supreme Court and the High Court, there are numerous quasi-judicial bodies who

are involved in dispute resolutions.

These quasi-judicial bodies are the Tribunals and Regulators. Tribunals are established as per appropriate statutory provisions and are observed as an alternative medium to the conventional judicial bodies for the redressal of grievances and settling disputes. A tribunal, in a plain language, is a body of administrative character that has been powered with judicial powers to adjudicate one question of law or fact that affects rights of citizens. It has judicial or a quasi-judicial function and works in a judicial manner.

Provision for setting up administration tribunals at the union and state levels has been made in part- XIV-A of the constitution by 42nd Amendment Act, 1976. Art. 323-A authorizes Parliament to establish administrative tribunals to resolve disputes and complaints regarding the service commission of persons employed under the union/state governments. The Parliament provides for the jurisdiction, power and authority to such tribunals and prescribes the procedure to be followed by them.

Some of the important tribunals are:

- Central Administrative Tribunal (CAT),
- Industrial Tribunals set up under Industrial Disputes Act, 1947
- Customs, Excise and Gold (Control) Appellate Tribunal
- Armed Forces Tribunal (AFT),
- Telecom Disputes Settlement Appellate Tribunal (TDSAT),
- Railway Rates Tribunals set up under Indian Railways Act, 1890
- Competition Appellate Tribunal (COMPAT).
- Debt Recovery Tribunal (DRT), etc-
- Income Tax Appellate Tribunal set up under Income Tax Act, 1961
- Court of Survey set up under Merchant Shipping Act. 1958
- VAT Tribunal
- Revenue Tribunal

The kind of cases are administered by the tribunals are limited to their explicit domains. For example, the Income Tax Appellate Tribunal can hear only matters related to Income Tax disputes and not matters of Customs or Excise department. Therefore, the area of operation of these tribunals are marked out at the beginning itself by the statute under which its constituted

Central Administrative Tribunal

Parliament has passed the Administrative Tribunals Act, 1985 which authorizes the central government to establish administrative tribunals for central ser-

vices and on the application of the states even for the state services.

Composition of tribunals: A tribunal shall consist of a chairman and such number of vice-chairman and another member as may be provided for. The President appoints them in case of central tribunals and the Governor in case of the state tribunals.

Each tribunal shall consist of a chairman and such number of Vice Chairman and judicial and administrative members as the appropriate Government may deem fit. The additional benches must consist of one judicial member and one administrative member.

The chairman may transfer the vice-chairman or other member from one Bench to another Bench. Every bench shall include at least one judicial member and one administrative member. The Chairman may constitute a single member bench for certain classes of cases. The chairman if required by the nature of case may require that the matter be heard by a Bench of two members, the benches of the central Tribunal shall ordinarily sit at New Delhi (which shall be known as the principle bench). Allahabad, Calcutta, Madras, Bombay and such other places as the central government may by notification, specific Qualification, Term and removal of members:

A person shall not appointed as Chairman unless he (a) has been a Judge of a High Court or

(b) has for two years held the office of Vice Chairman or has for two years held the post of a secretary to the government of India or holding other post carrying the scale of pay of secretary.

No person can be appointed as the Vice-Chairman unless he (a) is or has been a judge of high court (b) has for 2 years held the post of secretary to the Government or holding other post carrying the same scale under the central or state governments; (c) has for 5

years held the post of an additional secretary to the government of India or other post carrying the scales of pay of additional secretary. A person to be appointed as a judicial member must (a) be or have been a judge of the high court, or (b) have been a member of Indian legal service and has held a post in Grade I of the Service for at least 3 years.

A person to be appointed as an administrative member must (a) have held the post of an additional secretary to the Government of India or their equivalent post for at least 2 years or (b) have held the post of a joint Secretary to the government of India or other equivalent post, (c) have adequate administrative experience.

The Chairman, Vice Chairman and other members shall be appointed by the President. The judicial members shall appointed by the President with the consultation of the Chief Justice of India. The Chairman, Vice Chairman and other members of the Tribunal for a state shall be appointed by the President after consultation with the Governor of the concerned state.

The Chairman, Vice-Chairman or other members shall hold office for a term of 5 years or until he attains (a) in the case of the chairman or Vice-Chairman the age of 65 years and (b) in the case of other members the age of 62 years.

The Chairman, Vice-Chairman or member may resign from his post by writing to the President. They shall be removed from their office only by an order made by the President on the ground of proved misbehaviour or incapacity after an enquiry made by a judge of the Supreme Court. They shall have the right to be informed of the charges against them and shall be given a reasonable opportunity of hearing. The central government may be rules regulate the procedure for the investigation of the charges against them

KHAN SIR

47. Special Provisions in the Constitution

SPECIAL STATUS OF J & K (Article 370)

- Jammu & Kashmir has truly federal relation with the union.
- J & K got independence on 15th Aug, 1947 along with India, but daunted with the problems of forced annexation with Pakistan, it signed the Instrument of Accession with India & became a part of it.
- Instrument of Accession - Signed between Nehru & Maharaja Hari Singh on 26th Oct, 1947



- Under this, India acquired jurisdiction over the state with respect to subject of Defence, External affairs & communication
- People of J & K elected a sovereign constituent assembly which met for the 1st time on Oct 31, 1951.

History of Article 370:

–The provision was drafted in 1947 by Sheikh Abdullah, who had by then been appointed prime minister of Jammu & Kashmir by Maharaja Hari Singh and Jawahar Lal Nehru.

–Sheikh Abdullah had argued that Article 370 should not be placed under temporary provisions of the Constitution.

–He wanted 'iron clad autonomy' for the state, which Centre didn't comply with.

What is Article 370?

–Article 370 of the Indian Constitution is a 'temporary provision' which grants special autonomous status to Jammu & Kashmir.

–Under Part XXI of the Constitution of India, which deals with 'Temporary, Transitional and Special provisions', the state of Jammu & Kashmir has been accorded special status under Article 370.

–All the provisions of the Constitution which are ap-

plicable to other states are not applicable to J&K.

–For example, till 1965, J&K had a 'Sadr-e-Riyasat' for governor and prime minister in place of chief minister.

Article 1 stated as, J & K is a constituent state of Indian union, however Article 370 grants a special status to J & K on the basis of agreement concluded at time of J & K accession to Indian union:

- J & K has its own constitution apart from Indian constitution (Framed on 17th Nov 1956 & came in force on 26 Jan 1957).
- Parliament cannot make laws with regards to J & K on subjects stated in state list.
- Residuary powers lies with legislature of J & K.
- Follows dual citizenship, only citizens of J & K can take part in elections to state assembly.
- Only citizens of J & K can acquire, own & dispose of immovable property in J & K.
- Only national emergency proclaimed on the grounds of war & external aggression shall have automatic extension to J & K.
- National emergency proclaimed on the grounds of internal armed rebellion shall not be automatically extended to J & K.
- Parliament cannot change name, boundary or territory of J & K without the concurrence of state legislature.
- No preventive detention law made by government can have automatic extension to J & K (PMLA is also applicable for J & K).
- Union has no power to proclaim a financial emergency to J & K.
- State government shall be consulted by centre before appointing a person as governor of J&K.
- Apart from Presidential rule, governor rule can also be imposed for a maximum of 6 months.
- DPSP & Fundamental duties enlisted in Indian constitution are not applicable to J & K
- Urdu - Official language of the state.

Provisions of Article 370:

- As per this Article except for defence, foreign affairs, finance and communications, Parliament needs the state government's concurrence for applying all other laws.
- Thus the state's residents live under a separate set of laws, including those related to citizenship, ownership of property, and fundamental rights, as compared to other Indians.
- As a result of this provision, Indian citizens from other states cannot purchase land or property in Jammu & Kashmir.

- Under Article 370, the Centre has no power to declare financial emergency under Article 360 in the state.
- It can declare emergency in the state only in case of war or external aggression.
- The Union government can therefore not declare emergency on grounds of internal disturbance or imminent danger unless it is made at the request or with the concurrence of the state government.

J & K High Court

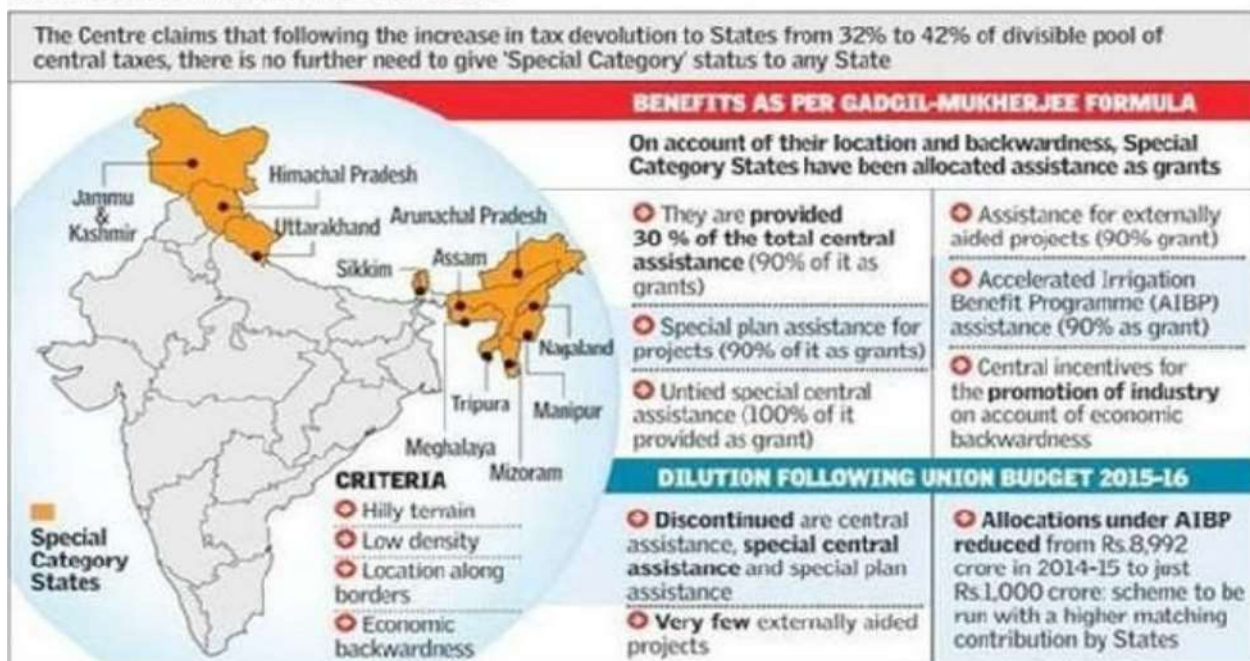
–Can issue writs only in case of violation of FRs.
–Cannot declare a law unconstitutional - Lack of Judicial activism.

SPECIAL PROVISIONS FOR STATES (ARTICLE 371)

Article 371 - Special Provisions for Maharashtra & Gujarat:

President is authorised to provide that Governor of Maharashtra & Gujarat would have special responsibilities for:

NOT SO SPECIAL ANYMORE



- Establishment of separate development boards for Vidarbha, Marathwada & rest of Maharashtra more over to Kutchh & rest of Gujarat.
 - A report on working of these boards will be placed each year before state legislative assembly.
 - Equitable allocation of funds for developmental expenditure over the mentioned areas.
 - Equitable arrangements providing adequate facilities for technical education, vocational training & adequate opportunities for employment in state services.
- Article 371 - A - Special Provisions for Nagaland:**
- Act of parliament relating to following matters would not apply to Nagaland unless state assembly so decides:
 - Religious & social practices of Nagas
 - Nagas customary law & procedure
 - Administration of civil or criminal justice involving decisions according to Naga customary law

- Ownership & transfer of land & its resources
- Special responsibility of governor with respect to law & order in the state (after consulting COMs, but his decision will be final) regarding internal disturbances occurring in Naga hills mainly in Tuensang area (Special responsibility ceases if President directs so).
- Governor has to ensure that money provided by the GOI out of consolidated fund of India for any specific purpose, is included in the demand for grant relating to that specific purpose only, not any other.
- A regional council for Tuensang district, consisting of 35 members should be formed & governor in his discretion shall make all the rules & terms regarding this council.
- For a period of 10 years, from formation of state of Nagaland or for further period as specified by Governor, on recommendations of regional council, following provisions would be operative for Tuensang district:

–Administration of Tuensang district shall be carried on by the governor.

–Governor in his discretion shall arrange for equitable distribution of money, between Tuensang district & Rest of Nagaland, provided by center.

–There shall be a minister for Tuensang affairs in state COMs.

–Final decision on all matters relating to Tuensang district shall be made by governor in his discretion.

–Members in Nagaland assembly from the Tuensang district are not elected directly by the people but by regional council.

Article 371 - B - Special Provisions for Assam:

- President may provide for the constitution & functions, a committee of Legislative assembly of the state, consisting of members of that assembly elected from the tribal area of Assam.
- President can also direct that the governor shall have special responsibility to secure proper functioning of that committee.

Article 371 - C - Special Provisions for Manipur:

- President may provide for the constitution & functions, a committee of Legislative assembly of the state, consisting of members of that assembly elected from the hill areas of Manipur.
- President can also direct that the governor shall have special responsibility to secure proper functioning of that committee
- Governor should submit an annual report to the President regarding the administration of Hilly areas.

Article 371- D - Special Provisions for Andhra Pradesh:

- President is empowered to provide equitable opportunities & facilities for people belonging to different parts of the state in matter of public employment & education.
- For above purpose, President may require the state government to organize civil posts in local cadre for different parts of the state & also provide for direct recruitment to posts in local cadre (or in any such educational institution).

- President may provide for establishment of an administrative tribunal in state to deal with certain disputes, relating to appointment, allotment or promotion to civil posts in state.

- Only SC is to exercise jurisdiction over such tribunal which means they are outside the purview of HC (President may abolish the tribunals if he thinks it is not necessary).

Article 371 - E - Special Provisions for Sikkim

- Legislative assembly shall not less than 30 members in addition with 1 seat from the state in Lok Sabha & 1 in parliamentary constituency.

- For the purpose of protecting the rights & interest of different sections of Sikkim population, Parliament is empowered to provide number of seats in Sikkim administrative assembly for the people belonging to such sections.

- Governor in his discretion (On direction of President) have special responsibility for peace & equitable arrangement for socio- economic development of different sections of Sikkim.

Article 371 G - Special Provisions for Mizoram:

- Legislative assembly shall not be less than 40 members
- Act of parliament relating to following matters would not apply to Mizoram unless state assembly so decides:

–Religious & social practices of Mizo

–Mizo customary law & procedure

–Administration of civil or criminal justice involving decisions according to Mizo customary law

–Ownership & transfer of land & its resources

Article 371 H - Special provisions for Arunachal Pradesh:

- Legislative assembly shall not be less than 30 members

- Governor of Arunachal Pradesh, on directions of President, shall have special responsibility for law & order in state (May consult with COMs but his decision will be final).

Article 371 - I - Special provisions for Goa

- Legislative assembly shall not be less than 30 members.