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1 Introduction

State

State is "a community of persons permanently occupying a definite portion of territory, independent of external control, and possessing an organized government"

On the basis of this definition, we can say that there are four elements of the State, which are given as below:

Elements of the State-

A State stands identified with its four essential elements:

1. ***Population or community of person:*** Population is the first and most essential element for the existence of any state. Whether the state is ancient or modern its physical existence depends on the groups of people.
2. ***Territory:*** Territory is next major element for the existence of state. Population within undefined or unspecified area cannot be called a state. For instance, until twentieth century no one was ready to recognize the physical existence of Jews because they did not have any defined geographical area but now their geographical area is specified or defined therefore, they are recognized as a nation with physical existence.
3. ***Government:*** The government is the most important instrument of the State through which the latter realizes its objectives. Through its three organs i.e.; the Legislature, the Executive and the Judiciary, it makes laws and rules, implements them, maintains peace and order in the Individual and the State country and resolves clashes of interests. It also tries to ensure territorial integrity or unity of the country.
4. ***Sovereignty:*** Sovereignty is one of the foremost elements of any independent State. It means absolute Independence, i.e., a government which is not controlled by any other power: internal or External. A country cannot have its own constitution without being sovereign like India.

Nation

A nation is a community of people formed on the basis of a common language, territory, ethnicity etc.

Difference between Nation and Country

Parameters of Comparison	Nation	Country
Etymology	It means a 'nacion' – an old French word meaning "place of origin".	It means a "contree" – an old French word meaning "a remote area".
Identity	It is commonly recognized as a cluster of individuals who share the same cultures and traditions.	It is commonly recognized as a 'state' governed by an authority.
State	Not every nation has a state.	In the concept of Nation-State, every state has one nation.
Example	The Kurds	The Russian Federation
Alternative	It can alternatively be used in reference to sovereign state and country.	In an unsubstantial way, it can alternatively be used in reference to any particular region or area with no governmental status.

Constitution

Constitution means a document having a special legal sanctity, which sets out the framework and principal functions of the Government.

Need and importance of the Constitution

- To establish Rule of Law.
- To provide a set of basic rules that allow for minimal coordination amongst members of society.
- To specify who has the power to make decisions in a society. It decides how the government will be constituted.
- To set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may never trespass on them.
- To enable the government to fulfil the aspirations of a society and create conditions for a just society.

Types of the constitution	
Unwritten Constitution	Written Constitution
Unwritten constitution refers to the constitution not codified in a structured manner	Written Constitution refers to the constitution codified and compiled in a structured and cohesive manner
Unwritten Constitution evolves over a long period with a new set of laws and guidelines being added as time progresses	Written constitutions have been properly framed and compiled in a step-by-step manner with any subsequent changes being added almost instantaneously
Rigid, Flexible or Both	Majorly Flexible, however, there can be instances where even the written Constitution is rigid
The Parliament is supreme in a country where there is an unwritten constitution	The Constitution is supreme
The judiciary has limited powers	The Judiciary has more power in order to ensure constitutional supremacy
The Magna Carta can be considered the earliest form of the unwritten constitution. It was a charter of rights signed by King John of England on 15th June 1215. The charter promised to protect the rights of the nobility from the interference of the crown. The Magna Carter would eventually evolve into the unwritten constitution of the United Kingdom	The Constitution of the United States of America is considered as the oldest written constitution, which is still in force. It was drafted on September 17th, 1787, ratified on June 21st, 1788 and, came into effect on March 4th, 1789. James Madison, one of the founding fathers of the United States wrote the document that formed the model for the Constitution
Example – Britain	Example – India, USA etc.

Are Constitutions Static in Nature?

No, Change is the rule of nature and Constitutions also develop through amendments. The Constitution is the basic document of any nation. There is a need to bring in timely changes in it because of the social, political, economic, cultural and technological changes that take place with the passage of time. The architects of the Constitution have made provisions to make amendments in the Constitution.

Indian Constitution

Historical Background –

- Many regulations and legislation passed before India's independence can be traced back to the Constitution. The Indian Constitution's evolution can be divided into two categories:
  - The Company Rule (1773–1858) is a set of rules that governs how businesses were run during the East India Company Rule.
  - The Crown Rule (1858–1947) was a period of British rule that lasted from 1858 until 1947.
- Colonial authorities adopted and devised techniques for dealing with Indian concerns, and India's constitution bears some of the British administration system's legacy.

Historical Evolution of the Indian Constitution

There are various layers in the background of the Indian Constitution:

- Regulating Act 1773
- Act of Settlement 1781
- Pitt's India Act 1784
- Charter Act of 1813
- Charter Act of 1833
- Charter Act of 1853
- Government of India Act 1858
- Indian Councils Act 1861
- India Councils Act 1892
- Morley-Minto Reforms 1909
- Montague-Chelmsford Reforms 1919
- Government of India Act 1935
- Indian Independence Act 1947

Regulating Act, 1773-

- First time the British Parliament resorted to regulating the affairs of the East India Company.
- The Governor of Bengal was made the Governor-General of Bengal.
- An Executive Council of the Governor-General was created with 4 members.
- Centralised the administration with the Presidencies of Madras and Bombay being made subordinate to the Bengal Presidency.
- Supreme Court was established at Calcutta as the Apex Court in 1774.
- Prohibited company officials from engaging in private trade and from accepting gifts from Indians.

Act of Settlement 1781-

- It exempted the Governor-General and the Council from the jurisdiction of the Supreme Court for the acts done by them in their official capacity. Similarly,

it also exempted the servants of the company from the jurisdiction of the Supreme Court for their official actions.

- It excluded the revenue matters and the matters arising in the collection of revenue from the jurisdiction of the Supreme Court.
- It provided that the Supreme Court was to have jurisdiction over all the inhabitants of Calcutta. It also required the court to administer the personal law of the defendants i.e., Hindus were to be tried according to the Hindu law and Muslims were to be tried according to the Mohammedan law.
- It laid down that the appeals from the Provincial Courts could be taken to the Governor-General-in-Council and not to the Supreme Court.
- It empowered the Governor-General-in-Council to frame regulations for the Provincial Courts and Councils.

Pitt's India Act 1784

- Commercial and political functions of the company separated. The Court of Directors managed the commercial activities while the Board of Control managed political affairs.
- The company territories in India were called 'British possession in India'.
- Governor's Councils were set up in Madras and Bombay as well.

Charter Act 1813

- It abolished the trade monopoly of the company in India i.e., the Indian trade was thrown open to all British merchants. However, it continued the monopoly of the company over trade in tea and trade with China.
- It asserted the sovereignty of the British Crown over the Company's territories in India.
- It allowed the Christian missionaries to come to India for the purpose of enlightening the people.
- It provided for the spread of western education among the inhabitants of the British territories in India.

Charter Act 1833

- It made the Governor-General of Bengal as the Governor- General of India and vested in him all civil and military powers. Thus, Lord William Bentick (the then Governor-General of Bengal) became the first Governor-General of India.
- It deprived the Governor of Bombay and Madras of their legislative powers. The Governor-General of India was given exclusive legislative powers for the entire British India.
- This act ended the commercial activities of the company and it was transformed into an administrative body.

Charter Act 1853

- The legislative and executive powers of the Governor-General's Council were separated.
- A Central Legislative Council was created of 6 members out of which 4 were appointed by the provisional governments of Madras, Bombay, Agra and Bengal.
- The Indian civil service was opened as a means to recruit officers for administration through open competition.
- It extended the Company's rule and allowed it to retain the possession of Indian territories on trust for the British Crown. But it did not specify any particular period, unlike the previous Charters. This was a clear indication that the Company's rule could be terminated at any time by the British Parliament.

Government of India Act 1858

- After the revolt of 1857, the rule of the company was ended and the British possessions in India came directly under the British Crown.
- The office of the Secretary of State for India was created. He was assisted by a 15-member Council of India.
- It changed the designation of the Governor-General of India to that of Viceroy of India. Viceroy was the direct representative of the British Crown in India. Lord Canning, thus, became the first Viceroy of India.
- It ended the system of dual Government by abolishing the Board of Control and Court of Directors.

Indian Council Act 1861

- Indians were given representation in the Viceroy's Councils. Three Indians entered the Legislative Council.
- Provisions were made for the entry of Indians in the Viceroy's Executive council also as non-official members.

- Portfolio system was recognised.
- Decentralisation initiated with the presidencies of Madras and Bombay being restored their legislative powers.

Indian Council Act 1892

- It raised the number of (non-official) members in the Central and Provincial Legislative Councils while keeping the official majority.
  - Bombay – 8
  - Madras – 20
  - Bengal – 20
  - North-Western province -15
  - Oudh – 15
  - Central Legislative Council minimum - 10, maximum 16
- Members could now debate the budget without having the ability to vote on it. They were also barred from asking follow-up questions.
- The Governor-General in Council was given the authority to set rules for member nomination, subject to the approval of the Secretary of State for India.
- To elect members of the councils, an indirect election system was implemented. Members of provincial councils could be recommended by universities, district boards, municipalities, zamindars, and chambers of commerce.
- Provincial legislative councils were given more powers, including the ability to propose new laws or repeal old ones with the Governor General's assent.
- In the event of the Central legislature, the Governor was given the authority to fill the seat, while in the case of the provincial legislature, the Governor was given the authority.

Indian Council Act 1909 (Morley-Minto Reforms)

- It considerably increased the size of the legislative councils, both Central and provincial. The number of members in the Central Legislative Council was raised from 16 to 60. The number of members in the provincial legislative councils was not uniform.
- It retained official majority in the Central Legislative Council but allowed the provincial legislative councils to have non-official majority.
- The elected members were to be indirectly elected. The local bodies were to elect an electoral college, which in turn would elect members of provincial legislatures, who in turn would elect members of the central legislature.
- It enlarged the deliberative functions of the legislative councils at both the levels. For example, members were allowed to ask supplementary questions, move resolutions on the budget, and so on.
- It provided (for the first time) for the association of Indians with the executive Councils of the Viceroy and Governors. Satyendra Prasad Sinha became the first Indian to join the Viceroy's Executive Council. He was appointed as the law member. Two Indians were nominated to the Council of the Secretary of State for Indian Affairs.
- It introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'. Under this, the Muslim members were to be elected only by Muslim voters. Thus, the Act 'legalised communalism' and Lord Minto came to be known as the Father of Communal Electorate.
- It also provided for the separate representation of presidency corporations, chambers of commerce, universities and zamindars.

Government of India Act 1919 (Montague-Chelmsford Reforms)

Dyarchy

- Introduction of dyarchy at the provincial level. Dyarchy means a dual set of governments where one set of government was accountable while the other was not.
- Control over provinces was relaxed by demarcating subjects as 'central subjects' and 'provincial subjects

Division of Subjects

- The provincial government's subjects were separated into two divisions.
- The reserved subjects were under the supervision of the province's British governor, while the transferred subjects were assigned to the province's Indian ministers.
- Local self-government, public works, sanitation, industrial research, and the establishment of new companies were all on the Transferred List.
- Justice Administration, Press, Revenue, Forests, Labour Dispute Settlements, Water, Agricultural

Loans, Police, and Prisons were among the items on the Reserved List.

- The Secretary of State and the Governor-General had the authority to intervene in things covered by the reserved list, but only to a limited extent in matters covered by the transferred list.

Legislative Changes

- Legislature had no power to pass any bill without the assent of the Viceroy while on the contrary Viceroy could enact a bill without the legislature assent
- Bicameralism was introduced in the Central Legislature by this act. The lower house was the Legislative Assembly, with 145 members serving three-year terms and the upper house was the Council of States with 60 members serving five-year terms.
- The legislators, under the new reforms, could now ask questions, pass adjournment motions and vote a part of the budget, but 75% of the budget was still not votable.
- Composition of Lower House: The Lower House would consist of 145 members, who were either nominated or indirectly elected from the provinces. It had a tenure of 3 years.

Electoral provision

- The communal representation was extended to include Sikhs, Europeans and Anglo-Indians. The franchise (Right of voting) was also granted but only to a limited number of people.
- There was a provision to provide reservation to the non-Brahmins in Madras and the depressed classes were also offered nominated seats in the legislatures.

Other Provisions

- The Act provided for the establishment of a Public Service Commission in India.
- The number of Indians in the Executive Council was three out of eight.
- It established an office of the High Commissioner for India in London.

Government of India Act 1935

- It provided for the establishment of an All-India federation consisting of provinces and princely states as units.
- It divided the powers between the centre and units in terms of three lists- Federal list, provincial list and the concurrent list. Residuary powers were given to the Viceroy. However, this federation never fructified since princely states did not join it.
- It abolished dyarchy in the provinces and introduced 'provincial autonomy' in its place
- The act introduced responsible government in provinces, that is, the governor was required to act with the advice of ministers responsible to the provincial legislature
- It provided for the adoption of dyarchy at the centre. However, this provision did not come into effect at all
- Bicameralism was introduced in six provinces- Bengal, Bombay Madras, Bihar, Assam and the United Provinces
- Separate electorates were further extended to depressed classes, women and labour
- Council of India which was established as per the 1858 act was abolished the Secretary of state was instead provided with a team of advisors.
- The act provided for setting up- Federal Public Service Commission, Provincial Public Service Commission, Joint Public Service Commission, Federal Court, Reserve Bank of India.

Indian Independence Act 1947

- The British authorities left India on Fifteenth August, 1947.
- India will be divided into two sovereign provinces of India and Pakistan and each of those states turns sovereign on this very day.
- The powers formerly exercised through the British authorities in India could be transferred to each of those states.
- Punjab and Bengal will be divided and its boundary will be separated by a boundary commission headed by Mr. Radcliffe.
- The Office of the Secretary of State for India will be abrogated.
- Provision was made for the Governor-General for every territory, who was to be named by the Queen of England on the exhortation of the Dominion government. He was not to act in his individual judgment or circumspection however will act just as the constitutional head of the state.

- Each domain must have a sovereign legislature to set the rules. No legislation passed by the British Parliament will automatically apply to India.
- Both countries will have their own Constituent Assembly, which will also act as a legislative body.
- Until a constitution is formulated by a Constituent Assembly in any dominion, it will work as closely as possible with the 1935 Act.
- Provincial governors will act as constitutional heads of the provinces.
- Reserving the posts of Secretary of State should be discontinued. Government personnel wishing to resign after the transfer of power to both dominions must do so.
- British domination of the states and tribal territories of India will end on August 15, 1947. In this case, power will be transferred not to dominions but left to the states to decide whether they want to participate in India or Pakistan.
- From now on, the relationship of the UK government with India will be managed through the Office of Commonwealth Affairs.
- The King of England renounced the title of King and Emperor of India.
- Pakistani territories include East Bengal, West Pakistan, Sindh and British Baluchistan. In the event that the NWFP decides to join Pakistan in a referendum, this territory will also join Pakistan.

Constituent Assembly

It was the Cabinet Mission that had put forth the idea of a Constituent Assembly and, therefore the composition of the Assembly was made in line with the Cabinet Mission scheme.

This came up with certain traits from which it could be inferred that the Constituent Assembly was supposed to be a body partly elected, and partly nominated members. The elections to the Assembly that took place in 1946 resulted in the Indian National Congress winning a total of 208 seats, and the Muslim League securing 73 seats leaving behind 15 seats that were occupied by independents. The decision of the Princely States to not be involved in the Constituent Assembly left 93 seats vacated.

It is noteworthy that although members of the Constituent Assembly were not elected directly by the Indian people, it comprised of representatives of all sections of the society namely the Hindus, Muslims, Sikhs, Parsi, Anglo-Indian, Indian Christians, SCs/ STS, Backward Classes, and women belonging to all of these sections.

The structure of the Constituent Assembly was:

- 292 members elected through the Provincial Legislative Assemblies;
- The Indian Princely States was represented by 93 members; and
- The Chief Commissioners' Provinces were represented by 4 members.

Thus, the total membership of the Constituent Assembly was to be 389. But the Mountbatten Plan of 3rd June 1947 led to the partition of India thereby leading to a formation of a separate Constituent Assembly for the newly made Pakistan. This ceased some of the representatives of certain Provinces to be members of the Assembly, resulting in a reduction of the membership to 299 members.

The total strength of the new Constituent Assembly was fixed at 299 which was inclusive of the strength of the

- Indian provinces (229), and
- Princely States (70)

The Assembly became a fully functioning sovereign body, and by the means of the Act of 1947, any law made under the umbrella of the British Parliament with regards to India could be scrapped, altered, or modified. The Assembly was majorly vested with two functions;

- Make a constitution for the free nation; and
- Enacting laws for the country and its people to be governed by.

The Assembly functioned in many other ways beyond enacting laws and framing the Indian Constitution such as;

- Adoption of the national flag, national song, and national anthem on 22nd July 1947, and 24th January 1950 respectively.
- In May 1949, the Assembly had ratified India's membership of the Commonwealth.
- The Assembly on 24th January 1950, elected Dr. Rajendra Prasad as its first President.

Committees of the Constituent Assembly

To avoid any kind of mismanagement, and taking into

account the load of work to be dusted off, the Constituent Assembly had formulated different committees working in specific areas of constitution-making. There were eight major committees namely;

- The Union Powers Committee presided over Pandit Jawaharlal Nehru.
- The Union Constitution Committee presided over Pandit Jawaharlal Nehru.
- The Provincial Constitution Committee presided over Sardar Patel.
- Drafting Committee presided by Dr. B.R. Ambedkar.
- Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas presided by Sardar Patel. This committee had the following five sub-committees:
- Fundamental Rights Sub-Committee with J.B. Kripalani as the Chairman.
- Minorities Sub-Committee with H.C. Mukherjee as the Chairman.
- North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee with Gopinath Bardoloi as the Chairman.
- Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee with A.V. Thakkar as the Chairman.
- North-West Frontier Tribal Areas Sub-Committee.
- Rules of Procedure Committee presided over by Dr. Rajendra Prasad.
- States Committee (Committee for Negotiating with States) presided over Pandit Jawaharlal Nehru.
- The Steering Committee was presided over by Dr. Rajendra Prasad.

The remaining 13 committees were considered minor committees.

The Drafting Committee of the Constituent Assembly

Among all the committees mentioned above, a special mention of the Drafting Committee headed by Dr. B.R. Ambedkar is required. Set up on 29th August 1947, the Drafting Committee was vested with the main task of drafting the Constitution of India after taking into account proposals from different committees. He was the first person to introduce a new draft of the Indian Constitution. This Committee comprised of seven members of the Assembly namely;

- Dr. B. R Ambedkar as the Chairman of the Committee;
- Dr. K M Munshi;
- Syed Mohammad Saadullah;
- N Madhava Rau (He replaced B L Mitter who resigned due to ill-health);
- N Gopalaswamy Ayyangar;
- Alladi Krishnaswamy Ayyar;
- T T Krishnamachari (He replaced D P Khaitan who died in 1948).

B.N. Rau was also appointed as the constitutional adviser to the constitution. The Committee took a period of not beyond six months to prepare its first draft which was subjected to changes by suggestions, public comments, and various criticism thereafter the second draft was released in October 1948.

The supreme law of democratic India was drafted by the Assembly from 1946 to 1950 and was finally adopted on 26th November 1949 with effect from 26th January 1950 which has been celebrated as the Republic Day of India.

The Constituent Assembly had precisely taken two years, eleven months, and seventeen days to complete the historic duty of drafting the Indian Constitution. During this period, the Assembly held eleven sessions spread over 165 days, among which 114 days were spent solely on consideration of the Draft Constitution.

Timeline of Formation of 'The Constitution of India'

- 9 December 1946: Formation of the Constituent Assembly (demanding a separate state, the Muslim League boycotted the meeting.)
- 11 December 1946: President Appointed – Rajendra Prasad, vice-chairman H.C. Mukherjee and constitutional legal adviser B.N. Rau (initially 389 members in total, which declined to 299 after partition of India). Out of 389, 292 were from government provinces, 4 from chief commissioner provinces and 93 from princely states)
- 13 December 1946: An 'Objective Resolution' was presented by Jawaharlal Nehru laying down the underlying principles of the constitution, which later became the Preamble of the constitution.
- 22 January 1947: Objective resolution unanimously adopted.
- 22 July 1947: National Flag adopted.
- 15 August 1947: Achieved independence. India split into Dominion of India and Dominion of Pakistan.
- 29 August 1947: Drafting Committee appointed, with B. R. Ambedkar as the Chairman.

- 16 July 1948: Along with H.C. Mukherjee, V. T. Krishnamachari was elected as the second vice-president of the Constituent Assembly.
- 26 November 1949: 'Constitution of India' passed and adopted by the assembly.
- 24 January 1950: Last meeting of the Constituent Assembly. 'Constitution of India' (with 395 articles, 8 schedules, 22 parts) was signed and accepted by all.
- 26 January 1950: The 'Constitution of India' came in to force after 2 years, 11 months and 18 Days, at a total expenditure of ₹6.4 million to finish.
- Ganesh Vasudev Mavalankar was the first speaker when meeting the assembly of Lok Sabha, after turning republic.

Indian Constitution

Indian constitution consists of a Preamble, 470 articles which are group into 25 parts with 12 Schedules.

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Second Schedule	❒ Provisions relating to the emoluments, allowances, privileges, and so on of: ❒ The President and the Governors of the States ❒ The Speaker and the Deputy Speaker of the Lok Sabha ❒ The Chairman and the Deputy Chairman of the Rajya Sabha ❒ The Speaker and the Deputy Speaker of the Legislative Assemblies in the States ❒ The Chairman and the Deputy Chairman of the Legislative Councils in the States ❒ The Judges of the Supreme Court and of the High Courts ❒ The Comptroller and Auditor-General of India
Third Schedule	Forms of the Oaths or Affirmations for: 1. The Union Ministers 2. The candidates for election to the Parliament 3. The Members of the Parliament 4. The Judges of the Supreme Court 5. The Comptroller and Auditor General of India 6. The State Ministers 7. The candidates for election to the State Legislature 8. The members of the State Legislature 9. The Judges of the High Courts
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Fifth Schedule	Provisions relating to the administration and the control of the Scheduled Areas and the Scheduled Tribes.
Sixth Schedule	Provisions relating to the administration of the Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.
Seventh Schedule	Division of the powers between the Union and the States in terms of List 1 (the Union List), List II (the States List) and List III (the Concurrent List).
Eighth Schedule	Includes the languages recognised by the Constitution. Originally, it had 14 but presently there are 22 languages. They are: Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21st Amendment Act of 1967, while Konkani, Manipuri and Nepali were added by the 71st Amendment Act of 1992. The 92nd Amendment Act, 2003 added Bodo, Dogri, Maithili and Santhali.
Ninth Schedule	Validation of certain Acts and regulations, mostly relating to the land reforms. There are 284 such Acts. This Schedule was added to the Constitution by the First Amendment Act of 1951 which provided, that by incorporating any law into it, the State would make it immune from judicial scrutiny.
Tenth Schedule	Provisions relating to the disqualification of the legislators on grounds of defection. This Schedule was added by the 52nd Amendment Act of 1985. It is also known as the Anti-defection Law.
Eleventh Schedule	Specifies the powers, authority and the responsibilities of the Panchayats. It has 29 matters. This schedule was added by the 73rd Amendment Act of 1992.
Twelfth Schedule	Specifies the power, authority and the responsibilities of the Municipalities. It has 18 matters. This Schedule was added by the 74th Amendment Act of 1992.

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2 Salient features of our Constitution

Introduction

The Constitution of India is one of the finest-crafted Constitutions in the World. The Constitution of India is a very dynamic creation of our lawmakers. The Constitution of India is a supreme law of the country and every citizen of our country has to abide by the constitution. According to Granville Austin, "Indian Constitution is the first and foremost social document".

Following are the salient features our Constitution:

1. ***Lengthiest written Constitution in the World:*** The Constitution of India is the lengthiest written Constitution in the World. It is because not only the essential rights are given under it but detailed administrative instructions are also given under it. Our constitution has given the place to various organizations like Civil services (under Article 308-323). One of the other reasons why this Constitution is so huge is because there is a single Constitution for entire India. India is a huge country and it needed detailed rules to be applied to various parts of the States. Due to this a massive constitution is made.
2. ***Adopted from many different sources:*** Different parts of our Constitution are adopted from various countries. The maker of our Constitution took the structural part of the Constitution from the Government of India Act, 1935.

   Following are the various sources of Indian Constitution:

   a. United States of America
      - Fundamental Rights,
      - Independence of Judiciary,
      - Judicial Review,
      - Impeachment of President and Supreme Court Judges.

   b. United Kingdom
      - Single Citizenship,
      - Parliamentary system of Government,
      - Rule of Law,
      - Prerogative writs

   c. Canada Constitution
      - Quasi Federal Government system,
      - Appointment of Governors.

   d. Australia Constitution
      - Concurrent List,
      - Joint sitting of 2 houses of the Parliament,
      - Freedom of Trade.

   e. USSR
      - Fundamental duties,
      - Social, Economic and Political Justice.

   f. Ireland
      - Directive Principles of State Policy,
      - Election of President.

   g. Germany
      - Emergency provisions like Suspension of Fundamental Rights during an emergency.

   h. France:
      - Republic

   i. South Africa
      - Amendment of Constitution
      - Election of members of Rajya Sabha.

   j. Japan
      - Procedure established by law.

3. ***Federal System with a Unitary Bias:*** Indian Constitution is that it is a federation with a strong centralizing tendency. The constitution of India is neither federal nor unitary but is a mix of both.
4. ***Blend of Rigidity and Flexibility:*** The Indian Constitution is neither completely rigid nor completely flexible, but a mix of both. Article 368 provides for two types of amendments –
   - Amendment through a special majority, i.e. two-

thirds majority of the members of each House present and voting, and a majority (50%) of the total membership of each House.

- Some other provisions can be amended by a special majority of the Parliament and with the ratification by half the states.

5. ***Parliamentary Form of Government:*** The framers of our Constitution preferred a Parliamentary system of government. Our newly christened democracy could not afford any confrontations between the executive and the legislature. This could happen only when they were separate and independent of each other. The Council of Ministers is collectively responsible to the Lok Sabha. The same is true of the relationship between the Governors and the Council of Ministers in the States.
6. ***Integrated and Independent Judiciary:*** The Judiciary ensures the proper functioning of the constitution and the enforcement of various provisions of the Constitution.The Constitution makers ensured that the Judiciary had to be independent and hence unbiased.There are various provisions in the Constitution that ensure the independence of the judiciary:
   - The appointment of Judges is independent and there is no involvement of any executive authorities.
   - The tenure of Judges is secured.
   - The removal of judges from their tenures must be also based on the constitutional provisions.
7. ***Fundamental Rights:*** The Indian Constitution guarantees 6 Fundamental Rights:
   1. Right to Equality (Article 14-18)
   2. Right to Freedom (Article 19-22)
   3. Right against Exploitation (Article 23-24)
   4. Right to Freedom of Religion (Article 25-28)
   5. Cultural and Educational Rights (Article 29-30)
   6. Right to Constitutional Remedies (Article 32)
8. ***Directive Principles:*** Directive Principles of State Policy
   - Part IV of the Indian Constitution deals with the Directive Principles of State Policy.
   - It is the duty of every State to apply these principles while making any new legislation.
   - The Directive Principles of State Policy is similar to the 'Instrument of Instructions' that is in the Government of India Act 1935.
   - They are basically instructions to the legislature and executive that have to be followed while framing new legislation by the State.
9. ***Fundamental Duties***
   - The Swaran Singh Committee of 1976 added a list of 11 Fundamental Duties in the constitution by adding a new Part-IVA and Article-51A in the constitution.
   - Swaran Singh Committee was formed in 1976 after the internal emergency of 1975 which recommended adding a list of Fundamental Duties which every citizen of India should abide by.
   - The 11 Fundamental Duties act as a moral obligation on every citizen of India and these Fundamental Duties are non-justiciable in nature i.e., one cannot move to court if someone is not obliging its duty as a citizen of India.
   - The new Part IVA with Article 51A was added in the Constitution of India and it was inspired by the Constitution of the USSR.
10. ***Secularism***
    - The Constitution of India stands for a secular state, i.e. it gives equal importance to all religions.
    - It also does not uphold any particular religion as the official state religion. The Western concept of secularism connotes a complete separation between religion and the State.
    - This concept is inapplicable in the Indian situation where the society is multireligious.
    - Hence, the Indian Constitution embodies the positive concept of secularism, i.e. giving equal respect to all religions and protecting all religions equally.
11. ***Universal Adult Franchise***
    - The concept of Universal Adult Franchise/ Adult suffrage allows every citizen of India who is above eighteen years the right to vote in

democratic elections.

- Any adult who is eligible to vote should not be discriminated against on the basis of gender, caste and religion.
- This provision was added in the 61st amendment which is also known as the Constitution Act, 1988, which changed the voting age from 21 to 18.
- Article 326 of the Indian Constitution guarantees this right.
- The Constitution of India is a very dynamic creation of our lawmakers. The Constitution of India as we all know is a supreme law of the country and every citizen of our country has to abide by the constitution.

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3 The Nature of Indian Constitution

Introduction

Constitutions are either unitary or federal. In the unitary government, the powers of the government are centralised in the central government & the states are subordinate to the centre. In the federal constitution, there is a division of power between the states & the central government & both are independent in their own spheres.

There is a huge difference of opinion when it comes to the nature of the Indian Constitution. Some jurist like Kenneth C. Wheare, said that India is quasi-federal i.e. "similar to a federal system" because it has some features of federal and some of the unitary Constitution. However, according to the makers of the Constitution, it is federal in nature. Even Dr. B. R. Ambedkar defined it as a federal Constitution, although the centre has certain powers to override the provinces.

What is a Federation?

A Federation is always characterised by the following essential features:

1. ***Division of Powers:*** Division of powers between the central government on the one hand and the state/ unit governments on the other is an absolutely essential condition of a federation. In it one part of the authority and power of the state is vested with the central government and the rest is vested with the state governments. Each works within a definite and defined sphere of functions.

   There can be different ways in which the division of powers between the centre and states is affected by different federal constitutions. As for example, the US Constitution specifies the powers of the federal government and vests the rest with the state governments, while the Constitution of India defines separately the powers of the union (federal government), powers of the states and concurrent powers which are available in common to both the union and the states, and vests the residuary powers with the union. As such the mode of division of powers can be different but it has to be essentially affected in every federal state. It is the sign post of a federation.

2. ***Written Constitution:*** Since in a federal constitution there is to be affected a division of powers, it becomes essential to effect it in writing in order to make it definite and binding upon both the centre and the states. As such a written constitution is a must for a federation. The constitution is the deliberate and conscious act of political construction. It must be a written and enacted constitution only then can it affect the division of powers in a clear and efficient way.

3. ***Rigid Constitution:*** A federal constitution has also to be a rigid constitution because it is to be kept immune from unilateral amendment efforts on part of The Centre Government or states. Only the central government and the state governments together can have the power to amend the constitution. Further, in order to maintain stability of the federal organisation, there is prescribed a special method of making the amendments in the constitution.

4. ***Supremacy of the Constitution:*** In a federation the constitution is the supreme law of land. Both the central government and the state governments derive their powers from the constitution. They always work within their own spheres as demarcated by the constitution. No one can violate the provisions of the constitution.

5. ***Special Role of the Judiciary:*** For protecting the supremacy of the constitution. Such a judiciary is also essential for performing the role of an arbiter of disputes between the centre and states or among the state governments in respect of their areas of action and power.

   The working of a federation always involves the

possibility of rise of disputes of jurisdiction between the centre and state governments and here there must be present an umpire, a superior organisation capable of settling these disputes. An independent judiciary armed with the power of interpreting the constitution and of regular such central and state laws as are found to be against the letter and spirit of the constitution, is an essential condition of a federation.

6. ***Dual Administration:*** A federation is characterised by dual administration— one, uniform administration of the central government for all the people of the federation and the other state administrations which are run by the governments of federating units and which differ from state to state or region to region. Each citizen has to obey two sets of law—the central laws and the laws of the state of which he is the resident.
7. ***Dual Citizenship:*** In an ideal federation, each individual gets a double citizenship—one common uniform citizenship of the whole state (Federation) and the second of the province or state of which he is the resident. In the United States, each individual enjoys both the citizenship of the United States as well as of the state of which he is the native resident. India do not follow the feature of dual citizenship.
8. ***Bicameral Legislature:*** In a federation, the legislature of the federal government is made a bicameral legislature. In one house the people of the federation are given representation while in the other house the units of the federation are given representation on the basis of equality.

   In the United States, the people of the country have been given representation in the House of Representatives and the fifty states of the US federation have been given equal representation, two seats to each state, whether big or small, in the upper house i.e. the Senate. The same is the case in India where representation in second house or Upper house is on the basis of population of the state.
9. ***Equality of all Federating States:*** One of the key underlying principles of the federation is to treat all states/units of the federation equal, without any consideration for the differences in their size, population and resources. It is because of this requirement that all states have been given seats in one of the two houses of the central legislature and each enjoys equal rights and autonomy.

   These are the essential features of a federation. Any state which has all these features can be legitimately described as a federation.

What is a Confederation?

A confederation is a system of governance, in which the constituents (states or provinces) come together for political, economic, security or administrative reasons. Entering a confederation is entirely voluntary and depends on the government of every individual states – or on the local authority in the case of provinces. Once entered the confederation, the constituents maintain their sovereignty and their powers (almost entirely), and there is no superior, unified, central government. Depending on the structure of the confederation, there might be a weak central body, appointed by all constituents, created to speed up bureaucratic processes and facilitate communication. In a confederation there is,

i. Unitary budget;
ii. Common military;
iii. Common foreign policy strategy;
iv. Common diplomatic representatives; and
v. Common legal system.

The United States started as confederation and later turned into a federation once the constitution was created, signed and ratified by all members. The concept of confederation is similar to the principles on which international organizations stand. For instance, the European Union has similar structure, even though it is not officially defined as such, in particular because there are legally binding documents that prevent states to enter and exit the union as they please.

Similarities between Federation and Confederation

Despite their natural differences, federation and confederation have some aspects in common:

- In both cases, various states, countries or provinces come together to create a new entity for matters of political, economic and security convenience. Federations and confederations only exist if there is a common agreement among constituents. Indeed, members need to adopt a common constitution

to become part of the federation, while entering a confederation is not binding; and

- In both cases, being part of the federation or the confederation should benefit member states. In the first case, constituents give up part of their sovereignty in order to receive protection, security and economic or political advantages. In the second case, states and provinces enter the confederation to create a stronger entity and enjoy administrative and economic advantages without losing power or authority.

Difference between Federation and Confederation

- Federation and confederation are political and strategical agreements among countries or provinces, created in order to enable the constituents to enjoy political and economic benefits. In spite of some similarities, the two concepts are quite different:
- Confederations were very popular in ancient Greece and during the Middle Age, but there are not many examples of existing confederations. International organizations have a similar structure, but have legal treaties and enforcement mechanisms, while confederations were loose agreements with no written constitution. Conversely, federations are more common today, and many confederations formed centuries ago evolved into federations;
- The powers and responsibilities of the central authority vary greatly between the two. First of all, there is no central government as such in a confederation, but rather a weak body elected by member states, while the federal government has great power and influence over the constituents. In a confederation, the central government has no power de facto, and it is only in place to facilitate the decision-making process and speed up communication. Conversely, when states come together to create a federation, they create a new nation state, with a functioning and powerful central government. The constituents lose part of their autonomy and authority, and the central government acquires the ability of making decisions regarding national security, military, foreign policy and diplomacy; and
- The ties among states and provinces are much stronger in the case of the federation. Indeed, in a confederation, states agree to come together for various purposes, but they are not legally tied together and can technically back up or exit the confederation whenever they want (depending on the type of confederation). Conversely, in a federation, there are binding legal agreements that prevent states from leaving the union. Relations among states within a federation are stronger as the different entities come together to create a new nation state.

Main Federal Features of the Indian Constitution

1. ***Written Constitution:*** The Indian Constitution is a written document containing 395 Articles and 12 schedules, and therefore, fulfils this basic requirement of a federal government. In fact, the Indian Constitution is the most elaborate Constitution of the world.
2. ***Supremacy of the Constitution:*** India's Constitution is also supreme and not the hand-made of either the Centre or of the States. If for any reason any organ of the State dares to violate any provision of the Constitution, the courts of laws are there to ensure that dignity of the Constitution is upheld at all costs.
3. ***Rigid Constitution:*** The Indian Constitution is largely a rigid Constitution. All the provisions of the Constitution concerning Union-State relations can be amended only by the joint actions of the State Legislatures and the Union Parliament. Such provisions can be amended only if the amendment is passed by a two-thirds majority of the members present and voting in the Parliament (which must also constitute the absolute majority of the total membership) and ratified by at least one-half of the States.
4. ***Division of Powers:*** In a federation, there should be clear division of powers so that the units and the centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of others. This requisite is evident in the Indian Constitution.

   The Seventh Schedule contains three Legislative Lists which enumerate subjects of administration, viz., Union, State and Concurrent Legislative Lists. The Union List consisted of 97 subjects, the more

important of which are defence, foreign affairs, railways, posts and telegraphs, currency, etc.

The State List consisted of 66 subjects, including, inter-alia public order, police, administration of justice, public health, education, agriculture etc. The Concurrent List embraced 47 subjects including criminal law, marriage, divorce, bankruptcy, trade unions, electricity, economic and social planning, etc.

The Union Government enjoys exclusive power to legislate on the subjects mentioned in the Union List. The State Governments have full authority to legislate on the subjects of the State List under normal circumstances. And both the Centre and the State can't legislate on the subjects mentioned in the Concurrent List, the residuary powers have been vested in the Central Government.

5. ***Independent Judiciary:*** In India, the Constitution has provided for a Supreme Court and every effort has been made to see that the judiciary in India is independent and supreme. The Supreme Court of India can declare a law as unconstitutional or ultra vires, if it contravenes any provisions of the Constitution. In order to ensure the impartiality of the judiciary, our judges are not removable by the Executive and their salaries cannot be curtailed by Parliament.
6. ***Bicameral Legislature:*** A bicameral system is considered essential in a federation because it is in the Upper House alone that the units can be given equal representation. The Constitution of India also provides for a bicameral Legislature at the Centre consisting of Lok Sabha and Rajya Sabha.

   While the Lok Sabha consists of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by the State Legislative Assemblies. However, all the States have not been given equal representation in the Rajya Sabha.
7. ***Dual Government Polity:*** In a federal State, there are two governments—the national or federal government and the government of each component unit. But in a unitary State there is only one government, namely the national government. So, India, as a federal system, has a Central and State Government.

Unitary Features of the Indian Constitution

1. ***Strong Centre:*** The division of powers is in favour of the Centre and highly inequitable from the federal angle. Firstly, the Union List contains more subjects than the State List. Secondly, the more important subjects have been included in the Union List. Thirdly, the Centre has overriding authority over the Concurrent List. Finally, the residuary powers have also been left with the Centre, while in the USA, they are vested in the states. Thus, the Constitution has made the Centre very strong.
2. ***States Not Indestructible:*** Unlike in other federations, the states in India have no right to territorial integrity. The Parliament can by unilateral action change the area, boundaries or name of any state. Moreover, it requires only a simple majority and not a special majority. Hence, the Indian Federation is "an indestructible Union of destructible states". The American Federation, on the other hand, is described as "an indestructible Union of indestructible states".
3. ***Single Constitution:*** Usually, in a federation, the states have the right to frame their own Constitution separate from that of the Centre. In India, on the contrary, no such power is given to the states. The Constitution of India embodies not only the Constitution of the Centre but also those of the states. Both the Centre and the states must operate within this single-frame. The only exception in this regard was the case of Jammu and Kashmir which has its own (state) Constitution till 2019.
4. ***Flexibility of the Constitution:*** The process of constitutional amendment is less rigid than what is found in other federations. The bulk of the Constitution can be amended by the unilateral action of the Parliament, either by simple majority or by special majority. Further, the power to initiate an amendment to the Constitution lies only with the Centre. In US, the states can also propose an amendment to the Constitution.
5. ***No Equality of State Representation:*** The states are given representation in the Rajya Sabha on the

basis of population. Hence, the membership varies from 1 to 31. In US, on the other hand, the principle of equality of representation of states in the Upper House is fully recognised. Thus, the American Senate has 100 members, two from each state. This principle is regarded as a safeguard for smaller states.

6. ***Emergency Provisions:*** The Constitution stipulates three types of emergencies—national, state and financial. During an emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation is not found in any other federation.
7. ***Single Citizenship:*** In spite of a dual polity, the Constitution of India, like that of Canada, adopted the system of single citizenship. There is only Indian Citizenship and no separate state citizenship. All citizens irrespective of the state in which they are born or reside enjoy the same rights all over the country. The other federal states like US, Switzerland and Australia have dual citizenship, that is, national citizenship as well as state citizenship.
8. ***Integrated Judiciary:*** The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the state high courts below it. This single system of courts enforces both the Central laws as well as the state laws. In US, on the other hand, there is a double system of courts whereby the federal laws are enforced by the federal judiciary and the state laws by the state judiciary.
9. ***All-India Services:*** In US, the Federal government and the state governments have their separate public services. In India also, the Centre and the states have their separate public services. But, in addition, there are all-India services (IAS, IPS, and IFS) which are common to both the Centre and the states. The members of these services are recruited and trained by the Centre which also possess ultimate control over them. Thus, these services violate the principle of federalism under the Constitution.
10. ***Integrated Audit Machinery:*** The Comptroller and Auditor-General of India audit the accounts of not only the Central government but also those of the states. But his appointment and removal are done by the President without consulting the states. Hence, this office restricts the financial autonomy of the states. The American Comptroller-General, on the contrary, has no role with respect to the accounts of the states.
11. ***Parliament's Authority over State List:*** Even in the limited sphere of authority allotted to them, the states do not have exclusive control. The Parliament is empowered to legislate on any subject of the State List if Rajya Sabha passes a resolution to that effect in the national interest. This means that the legislative competence of the Parliament can be extended without amending the Constitution. Notably, this can be done when there is no emergency of any kind.
12. ***Appointment of Governor:*** The governor, who is the head of the state, is appointed by the President. He holds office during the pleasure of the President. He also acts as an agent of the Centre. Through him, the Centre exercises control over the states. The American Constitution, on the contrary, provided for an elected head in the states. In this respect, India adopted the Canadian system.
13. ***Integrated Election Machinery:*** The Election Commission conducts elections not only to the Central legislature but also to the state legislatures. But this body is constituted by the President and the states have no say in this matter. The position is same with regard to the removal of its members as well. On the other hand, US has separate machineries for the conduct of elections at the federal and state levels.
14. ***Veto Over State Bills:*** The governor is empowered to reserve certain types of bills passed by the state legislature for the consideration of the President. The President can withhold his assent to such bills not only in the first instance but also in the second instance. Thus, the President enjoys absolute veto (and not suspensive veto) over state bills. But in US and Australia, the states are autonomous within their fields and there is no provision for any such reservation.

4 Preamble

Introduction

The term Preamble means an introductory statement that sets out the guiding purpose, principles and philosophy of the Indian Constitution. A preamble gives a brief introduction of documents by highlighting the principles and fundamental values of the document. It shows the source of the authority of the document. The American Constitution was the first Constitution in the world to begin with Preamble. The Preamble of the Indian constitution is based on the 'Objective Resolution' moved by Jawaharlal Nehru in the Constituent Assembly which was adopted by the Constituent Assembly.

The Constitution of India begins with a Preamble. It is interesting to know that the Preamble, though the Constitution starts with it, was not the first to come into existence. It was the last piece of Drafting adopted by the Constituent Assembly at the end of the first reading of the Constitution and then placed at the beginning of the Constitution. Several amendments were suggested in the Preamble but they all were rejected. At the end, the President of the Constituent Assembly moved the motion- "That the Preamble stands part of the Constitution." Thus, Preamble was added to the Constitution.

The 42nd Amendment of 1976, changed the description of India from a "sovereign democratic republic" to a "sovereign, socialist secular democratic republic", and also added the word 'integrity' to change, "unity of the nation" to "unity and integrity of the nation".

Preamble embodies the basic philosophy and fundamental values-political, moral and religious on which it is based.

Text of The Preamble

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

JUSTICE, social, economic and political;

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

EQUALITY of status and of opportunity;

And to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

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

Components of The Preamble

- SOURCE OF AUTHORITY: Preamble specifies that Constitution of India derives its authority from the people of India
- NATURE OF INDIAN STATE: Preamble declares India as a Sovereign, Socialist, Secular, Democratic and Republican state.
- OBJECTIVES OF THE CONSTITUTION: Preamble specifies justice, liberty, equality and fraternity as its objectives.
- DATE OF ADOPTION: Preamble mentions 26-November-1946 as its adoption date.

Nature of Preamble

- In Keshavananda Bharti case (1972), the Supreme Court held that, Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution.
- In LIC case (1995), the Supreme Court held that, Preamble is non-justiciable, its provisions are not enforceable in the courts of law, but it helps in the legal interpretation of the Constitution of India.

Ideals Menntioned in the Preamble

Sovereign:

Sovereignty is one of the principleelements of any independent State. It means absolute independence, i.e., a government is not controlled by any other power, be it internal or external. A country cannot have its own constitution without being sovereign. India is a sovereign country. The term 'Sovereign' mentioned in

the Preamble means that India has its own independent authority and it is not a dominion of any other external power. In India, the legislature has the power to make laws which is subjected to certain limitations. As a sovereign country, India can acquire foreign territory or cede a part of it in favour of any country. It is free from any external control. It can frame state policies on its own. India is also free to formulate its own foreign policy

Socialist:

Initially, the word socialist was not there in the Preamble. It was added by the 42nd Amendment act 1976 in the Preamble. The word 'Socialism' had been used in the context of economic planning. It means commitment to attain ideals like removal of inequalities, provision to ensure minimum basic necessities to all, equal pay for equal work. In the Directive Principles of the State Policy, these ideals have been incorporated. It is basically a 'Democratic Socialism'- the term means the achievement of socialist ends through democratic means, that is followed in the mixed economy like India where both private and public sectors co-exist side by side.

Secular:

The term 'secular' was also added by the 42nd Constitutional Amendment Act of 1976. In the context of secularism in India, 'India is neither religious, nor irreligious nor anti- religious.' It implies that in India there will be no 'State' religion – the 'State' will not favour any particular religion out of public fund. This has two implications,

i. every individual is free to believe in, and practice, any religion he/ she belongs to, and,
ii. State will not discriminate against any individual or group on the basis of religion.

The concept of secularism was already implicit in the Indian Constitution. Articles 25 to 28 of the Constitution guarantees every person the freedom of conscience and the right to profess, practice and propagate religion. Indian Constitution encompasses positive concept of secularism that all religion in India have the same status and support from the state.

Comparison with Western Secularism:	
Western Secularism	**Indian Secularism**
In western society, secularism refers to the complete separation between the state and religion and freedom of religion for all people.	There's no clear demarcation between state and religion in India, positive intervention of the state in religious affairs is not prohibited.
The Western concept of Secularism does not believe in an open display of religion except for places of worship. In a country like France, the hijab is banned because the external manifestation of religion is not appreciated in that society.	In India, secularism manifests itself by the creation of an environment where every religion is represented and its followers can freely practice the religion. All expression of Religion is manifested equally with support from the state.
In western society, laws are made in isolation from religious principles.	In India, the law seeks to incorporate the multiple religious principles that followers of different religions comply to.
The state cannot give any financial support to educational institutions run by religious communities.	The state provides all religious minorities with the right to establish and maintain their own educational institutions which may receive assistance from the state.
The State does not intervene in the affairs of religion until the time religion is working within the limits of the law.	In Indian secularism, the state shall interfere in religion so as to remove evils in it.
A single uniform code of law is used to dispense justice regardless of religious background.	In matters of law in modern India, however, the applicable code of law is unequal, and India's personal laws– on matters such as marriage, divorce, inheritance, alimony– varies with an individual's religion. Muslim Indians have Sharia-based Muslim Personal Law, while Hindu, Christian and Sikh Indians live under common law.
Focus is more on intrareligious domination than interreligious due to religiously homogeneous nature of the State.	Focusing both on interreligious and intra religious dominations because Indian society is not homogenous rather it is multi-religious that has numerous religious denominations and caste under each.
It is concerned with liberty and equality among the individuals of the particular religion and often neglected the equality of other religious minorities.	It not only ensures the religious freedom of individuals but also provides for the religious freedom of minorities.

Democratic:

As said by Abraham Lincoln, 'Democracy is government of the people, by the people and for the people'. The term 'Democratic' implies that the Constitution of India has an established form of Constitution which gets its authority from the possession of supreme power by the people expressed in an election. This means that the Government is elected by the people, it is responsible and accountable to the people. The democratic principles are highlighted with the provisions of universal adult franchise, elections, fundamental rights, and responsible government. The term Democracy used in Preamble embraces not only political democracy but also social and economic democracy.

In views of Dr. Ambedkar, Political democracy cannot succeed without social and economic democracy. For him, the best mode of achieving socio-economic democracy is to achieve political democracy at the first instance. The importance of ideas of political social and economic democracy lies in the fact that, rights cannot be enjoyed by the citizens of any nation in the absence of them. The coexistence of all three democracies is imperative to achieve the goals of equality and fraternity as enshrined in our Constitution in Preamble.

Republic:

India has a republic form of government as the head of state is elected and not a hereditary monarch like a king or queen. It means the power to elect the head of the state for a fixed term lies within the people. So, in conclusion, the word 'republic' shows a government where the head of state is elected by the people rather than any birth-right.

Justice:

Justice stands for rule of law, absence of arbitrariness and a system of equal rights, freedom and opportunities for all in a society. Justice is to give people what they are entitled for in terms of basic rights to food, clothing, housing, participation in the decision-making and living with dignity as Human Beings. The Preamble covers all these dimensions of justice – social, economic and political secured through various provisions of the Fundamental and Directive Principles.

- Social justice in the Preamble means equal treatment of all citizens without any discrimination on the grounds of race, religion, caste, sex or place of birth. It also means absence of any privileges to any section of the society and also take necessary steps to improve the conditions of SC/ ST, OBC's and women.
- Economic Justice means no discrimination can be caused by people on the basis of their wealth, income, and economic status. It means wealth must be distributed on the basis of their work, not with any other reason. Every person must be paid equally for an equal position and all people must get opportunities to earn for their living. A blend of social and economic justice is also known as distributive justice.
- Political Justice means that all citizens have equal rights in political participation. Indian Constitution provides for universal adult suffrage and equal value for each vote, without any sort of qualification, e.g. education, property, social status.

  The ideals of justice are taken from Russian Revolution.

Liberty:

The idea of Liberty refers to the freedom on the activities of citizens. This establishes that there are no unreasonable restrictions on Indian citizens in term of what they think, their manner of expressions and the way they wish to follow up their thoughts in action. However, liberty does not mean freedom to do anything, and it must be exercised within the constitutional limits.

The Preamble provides for the liberty of thought, expression, belief, faith, and worship. The Indian Constitution guarantees six democratic freedoms to the individuals under Art. 19 and right to freedom of religion under Arts. 25-28.

The ideals of Liberty, Equality and Fraternity are taken from French Revolution.

Equality:

The term 'equality' means the absence of special privilege to any section of society, and the provision of adequate opportunity of all the individuals without any discrimination. Preamble ensures equality at- social, political and economic front.

- Constitution mentions few articles in Fundamental rights to ensure equality in society:
  - Prohibition of discrimination by the State only

on the basis of religion, caste, sex, or place of birth (Art. 15).

- Equality of opportunity in terms of public employment (Art. 16)
- Abolishing untouchability (Art. 17)
- Abolishing titles of honour (Art. 18).
- However, to bring the neglected/ backward sections of the society into the national mainstream, the Parliament has passed certain laws for the SCs, STs, OBCs and also, women (Protective Discrimination).

- Article 39 of Directive principle of State policy ensures economic equality which states for equitable distribution of wealth, equal pay for both men and women for equal work.
- Article 325 and article 326 of the Constitution enables political equality amongst the citizens by providing universal adult suffrage.

Fraternity:

- Fraternity as enshrined in the Constitution means a sense of brotherhood prevailing amongst all the sections of the people. However, fraternity is an evolving process and by the 42nd amendment, the word 'integrity' was added, thus giving it a broader meaning.
- Fundamental duties implicitly describe about fraternity as it talks about upholding and protecting the sovereignty, unity and integrity of India.
- To ensure sense of brotherhood Indian Constitution have provision of single citizenship.

Significance of the Preamble:

- The Preamble to the Constitution embodies the essence of the entire Constitution.
- It sets out the main objectives, which the Constituent Assembly intended to achieve.
- As the 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.
- It can neither provide substantive power (definite and real power) 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.
- The ideals are the means to achieve aspirations

Whether the Preamble is a part of the Constitution?

- In the Berubari Union case (1960), Supreme Court held that Preamble is not a part of the Constitution. However, it is a key to the mind of framers of the Constitution and it reveals their intentions. Preamble is in itself neither a source of any powers, nor a source of any restrictions. The preamble is an important tool for interpretation of the Constitution.
- The Supreme Court in the Kesavananda Bharati vs. State of Kerala (1971) case overruled its earlier decision (Berubari case) of 1960 and made it clear that it is a part of the Constitution and is subject to the amending power of the Parliament as any other provisions of the Constitution, provided the basic structure of the Constitution as mentioned in the Preamble is not destroyed. However, it is not an essential part of the Constitution.
- Minerva Mills V Union of India (1980), Supreme Court held that any positive amendment in the Preamble can certainly be made. Preamble can be amended by procedure held in Article 368 of the Constitution.
- In the latest S.R. Bommai case, 1993 regarding the dismissal of three Governments in MP, Rajasthan and Himachal Pradesh, Justice Ramaswamy said, "the Preamble of the Constitution is an integral part of the Constitution. Democratic form of government, federal structure, unity and integrity of the nation, secularism, socialism, social justice and judicial review are basic features of the Constitution".

Why the two words were left out of original Preamble?

- As per the Constituent Assembly debate over word secular, Dr. B.R. Ambedkar refuted its inclusion with a reason that there was no need to include the term 'secular' as the entire Constitution embodied the concept of secular state, which meant non-discrimination on grounds of religion and equal rights and status to all citizens.
- On the inclusion of the term 'socialist,' he said it is

against the very grain of democracy to decide in the Constitution what kind of society the people of India should live in. Dr Ambedkar said "It is perfectly possible today, for the majority people to hold that the socialist organisation of society is better than the capitalist organisation of society. But it would be perfectly possible for thinking people to devise some other form of social organisation which might be better than the socialist organisation of today or of tomorrow. I do not see therefore why the Constitution should tie down the people to live in a particular form and not leave it to the people themselves to decide it for themselves". His words had influenced the final decision to omit the two words.

The question arises as to why Preamble was amended?

By the 42nd amendment, the Preamble was amended to include 'socialist', 'secular', 'integrity,' as it was assumed that this amendment is clarificatory in nature.

The structure of the Constitution has been built upon the concepts crystallized in the Preamble. The 42nd amendment adds liveliness to the philosophy of the Constitution. It makes explicit what was implicit in the Constitution i.e., Positive Amendment.

Prime Minister Indira Gandhi re-introduced the two words for political reasons in the 42nd Constitution Amendment of 1976. In the opinion of Constitutional expert Subhash Kashyap, "The word 'socialist' was added to send a message politically that she stood for the poor. The word 'secular' was obviously meant for the minorities in the context of the birth control programmes of the emergency period. It was not as if the Constitution was not secular or socialist before the words were added. India has been secular before the 42nd Amendment and continues to be secular after it.

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5 The Union & Its Territory

Part (I) of the constitution comprises of 4 Articles concerned with the territory of India.

Article 1: Name and Territory of the Union.

Article 1(1) States that India, that is Bharat, shall be a Union of States.

Why 'union' not 'federation'?

- India has opted for the Federal form of Government due to its large size and socio-cultural diversities, but the word 'Federation' does not find mention in the Constitution.
- The term'Union' was suggested by Dr B.R. Ambedkar, which indicates two things— first, Indian Union is not a result of agreement of independent and sovereign states, and second, the Units/States do not have right to secede from the Union.
- The expression 'Union of India' needs to be distinguished from the expression 'Territory of India'.
- While the Union of India includes only the States which share federal powers with the Centre, Territory of India includes the entire territory over which the sovereignty of the country is exercised.

Article 1(2) says that the States and the territories will be specified in the First Schedule.

Article 1(3) says that the territory of India will comprise the following –

a) The territories of the States.

b) The Union territories mentioned in the First Schedule; and

c) Such other territories as may be acquired.

Article 2 - Admission or establishment of new States

According to the Article Parliament may by law admit new States into the Union India or establish new States on such terms and conditions as it think.

Article 2 gives Parliament two powers

1. The power to admit into the Union new States which are established and are already in existence. i.e., The French Settlements of Pondicherry, etc.
2. The power to establish new States which were not in existence before.

Article 2-A. Sikkim to be associated with the Union. (repealed)

- The 35thAmendment laid down a set of conditions that made Sikkim an "Associate State", a special designation not used by any other state
- The 36th Amendment made Sikkim a full-fledged State of the Indian Union and omitted the tenth schedule.
- The 36th Amendment Act was passed on 16th May 1975.
- Notably, Article 2 relates to the admission or establishment of new states that are not part of the Union of India. Article 3, on the other hand, relates to the formation of or changes in the existing states of the Union of India. In other words, Article 3 deals with the internal re-adjustment inter se of the territories of the constituent states of the Union of India.

Article 3: Formation of New States and Alteration of Areas, Boundaries or Names of Existing States.

- The Parliament can redraw the political map of India according to its will. Hence, the territorial integrity or continued existence of any state is not guaranteed by the Constitution. Therefore, India is rightly described as 'an indestructible union of destructible states.
- The Union government can destroy the states whereas the state governments cannot destroy the Union. In USA, on the other hand, the territorial integrity or continued existence of a state is guaranteed by the Constitution.

- The American Federal government cannot form new states or alter the borders of existing states without the consent of the states concerned. That is why the USA is described as 'an indestructible federation of indestructible states.

Formation of new states

Parliament may create new States in a number of ways, namely by

- Separating territory from any State,
- Uniting two or more States,
- Uniting parts of States and
- Uniting any territory to a part of any State.

Parliamentary procedure

- Firstly, a bill calling for formation of new States or alteration of the boundaries or names of the existing State shall be introduced in either House of Parliament only on the recommendation of the President.
- Parliament can form new States, and can alter the area, boundaries or names of the existing States by a law passed by a simple majority.
- Such a bill must be referred by the President to the concerned State Legislature for expressing its views to Parliament if it contains provisions which affect the areas, boundaries or name of that State. Also, its opinion within a specified time limit
- If the State Legislature does not give its opinion within the specified time limit, the time limit may 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.
- It is not necessary to make fresh reference to the State Legislature every time when an amendment to the Bill is proposed and accepted.

- Recent change has been in the status of Jammu and Kashmir in the year 2019 by Jammu and Kashmir reorganization act 2019. Through this act state of Jammu and Kashmir was demolished into the union territory of Jammu and Kashmir and the union territory of Ladakh.
- It was the first time in the history of India that a state was demolished into a union territory. Also, the Parliament passes a bill in Dec 2019 which changes the status of union territory of Daman and Diu and Dadra and Nagar haveli into one unit.

The Berubari Union and Exchange of Enclaves case 1960

- In the case of the Berubari Union, the President had consulted the Supreme Court of India regarding the Nehru-Noon Agreement signed between the Prime Minister of India and Pakistan.
- The dispute was that the State Government of West Bengal did not want to give any territory of Berubari to Pakistan. The Central Government signed the Nehru-Noon Agreement, which clearly states that the territory of Berubari will be equally distributed between India and Pakistan. Therefore, this matter was finally taken to the Supreme Court of India.
- Supreme Court in 1969 ruled that, settlement of boundary dispute between India and any other country doesn't require constitutional amendment, it can be done by an executive action (govt action), if it doesn't involve cession of a territory.
- The 100th Amendment in Indian Constitution provides acquisition of territories by India and transfer of certain territories to Bangladesh. The Constitution Act 2015 (100th amendment) ratified the land boundary agreement between India and Bangladesh. The act amended the first schedule of the Constitution in order to exchange the disputed territories occupied by both the nations in accordance with Land Boundary Agreement of 1974 and its Protocol of 2011.
- For this purpose, this amendment act amended the provisions relating to the territories of four states (Assam, West Bengal, Meghalaya and Tripura) in the First Schedule of the Constitution.

Article 4 - Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and Supplemental, Incidental and Consequential matters

Article 4(1) Any law referred to in Article 2 or Article

3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

Article 4(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368-part II citizenship.

Explanation: -

- This Article explains that changes which are made by Article 2 & 3 will not be termed as the amendment but will be termed as law for changes in First and Fourth schedule.
- To understand Article 4, one must have knowledge of Article 368 that deals with amendment to Constitution.
- Remember if Parliament wants to change any provision or Article or schedules mentioned Constitution, it has to propose amendment bill under Article 368. Second point is as mentioned in Article 4, there is no necessity for Parliament to initiate amendment bill under Article 368 in order to pursue any bill propose under Article 2 or Article 3.
- Remember Article 2 deals admission of any newly acquired territory and its admission to Union of India (such as Sikkim 1975 or recent addition of some villages in Bangladesh to India)
- Also, Article 3 deals with re mapping or creation of states or territories in existing in Union of India (such creation of State of Telangana).
- This is because after independence from British in 1947, there were approx. 357 princely states which also got independence and they had right to join either India or Pakistan or remain separate. So, process of amalgamation of these territories to India was going on continuously from 1947 to till date also there were many complex problems created due to partition of India.
- Changes to Indian Union were inevitable and continuous, due to which our founding fathers thought that if every such legislation is came under preview of Article 368 i.e. Amendment of constitution then it will be very tedious and complex work to acquire territories or rename states or create new state or merge any state to existing states.

Also it will become time consuming and difficult for Parliament to function or proceed with foreign relations of country, So to minimize and simplify this problem, they made provision of Article 4.

- So just because of Article 4 it is very handy for Parliament to make laws regarding the alteration local or international boundaries without interference.

REORGANISATION OF STATES

- At the time of independence in 1947, India consisted of 571 disjointed princely states that were merged together to form 27 states. The grouping of states at the time was done on the basis of political and historical considerations rather than on linguistic or cultural divisions, but this was a temporary arrangement. On account of the multilingual nature and differences that existed between various states, there was a need for the states to be reorganized on a permanent basis
- Initially as per constitution States are divided into 4 parts- ***PART-A, B, C, D***
- After 7th Constitutional amendment it was changed to States and Union territories. The Constitution of 1950 categorized states in Four Parts.
- Part A had 9 states and these were the former Governor Provinces of British India ruled by elected Governor.
- Part B had 8 states and these were former princely states, governed by Rajpramukh (ruler of the state).
- Part C had 10 states and these were former Chief Commissioner's provinces in British India governed by Chief Commissioner appointed by the President of India.
- Part D had only 1 State administered by Lieutenant Governor appointed by Central Government.
- This scheme was reorganized by States Reorganisation Act, 1956.

- In 1948, SK Dhar - a judge of the Allahabad High Court - was appointed by the government to head a commission that would look into the need for the reorganization of states on a linguistic basis. However, the Commission preferred reorganization of states on the basis of administrative convenience including historical and geographical considerations instead of on linguistic lines.
- In December 1948, the JVP committee comprising Jawaharlal Nehru, Vallabh bhai Patel and Pattabhi Sitaramayya was formed to study the issue. The Committee, in its report submitted in April 1949, rejected the idea of reorganization of states on alinguistic basis but said that the issue could be looked at afresh in the light of public demand.
- In 1953, the first linguistic state of Andhra for Telugu-speaking people was born. The government was forced to separate the Telugu speaking areas from the state of Madras, in the face of a prolonged agitation and the death of Potti Sriramulu after a 56-day hunger strike. Consequently, there were similar demands for creation of states on linguistic basis from other parts of the country.
- On December 22, 1953, Jawaharlal Nehru appointed a commission under Fazal Ali to consider these new demands. The commission submitted report in 1955 and it suggested that the whole country be divided into 16 states and 3 centrally administered areas. The government, while not agreeing with the recommendations entirely, divided the country into 14 states and 6 union territories under the State's Reorganization Act 1956. The states were Andhra Pradesh, Assam, Bihar, Bombay, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal. The six union territories were Andaman and Nicobar Islands, Delhi, Himachal Pradesh, Laccadive, Minicoy and Amindivi Islands, Manipur and Tripura. States Reorganization Act,1956
- The States Reorganization Act, 1956 was a major reform of the boundaries of India's states and territories and remains the single most extensive change in state boundaries since the independence of India in 1947. The act abolished distinction among Part A, B, and C states categorization. States were reorganized largely on linguistic lines.
- Demand of states on linguistic basis was developed even before independence of India under British rule. Though that time Indian administrative regions were identified as different provinces. Orissa was the first Indian state formed on linguistic basis in the year 1936 due to the efforts of Madhusudan Das and became Orissa Province. In Odisha linguistic movement started in the year 1895 and intensified later years with the demand of separate province from Bihar and Orissa Province.

Why language was used as the criteria for the division of states?

- It would lead to the local people participating in the administration in larger numbers because of being able to communicate in a common language.
- Governance would be made easier in areas, which shared linguistic and geographical features.
- This would lead to the development of vernacular languages, which had long been ignored by the British.
- This would help replace the caste and religion-based identities with less controversial linguistic identities.
- Andhra State was the first state to be formed after independence on linguistic basis in India on 1 October 1953. On 1 November 1956, Andhra State was merged with the Telugu-speaking areas of the Hyderabad State to form Andhra Pradesh.
- In 1960, the state of Bombay was bifurcated to create the states of Gujarat and Maharashtra following violence and agitation. In 1963, the state of Nagaland was created for the sake of the Nagas and total number of states stood at 16.
- The areas of Chandernagore, Mahe, Yamen and Karaikal from France, and the territories of Goa, Daman and Diu from the Portuguese, were either made union territories or were joined with the neighbouring states, after their acquisition.
- Based on the Shah Commission report in April 1966, the Punjab Reorganization Act was passed by

the Parliament. Following this, the state of Haryana got the Punjabi-speaking areas while the hilly areas went to the Union Territory of Himachal Pradesh. Chandigarh, which was made a Union Territory, would serve as the common capital of Punjab and Haryana.

- In 1969 and in 1971, the states of Meghalaya and Himachal Pradesh came into being respectively. With the Union Territories of Tripura and Manipur being converted into states, the total number of Indian states rose to 21.
- Thereafter, Sikkim in 1975 and Mizoram, Arunachal Pradesh in February 1987 also acquired the status of states. In May 1987, Goa became the 25th state of the Indian Union, while three new states of Jharkhand, Chhattisgarh and Uttaranchal were formed in November 2000. On June 2, 2014, Telangana officially became India's 29th state.
- In 2019, the Central Government took an imminent decision of reorganizing the fable state of Jammu and Kashmir. The decision of scrapping the special status bestowed to the state under Article 370 of the Indian Constitution left the state in peril. Hence, Jammu and Kashmir got divided into the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh.
- The Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Bill, 2019 was introduced in Lok Sabha on November 26, 2019. The Bill provides for the merger of the Union Territories (UTs) of Dadra and Nagar Haveli, and Daman and Diu into a single UT.

Why the new states were created?

- One main reason was cultural or social affiliations. For instance, the state of Nagaland in the Northeast was created taking tribal affiliations into account.
- Another reason was economic development. For instance, Chhattisgarh felt that the region could grow economically only through separate statehood because the region's development needs were not being met by the state government. For an aggrieved region, there is a strong sense that overall development will not come to them in the bigger state because of inequitable distribution of resources and lack of adequate opportunities for growth.
- There is also a shift in power from the Centre to the states and with the growth of diverse communities, the existing federal structure is probably not sufficient to meet the aspirations of the rising numbers.
- Also, parties tend to associate themselves with identity politics to get attention on the national stage and for gaining a vote bank. Hence, there is an increasing demand for formation of new states based on social and cultural identities.

List of Union Territories

Union territories	Capital	Founded Year	Official Languages
Andaman and Nicobar Islands	Port Blair	1. Nov. 1956	Hindi, English
Chandigarh	Chandigarh	1. Nov. 1966	English
Dadra and Nagar Haveli, Daman and Diu	Silvassa, daman	11. Aug. 1961 (Merged in 2019)	Gujarati, Hindi, Marathi
Delhi	New Delhi	9. May. 1956	Hindi, Punjabi, Urdu
Lakshadweep	Kavaratti	1. Nov. 1956	English, Hindi
Puducherry	Pondicherry	1. Nov. 1954	English, Tamil, Malayalam, Telugu
Jammu and Kashmir	Srinagar (Summer), Jammu (Winter)	From 31 Oct 2019	Urdu
Ladakh	Leh	From 31 Oct 2019	Bhoti

NOTE: Goa, Puducherry, Dadra & Nagar Haveli and Sikkim were not a part of India at the time of independence. Goa was liberated from Portuguese occupation in 1961, Puducherry along with Karaikal, Mahe and Yanam, was transferred to India in 1954 by the French, Dadra & Nagar Haveli were liberated in 1954 from the Portuguese and Sikkim became a part of India in 1974.

List of States				
States	**Zone**	**Capital**	**Founded Year**	**Official Languages**
Andhra Pradesh	Southern	Amaravati (announced)	1. Nov. 1956	Telugu
Arunachal Pradesh	North-Eastern	Itanagar	20. Feb. 1987	English
Assam	North-Eastern	Dispur	26. Jan. 1950	Assamese
Bihar	Eastern	Patna	26. Jan. 1950	Hindi, Urdu
Chhattisgarh	Central	Naya Raipur	1. Nov. 2000	Hindi
Goa	Western	Panaji	30. May. 1987	Konkani, Marathi
Gujarat	Western	Gandhinagar	1. May. 1960	Gujarati
Haryana	Northern	Chandigarh	1. Nov. 1966	Hindi, Punjabi
Himachal Pradesh	Northern	Shimla	25. Jan. 1971	Hindi, English
Jharkhand	Eastern	Ranchi	15. Nov. 2000	Hindi, Urdu
Karnataka	Southern	Bangalore	1. Nov. 1956	Kannada
Kerala	Southern	Thiruvananthapuram	1. Nov. 1956	Malayalam
Madhya Pradesh	Central	Bhopal	1. Nov. 1956	Hindi
Maharashtra	Western	Mumbai	1. May. 1960	Marathi
Manipur	North-Eastern	Imphal	21. Jan. 1972	Meitei, English
Meghalaya	North-Eastern	Shillong	21. Jan. 1972	English, Khasi
Mizoram	North-Eastern	Aizawl	20. Feb. 1987	English, Hindi, Mizo
Nagaland	North-Eastern	Kohima	1. Dec. 1963	English
Odisha	Eastern	Bhubaneswar	26. Jan. 1950	Odia
Punjab	Northern	Chandigarh	1. Nov. 1956	Punjabi
Rajasthan	Northern	Jaipur	1. Nov. 1956	Hindi, English
Sikkim	North-Eastern	Gangtok	16. May. 1975	English, Bhutia, Nepali, Sikkimies, Lepacha, Gurung, Limbu, Sherpa, Magar, Mukhia, Newari, Rai, Tamang
Tamil Nadu	Southern	Chennai	26. Jan. 1950	Tamil, English
Telangana	Southern	Hyderabad	2. Jun. 2014	Telugu, Urdu
Tripura	North-Eastern	Agartala	21. Jan. 1972	Bengali, Kokborok, English
Uttar Pradesh	Central	Lucknow	26. Jan. 1950	Hindi, Urdu
Uttarakhand	Central	Dehradun	9. Nov. 2000	Hindi, Sanskrit
West Bengal	Eastern	Kolkata	1. Nov. 1956	Bengali, Hindi, Urdu, Gurumukhi, Nepali, Ol-Chiki

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6 Citizenship

Citizenship: Concept

The concept of citizenship is composed of three main elements or dimensions. The first is citizenship as legal status, defined by civil, political and social rights. Here, the citizen is the legal person free to act according to the law and having the right to claim the law's protection. The second considers citizens specifically as political agents, actively participating in a society's political institutions. The third refers to citizenship as membership in a political community that furnishes a distinct source of identity.

Meaning of Citizenship

Citizenship is a relationship between an individual and a state to which the individual owes allegiance and in turn is entitled to its protection. Citizenship implies the status of freedom with accompanying responsibilities. Citizens have certain rights, duties, and responsibilities that are denied or only partially extended to aliens and other noncitizens residing in a country. In general, full political rights, including the right to vote and to hold public office, are predicated upon citizenship. The usual responsibilities of citizenship are allegiance, taxation, and military service.

Constitutional provisions for Citizenship

PART II

ARTICLES

Article 5: Citizenship at the commencement of the Constitution.

Article 6: Rights of citizenship of certain persons who have migrated to India from Pakistan.

Article 7: Rights of citizenship of certain migrants to Pakistan.

Article 8: Rights of citizenship of certain persons of Indian origin (PIO) residing outside India.

Article 9: Persons voluntarily acquiring citizenship of a foreign State not to be citizens.

Article 10: Continuance of the rights of citizenship.

Article 11: Parliament to regulate the right of citizenship by law.

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—

a. who was born in the territory of India; or
b. either of whose parents was born in the territory of India; or
c. 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.

Power of Parliament to regulate the Rights of Citizenship by Law [Article 11]

- The Parliament has the right to make any provision with regard to the acquisition and termination of citizenship and any other matter relating to citizenship.
- Parliament, in exercise of the power given to it under Article 11 of the Constitution has passed the Indian Citizenship Act, 1955. This Act provides for the acquisition and termination of Citizenship in India. The Indian legislation has enacted the Citizenship (Amendment) Acts of 1986, 1992, 2003, 2005, 2015 and 2019. Hence 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 of the Law of Citizenship.

Acquisition of Indian Citizenship

Parliament, in exercise of the power given to it under Article 11 of the Constitution, has passed the Citizenship Act, 1955, making provisions for the acquisition and termination of citizenship after the commencement of the Constitution. The Act provides for the acquisition of India citizenship after the commencement of the Constitution in five ways, i.e., birth, descent, registration, naturalization and incorporation of territory.

By birth:

1. 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. (Jus Soli).

2. A person born in India on or after 1st July, 1987 but before 3rd December, 2004 is considered citizen of India by birth if either of his parents is a citizen of India at the time of his birth.
3. A person born in India on or after 3rd December, 2004 is considered 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.
    a. An "illegal migrant" as defined in section 2(1) (b) of the Act is a foreigner who entered India:
        - Without a valid passport or other prescribed travel documents: or
        - With a valid passport or other prescribed travel documents but remains in India beyond the permitted period of time.

By descent:

- Broadly, a person born outside India on or after January 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 (Jus Sanguine).
- A person born outside India on or after 3rd December, 2004 shall not be a citizen of India, 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.

Citizenship of persons covered by the Assam Accord (1985):

As per this accord -

- All those foreigners who had entered Assam between 1951 and 1961 were to be given full citizenship including the right to vote.
- Those migrants those who had done so after 1971 were to be deported.
- Those who entered between 1961 and 1971 were to be denied voting rights for ten years but would enjoy all other rights of citizenship.

By registration:

Citizenship can also be acquired by registration with fulfil some condition,which is given below:

- A person of Indian origin who has been a resident of India for 7 years before applying for registration.
- A person of Indian origin who is a resident of any country outside undivided India.
- A person who is married to an Indian citizen and is ordinarily resident for 7 years before applying for registration.
- Minor children of persons who are citizens of India.

By naturalization:

Citizenship of India by naturalization 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 territories: If any new territory becomes a part of India, after a popular verdict, the Government of India shall specify the person of that territory to be the citizen of India.

- In India, there is single citizenship i.e., citizenship of India.
- A citizen is an individual who enjoys all the rights given by the law, available in the country.
- Art. 11 says that the Parliament will regulate the right of citizenship by the Law.

Termination of Indian Citizenship

The Citizenship Act, 1955, also lays down how the citizenship of India may be lost whether it was acquired under the Citizenship Act. 1955, or prior to it, under the provisions of the Constitution. It may happen in any of the three ways: (a) renunciation, or (b) termination, and (c) deprivation.

Renunciation: It is a voluntary act by which a person, after acquiring the citizenship of another country, gives up his Indian citizenship. This provision is subject to certain conditions.

Termination: It takes place by operation of /when an Indian citizen voluntarily acquires the citizenship of another country. He automatically ceases to be an Indian citizen.

Deprivation: Deprivation is a compulsory termination of citizenship of India. A citizen of India by naturalization, or registration, may be deprived of his citizenship by an order of the Central Government if it

is satisfied that:

- The citizen has obtained the citizenship by means of fraud, false representation or concealment of any material fact;
- The citizen has shown disloyalty to the Constitution of India;
- The citizen has unlawfully traded or communicated with the enemy during a war;
- The citizen has, within five years after registration or neutralization, been imprisoned in any country for two years;
- The citizen has been ordinarily resident out of India for seven years continuously.

Rights not available to Aliens

1. Right not to be discriminated against on grounds of race, caste, religion, sex or place of birth (Art 15)
2. Right to equality of opportunity in public employment (Art 16)
3. Right to six fundamental freedoms under Art 19
4. Right to vote
5. Cultural and educational rights conferred by Arts 29 & 30
6. Rights to hold certain offices—President, Vice-President, Governor of States, Judges of Supreme Court or High Courts, Attorney General of India, Comptroller and Auditor General, etc.
7. Right to contest election and get elected to either House at the Centre or State.

Dual Citizenship

- The Indian Constitution, under Article 11, gives power to the Indian Parliament to legislate on citizenship matters. Accordingly, Parliament enacted the Citizenship Act in 1955. Article 9 says that citizenship means full citizenship. The Constitution does not recognize divided allegiance. Section 10 of the Citizenship Act says that a person cannot have allegiance to the Indian Constitution as well as to the Constitution of another country. The Indian Courts have consistently ruled against dual citizenship.
- If an Indian citizen acquires citizenship of another country, he loses the Indian citizenship. For example, if a child of parents, who are citizens of India, is born in another country and does not renounce the citizenship of that country on attainment of adulthood, he/she loses the Indian citizenship.
- The reason for the denial of dual citizenship is that citizenship entails certain duties like serving in the army, if the need be.

One Citizenship in India

Our Constitution, though federal, provides for one citizenship only, namely, the citizenship of India. There is no separate citizenship for States. In some federal countries like the USA and Switzerland, there is dual citizenship, namely federal/national citizenship and citizenship of the State where a person is born or permanently resides, and there are distinct rights and obligations flowing from the two kinds of citizenship. In India, however, the civic and political rights which are conferred by the Constitution upon the citizens of India can be equally claimed by any citizen of India irrespective of his birth and residence in any part of India.

Permanent residence within a State may, however, confer certain advantages in two situations:

- Although in cases of employment under the Union, there shall be no qualification for residence within a particular territory, Union Parliament, under Article 16(3) of the Constitution, is empowered to lay down such qualification with regard to any particular class or classes of employment under a State or a Union Territory: this is done basically for the sake of efficiency, insofar as it depends on familiarity with local conditions.
- Moreover, it is the Union Parliament which is the sole authority to legislate in this matter and that State Legislature shall have no voice.

As Article 15(1), which prohibits discrimination on grounds only of race, religion, caste, sex or place of birth, does not mention 'residence', it is, therefore, constitutionally permissible for a State to confer special benefits upon its residents in [natters other than those in respect of which rights are conferred by the Constitution upon all citizens of India. In Joshi vs. State of Bombay (1955), Supreme Court has held that since discrimination on grounds of residence is not prohibited by Article 15, it is permissible for a State to offer a concession to its residents in the matter of fees for admission in its State Medical Colleges

NRI

An NRI is an Indian citizen who does not reside

within India for more than 120 days a year. Till the end of FY 2019-20 (i.e. financial year ended March 31, 2020), NRIs (covers Indian citizens and Persons of Indian Origin) included those individuals who being outside India visited India for less than 182 days in a financial year. The Finance Act 2020 reduced this period to 120 days in cases where the total taxable Indian income (i.e., income accruing in India) of such visiting individuals during the financial year is more than Rs 15 lakh.

An Indian Citizen who stays abroad for employment/ carrying on business or vocation outside India or stays abroad under circumstances indicating an intention for an uncertain duration of stay abroad is a non-resident. (Persons posted in U.N. Organizations and Officials deputed abroad by Central/State Governments and Public Sector undertakings on temporary assignments are also treated as non-residents). Non - Resident foreign citizens of Indian Origin are treated on par with non-resident Indian Citizens (NRIs) for the purpose of certain facilities.

Main categories of NRIs

The following are the main three categories of NRIs: -

i. Indian citizens who stay abroad for employment or for carrying on a business or Vocation or any other purpose in circumstances indicating an indefinite period of stay abroad.

ii. Indian citizens working abroad on assignment with foreign government agencies like United Nations Organization (UNO), including its affiliates, International Monetary Fund (IMF), World Bank etc.

iii. Officials of Central and State Government and Public Sector undertaking deputed abroad on temporary assignments or posted to their offices, including Indian diplomat missions, abroad.

Overseas Citizenship of India (OCI)

- The Prime Minister of India in the Pravasi Bhartiya Divas, 2005 made a statement to extend the facility of Overseas Citizenship of India (OCI) to Persons of Indian origin (PIOs).
- In order to implement the PM's statement, Citizenship (Amendment) Ordinance, 2005 was promulgated on 28th June 2005, which later became an Amendment Act. This Citizenship (Amendment) Act 2005 amends the Citizenship Act, 1955 by deleting Fourth Schedule of the Citizenship Act, 1955.
- The Constitution of India does not allow holding Indian citizenship and citizenship of a foreign country simultaneously. Based on the recommendation of the High-Level committee on Indian Diaspora, the Government of India decided to grant Overseas Citizenship of India (OCI) commonly known as 'Dual Citizenship'.
- A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at any time after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947 and his/her children and grandchildren, provided his/her country of citizenship allows dual citizenship in some form or other under the local laws, is eligible for registration as Overseas Citizen of India (OCI). Minor children of such person are also eligible for OCI.
- However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she 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, and Judge of Supreme Court/High Court etc.
- Registered OCIs shall be entitled to following benefits:
  i. A person registered as OCI iseligible to apply for grant of Indian citizenshipunder section 5(1) (g) of the Citizenship Act, 1955 if he/she is registered as OCI for five years and has been residing in India for one year out of the five years before making the application.
  ii. The fee for application for registration as OCI is US $ 275 or equivalent in local currency for each applicant.
  iii. As per the provisions of section 5(1) (g) of the Citizenship Act, 1955, a person who is registered as OCI for 5 years and is residing in India for 1 year out of the above 5 years, is eligible to apply for Indian Citizenship.

PIO and OCI merger:

- The PIO and OCI schemes were merged to maximize

benefits and reduce immigration procedures for non-resident Indians (NRIs) visiting India. The PIO card was valid for travel, work, and residence in India for a period of 15 years.

- The OCI card was implemented in 2005, carried more expansive benefits than the PIO card, and was valid for the holder's lifetime.As a result of the merger, former Indian citizens receive benefits from both PIO and OCI card schemes.
- Current PIO cardholders now receive greater work, residence, andpolitical benefits andare no longer required to undergo registration protocols through Foreigner Regional Registration Offices (FRROs).

Citizenship Amendment Act 2019

What is Citizenship Amendment Act or CAA?

The Citizenship Amendment Act (CAA) is introduced by the Central Government in the Parliament of India in 2019 to primarily amend the Citizenship Act of 1955.

Purpose of the Citizenship Amendment Act (CAA) 2019

- The main purpose of the act is to make certain religious communities of illegal migrants or refugees eligible for Indian citizenship - in a fast-track manner.
- The Act, among other things, seeks to grant citizenship to Hindus, Sikhs, Jains, Parsis, Buddhists and Christians who migrated to India till the end of 2014 from countries like Pakistan, Bangladesh and Afghanistan, due to reasons like persecutions.

What makes the Citizenship Amendment Act Controversial?

- The Citizenship (Amendment) Act 2019, in effect, seeks to give Indian nationality only to the non-Muslim refugees from Pakistan, Bangladesh and Afghanistan.
- Six religious' communities- Hindus, Sikhs, Buddhists, Jains, Parsis and Christians- are considered eligible for Indian citizenship if they entered India on or before 31 December 2014, but not Muslims.
- The countries from which minorities are allowed include Afghanistan, Bangladesh and Pakistan, but not Myanmar or Sri Lanka.
- Citizenship is granted by relaxing the requirement of residence in India for citizenship by naturalization from 11 years to 5 years for these migrants.
- North-east India has already suffered a lot due to the problem of illegal migrants. The natives of North-east India are against any move to allow citizenship to illegal migrants - irrespective of their religion.

The stand of the Government regarding CAA

- The Central government is of the opinion that the act is not discriminatory against Muslims. As the Citizenship Amendment Act has not amended the original provisions, any foreigner, including a Muslim, can still apply for Indian citizenship under the normal process of naturalization. However, it may take 11 or more years to get Citizenship in this route.
- The strong advocate of the Citizenship Amendment Act (CAA) 2019, Amit Shah, Home Minister of India, connected the 2-nation theory which led to the division of India with the new act. As per him, as the two nations - India and Pakistan - are created on the basis of religion, CAA turned a necessity now.
- Home Minister also cited the Nehru-Liaquat pact. As per him, Nehru-Liaquat pact failed to achieve its objectives in protecting minorities in Pakistan and Bangladesh. Pakistan, Bangladesh and Afghanistan have declared Islam as their State Religion. However, there are religious persecutions of minorities in these countries. Home Minister pointed out the declining minority population in the three neighbouring countries.
- The CAA legislation, as per the Union Government, will give bring a new light into the lives of the people who were facing religious persecution in neighbouring countries.
- As per the government, the act does not violate any provisions of the Constitution including Article 14.

Three flaws in the logic of the Central Government

- Even though Jinnah proposed 2-nation theory in the 1940s, the result was never a Muslim Pakistan and a Hindu India. While one nation (Pakistan) was created on the basis of religion, the other nation was created on the basis of secular ideology (India).
- Secular India, citizenship was granted to members of all regions including Islam.
- Only Pakistan and Bangladesh were part of Pre-Partition India, Afghanistan was not even if the government take moral responsibility to protect

the minorities affected by the 2-nation theory, that logic is not applicable in the case of Afghanistan.

- If the intention of the CAA is to protect all minorities facing persecution in the neighbouring countries- the act turns a blind eye on the minorities in Myanmar (Rohingya Muslims) and Sri Lanka (Tamils).
- Thus clearly, the act is highly selective. CAA is intended to select some communities and omit others.

Exclusions from the applicability of CAA:

- It shall not apply to tribal areas of Assam, Meghalaya, Mizoram and Tripura (the sixth schedule of the Constitution). These tribal areas include Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District.
- Areas covered in the States of Arunachal Pradesh, Mizoram and Nagaland that are protected by the Inner Line Permit (ILP) (notified under the Bengal Eastern FrontierRegulation, 1873.) have also been excluded.

State by State Report:

- Assam: The state has three Autonomous District Councils, two of which are geographically contiguous. While these are protected, CAA will be in effect in a larger area.
- Meghalaya: This state too has three ADCs. Unlike in Assam, the ADCs in Meghalaya cover almost the entire state. Only a small part of Shillong is not covered. CAA will be effective in that part of Shillong while the rest of the state is protected.
- Tripura: One ADC covers around 70% of the state's area. However, the remaining 30% holds about two-thirds of the population. CAA is effective in the smaller, more densely populated regions.
- Arunachal Pradesh: Entire state covered under ILP regime, protected from CAA.
- Nagaland: Entire state covered under ILP regime, protected from CAA. So far, only Dimapur used to be outside the regime. Now, Inner Line Permit (ILP) has been extended to Dimapur, too, so the whole state is now exempt.
- Mizoram: Entire state covered under ILP regime, protected from CAA. Additionally, the state has three ADCs that are also protected under the Sixth Schedule.
- Manipur: Entire state gets new ILP protection. The state was not protected under either option, but following the introduction of CAA in Parliament, the government has introduced ILP in Manipur too.

Concerns of the North East Region of India

- Northeast people are immensely worried about the possible demographic changes the Citizenship (Amendment) Act could cause in the region. The north east region has long battled migration from Bangladesh.

The natives of North-east are fiercely opposed to any 'outsider' settling in. Protests have already broken out over the fears that the Citizenship (Amendment) Act could end up destroying the culture and ethnicity of the region.

Overseas Citizen of India (OCI) and CAA

- The Act also proposes to incorporate a sub-section (d) to Section 7, providing for cancellation of Overseas Citizen of India (OCI) registration where the OCI card-holder has violated any provision of the Citizenship Act or any other law in force.

Conclusion

- The chief opposition to the Citizenship (Amendment) Act is that it discriminates on the basis of religion by identifying only non-Muslims refugees as those who would be eligible for Indian citizenship.
- While any foreigner can still apply for Indian citizenship, he/she has to follow the normal process of naturalization - which takes 11 or more years.
- The CAA is seen by many as a quick move to change the demographics and voters-profile in favour of the ruling party by selective admission of illegal migrants.
- As per the critics, Citizenship (Amendment) act violates Article 14 of the Indian Constitution - the fundamental right which guarantees equality to all persons. This is part of the basic structure of Constitution and hence cannot be reshaped by any Parliament laws.
- It is yet to be seen if the Supreme Court allows the selective fast- tracking for Indian Citizenship. The apex court has power even to declare the bill as

unconstitutional.

- The policy towards illegal migrants and refugees needs wider debates and deliberation. However, religion can never be the basis of Indian Citizenship.

National Register for Citizens (NRC)

- NRC is a verified digital register having names and basic demographic information about all Indian citizens in a digital format.
- The names of all persons born in India or having Indian parentage or having resided in India for at least 11 years, will be mentioned as Indian Citizens in the National Register for Citizens

Citizenship Amendment Act (CAA) vs National Register for Citizens (NRC)

- CAA is applicable for illegal migrants residing in India and that not apply to any Indian citizen. NRC consists of a record of citizens of India only excluding others.
- NRC is not based on religion, while CAA is.
- The base-year of NRC is 1971 (in the case of Assam), while the base-year of CAA is 2014.

Benefit of NRC being implemented at national level:

1. ***Ensure People's Right:*** A national NRC will clear actual number of illegal migrants in Assam. It will prevent further illegal migration that will ensure rights of Indian citizens in a better way.
2. ***Better policy measures and implementation:*** It will provide a verified database to implement targeted policies and calibrated policy measures for benefits of Indian citizen's especially tribal people. This will weed out fake beneficiaries.
3. ***Enhance internal security:*** It will enhance internal security of the nation by keeping a check on illegal migration. Illegal migration led to terrorist threat, counterfeit money etc. endangering security of our nation.
4. ***Prevent future illegal migration:*** Publication of an NRC at national level would deter future migrants illegally. The publication of the draft NRC has already created a perception that staying in Assam without valid documentation will attract detention/ jail term and deportation.
5. ***Will reduce fake voting:*** Illegal migrants will find it difficult to procure Indian identity documents. Thus, cases of vote for money through fake identities will reduce as persons whose names are not in list will lose voting rights. Thus, it will strengthen our electoral process.

Issues related to National Register of Citizens being implemented at national level:

1. ***Law and order problem:*** the implementation of NRC may lead to serious law and order problem in India and also in neighbouring states.
2. ***Loss of Right to Vote:*** Right to vote is a constitutional right. People excluded from NRC would be barred from voting. Thus, loosing right to vote.
3. ***Fake Cases:*** There have been several cases of people having made fake official identity cards such as Aadhaar, PAN card, ration card and even voter's identity card. This will legalise their illegal migration.
4. ***Loss of Properties:*** The left out whose names are not in the list will not be able to buy land or a house in the country. It will increase selling of benami properties especially by those who lose their citizenship.
5. ***Judicial burden will increase:*** Since such 'non citizens' will go to judiciary for relief to substantiate their citizenship claim. Thus, it will lead to overburdening of judiciary which is already overburdened.

NRC exercise makes sense in Assam because in 1971 around 10 million people crossed over from Bangladesh to India and that caught the attention of authorities. However, there is no need to get into this kind of exercise at national level, as it can lead to unintended consequences.

National Population Register (NPR)

The National Population Register (NPR) is a comprehensive identity database maintained by the Registrar General and Census Commissioner of India under Ministry of Home Affairs.

- It is a Register of "usual residents of the country" and will be prepared at the local, sub-district, district, state and national level.
- The NPR is being prepared under provisions of the Citizenship Act 1955 and the Citizenship

(Registration of Citizens and issue of National Identity Cards) Rules, 2003. It is mandatory for every "usual resident of India" to register in the NPR.

- As per section 14A of Citizenship Act 1955, it is compulsory for every citizen of the country to register in the National Register of Indian Citizens (NRIC). The creation of NPR is the first step towards preparations of NRIC.

- According to the Ministry of Home Affairs, "usual resident of the country" is one who has been residing in a local area for at least the last 6 months or intends to stay in a particular location for the next six months.

Citizens & Foreigners: Unlike the NRC, the National Population Register will not only include citizens but also foreigners as it would record even a foreigner staying in a locality for more than six months. The NPR database would contain demographic as well as biometric details.

Seeding with Aadhaar: The government also plans to seed Aadhaar database with the updated NPR. This updated NPR database along with Aadhaar Number will become the mother database and can be used by various government departments for selection of beneficiaries under their respective schemes.

Backdrop to NPR

- The data for the NPR were first collected in 2010 along with the house listing phase of Census 2011. In 2015, this data was further updated by conducting a door-to-door survey. Earlier, the roll out of NPR had slowed down due to overlapping with that of Aadhaar.
- NPR will again be conducted in conjunction with the house listing phase from 1st April 2020 till 30th September 2020 - the first phase of the Census 2021 - by the Office of the Registrar General of India (RGI) under the Home Ministry for Census 2021. Only Assam will not be included, given the recently completed NRC.

Objectives & Benefits of the massive exercise of NPR

- The objective of the NPR is to create a comprehensive identity database of every usual resident in the country and to help in better utilization and implementation of the benefits and services under the government schemes, improve planning and security in the country. The database would contain demographic as well as biometric particulars.
- It will provide solution to multifarious problems facing the country that range from effective maintenance of law and order to efficient implantation of welfare schemes like MGNREGS, food security and nutrition campaigns etc.
- Updating of NPR will help in tracking criminal activities, and better planning and execution of government schemes. The NPR links biometric and demographic details of any ordinary resident, thus making it a comprehensive database of residents.

Connection between NPR & Aadhaar

- Data collected in NPR will be sent to Unique Identification Authority of India (UIDAI) for de-duplication and issue of Aadhaar number.
  - So, the NPR will contain three elements of data:
    1. Demographic Data,
    2. Biometric Data, &
    3. Aadhaar - UID Number
- A person who has register under Aadhaar still has to register under NPR. In NPR, certain processes like the collection of data at the doorstep of the individual by authorized persons, collection of biometrics after following a certain process, authentication through social audit, verification by authorities etc is mandatory.

7 Fundamental Rights

Part-III

Article 12 to Article 35

The concept of rights or human rights, originates from the voice of the protest against oppression perpetuated by the dominant group in society. Rights are meant to safeguard the individual from the irresponsible and arbitrary use of power by the ruling class. The British rulers deprived Indians of their human rights, so we Indians, well acquainted with the misuse of state machinery, decided to provide safeguards against the state.

The inclusion of the Chapter of Fundamental rights in the constitution of India is in accordance with the trend of modern democratic thought, the idea being to preserve that which is an indispensable condition of a free society. The aim of having a declaration of fundamental rights is that certain elementary rights, such as right to life, liberty, freedom of speech, freedom of faith and so on, should be regarded as inviolable under all conditions and that the shifting majority in Legislature of the country should not have a free hand in interfering with these fundamental rights.

Why these rights are called fundamental?

These rights are regarded as fundamental because they are most essential for the attainment by the individual or his full intellectual, moral and spiritual status under all conditions. The negation of these rights will keep the moral and spiritual life stunted and his potentialities underdeveloped.

Sources of Inspiration for Fundamental Rights

- The development of such constitutionally guaranteed fundamental rights in India was inspired by the Bill of Rights of the USA.
- The first demand for fundamental rights came in the form of the "Constitution of India Bill, in 1895. In 1895, Bal Gangadhar Tilak presented the 'Swaraj Bill' to the British government. The bill asked for the right to freedom of thought and expression and equality under law. Annie Besant's 'Commonwealth of India' Bill proposed in 1925 reiterated Tilak's demands.
- It was the first time in 1928, when Congress officially created a committee for the development of constitutional provisions for India. This committee was headed by Motilal Nehru (Nehru Committee).
- The report of this committee was accepted by the Congress in Karachi session (1931). This committee includes the provisions of Fundamental rights like universal adult suffrage, women's rights, minorities rights and so on. Soon after the independence Fundamental rights was incorporated in the constitution.

Rights

There are six fundamental rights are available in our constitution-

1. Right to Equality (Article 14 to 18)
2. Right to Freedom (Article 19 to 22)
3. Right against Exploitation (Article 23 to 24)
4. Freedom of Religion (Article 25 to 28)
5. Cultural and Educational rights (Article 29 to 30)
6. Right to constitutional remedies (Article 32)

Sr.No.	Article Number	Subject
1	Art 12	Definition of state.
2	Art 13	Laws inconsistent with or in derogation of the fundamental rights.
3 Right to Equality	Art 14	Equality before law.
	Art 15	Prohibition of discrimination on grounds of religion, race, caste,sex or place of birth.
	Art 16	Equality of opportunity in matters of public employment.
	Art 17	Abolition of untouchability.
	Art. 18	Abolition of titles.

4 Right to Freedom	Art 19	Protection of certain rights regarding freedom of speech, etc.
	Art. 20	Protection in respect of conviction for offences.
	Art 21	Protection of life and personal liberty.
	Art 21 A	Right to Education.
	Art 22	Protection against arrest and detention in certain cases.
5 Right Against Exploitation	Art 23	Prohibition of traffic in human beings and forced labour.
	Art. 24	Prohibition of children in factories etc.
6. Freedom of Religion	Art. 25	Freedom of conscience and free profession, practice andpropagation of religion.
	Art. 26	Freedom to manage religious affairs.
	Art. 27	Freedom as to payment of taxes for promotion of any particularreligion.
	Art. 28	Freedom as to attendance at religious instruction or religiousworship in certain educational institutions.
7 Cultural and Educational rights	Art. 29	Protection of interests of minorities.
	Art. 30	Right of minorities to establish and administer educationalInstitutions.
8	Art. 31	Right to Property (Repealed)
9 Right to constitutional remedies	Art. 32	Remedies for enforcement of rights conferred by this part.

Features of the Fundamental Rights-

The Fundamental rights guaranteed by the constitution are characterised by following:

- Some of the Fundamental Rights are available to only citizens of India like Article 15, 16, 19, 29 and 30 while rest of the articles are available for both citizens and aliens.
- Fundamental Rights are not absolute in nature that means State can impose reasonable restrictions on them if needed.
- Fundamental Rights acts against the arbitrary actions of State. That means, they provide the safeguard to the individuals.
- Fundamental Rights are negative in nature that means they impose limitation on the government.
- Fundamental rights are justiciable in nature.
- Fundamental rights are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgement of the high courts.
- Fundamental rights are not permanent. They can be suspended by the Parliament during the operation of the National Emergency except the rights guaranteed by Article 20 and 21.
- Parliament can amend the provision of the Fundamental Rights by the way of a constitutional amendment but it should not violate the basic structure of the constitution (Keshavananda Bharti Case).

Importance of the fundamental rights

Fundamental Rights are individual rights and without them democracy is meaningless. The purpose of the rights is to impose restrictions on the State and establish a 'limited government'. Because ultimately human uses the power of the state in the name of the government. An individual cannot function freely without Fundamental Rights.

In the historic judgement of Maneka Gandhi v. Union of India (1978), Bhagwati J. (the then Supreme court judge) stated: "These fundamental rights represent the basic values enshrined by the people of this country (India) since the Vedic times and they are calculated to protect the dignity of the individual and created conditions in which every human being can develop his personality to the fullest extent. They weave a 'pattern of guarantee' on the basic structure of human rights, and impose negative obligations on the State not to encroach on individual liberty in various dimensions".

Article12: The State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Explanation:

Article 12 of the Indian Constitution deals with the term of 'State' as enshrined in the Fundamental Rights Chapter.

It includes-

- ***Legislative and Executive Organs of the Union Government:***
  1. Union Government
  2. Parliament of India – President, Lok Sabha, Rajya Sabha
- ***Legislative and Executive organs of the State Government:***
  1. State Governments
  2. State Legislature – Governor, Legislative Assembly, Legislative Council of State
- ***All local authorities***
  1. Municipalities – Municipal Corporations, Nagar Palika, Nagar Panchayats
  2. Panchayats – Zila Panchayats, Mandal Panchayats, Gram Panchayats
  3. District Boards
  4. Improvement Trusts, etc.
- ***Statutory and Non-Statutory Authorities***
  - Statutory Authorities:
    1. National Human Rights Commission
    2. National Green Tribunal
    3. National Consumer Disputes Redressal Commission
    4. Armed Forces Tribunal
  - Non-Statutory Authorities
    1. Lokpal and Lokayukta
    2. CBI

The actions performed by any of these bodies can be challenged in the courts as a violation of Fundamental Rights.

Article 12 of the Indian Constitution & 'Other Authorities'

The 'Other Authorities' mentioned under Article 12 means all such authorities that lie within the territory of India and are controlled by the government of India through its acts and amendments.

1. ***Ujjain Bai v. State of Uttar Pradesh (UP)–*** Supreme Court observed that Article 12 winds up the list of authorities falling within the definition by referring to "other authorities" within the territory of India which cannot be read as 'of or as the same kind' with either the Government or the Legislature or Local authorities
2. ***R.D Shetty v. Airport Authority of India –*** Five points were mentioned by Justice P.N. Bhagwati to understand if the 'body' in news is instrumental to be called as the 'State' under Article 12 or not:
   - The 'Body' can be called as 'State' if its entire shared capital is held by the Government of India.
   - Such other authorities have a governmental functional character.
   - The absolute control of such authorities lies with the government.
   - Such authorities which have an element of command or authority.
   - The authorities discharging public service.

Article 13: Laws inconsistent with or in derogation of the Fundamental rights.

Article 13(1): All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.

Article 13(2): The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

Article 13(3): (a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; (b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed.

Article 13(4): Nothing in this article shall apply to any amendment of this Constitution made under Article 368.Inserted by the Constitution (Twenty-fourth Amendment) Act, 1971.

Explanation-

- Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. In other words, it expressively provides for the doctrine of judicial review.
- This power has been conferred on the Supreme

Court (Article 32) and the High Courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.

- Article 13 declares that a constitutional amendment is not a law and hence cannot be challenged. However, the Supreme Court held in the Keshavananda Bharati case (1973) that a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the 'basic structure' of the Constitution and hence, can be declared as void.

Doctrine of Eclipse

- It is dealt under Article 13(1) of the Indian Constitution.
- The doctrine of eclipse means that an existing law that is inconsistent with a fundamental right, although it becomes inoperative from the date of the constitution's beginning, is not entirely dead. By amending the constitution's relevant fundamental rights, the conflict can be eliminated so that the eclipse vanishes and the entire law becomes valid. The first case in which this doctrine was applied was Bhikaji vs State of Madhya Pradesh.

Rule of Severability

- According to Art. 13(1) and 13 (2), any part of a 'law' which is inconsistent with the provisions of Part III of the Constitution shall be declared void to the extent of such inconsistency.
- The doctrine of severability lays down that, if the valid sections of a law can be severed from the void sections, and if such valid sections can be considered to form an independent statute, these sections will remain valid.
- The Supreme Court summarises the rules relating to doctrine of severability as follows:
    1. The intention of the legislature is a factor- whether the legislature enacted that law knowing well that the rest of the statute is invalid- to determine whether valid parts are separable or not.
    2. If valid & invalid are so inextricably mixed up, the whole law is declared void.
    3. If valid and invalid form part of a single scheme, the whole law is declared invalid.
    4. After omitting the invalid part, if what remains is very thin and what emerges out is something different, the entire law is invalid.

The term 'law' in Article 13 has been given a wide connotation so as to include the following:

a) Permanent laws enacted by the Parliament or the state legislatures;

b) Temporary laws like ordinances issued by the president or the state governors;

c) Statutory instruments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation or notification; and

d) Non-legislative sources of law, that is, custom or usage having the force of law.

Thus, not only a legislation but any of the above can be challenged in the courts as violating a Fundamental Right and hence, can be declared as void.

Article 14: Equality before law. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Explanation:

Article 14 states that The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

It has two connotations of equality i.e.

I. Equality before Law

II. Equal protection of Law

Equality before law

- This concept is adopted from the British Constitution.
- Equality before law is a negative concept.
- It means 'no man is above law and every person, whatever is his/ her social status, is subject to the jurisdiction of the courts.

Equal Protection of law

- This concept is adopted from the US Constitution.
- It only means that all persons in similar conditions/ circumstances shall be treated alike.

The right is extended to all persons whether citizens or foreigners, statutory corporations, companies, registered societies or any other type of legal person.

Exceptions of Article 14

There are certain provisions in the Constitution which, under certain circumstances, limit the effectiveness of Article 14.

- Article 361 lays down that the President and the Governors are exempted from any criminal proceedings during the tenure of their offices.
- The scope of the Right to Equality under Article 14 has been considerably restricted by the 42nd Amendment Act, 1976. The new Article 31-C added by the Amendment Act provides that laws made by the State for implementing the Directive Principles contained in clause (b) or clause (c) of Article 39 cannot be challenged on the ground that they are violative of Article 14. Such laws will be exceptions to Article 14 of the Constitution.
- Under the International Law, foreign sovereign, ambassadors and diplomats, enjoy full immunity from any judicial process.
- Article 359 (1) provides that where a Proclamation of Emergency is in operation, the President may, by order, declare that the right to move to any Court for the enforcement of such rights conferred by Part III (except Articles 20 and 21) shall remain suspended. Thus, if the President of India issues an order, where a Proclamation of Emergency is in operation, enforcement of Art. 14 may be suspended for the period during which the Proclamation is in force.

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.
- Also, it 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 meanings of ***'Rule of Law***'

- Absence of arbitrary power or supremacy of law- "a man can be punished for a breach of law but he cannot be punished for anything else".
- 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.

Right to Equality is a Basic Structure of the Constitution

- In M. Nagaraj Vs Union of India (2007) case, the Supreme Court held that Right to Equality under Article 14 form part of the 'Basic Structure' of the Constitution.
- The Supreme Court opined that "equality is the essence of democracy"and accordingly, it is a basic feature of the Constitution.
- If Article 14 is withdrawn, the political pressure exercised by numerically large groups can tear the country apart by leading the legislature to pick and choose favoured areas and favourite classes for preferential treatment.

Article 15: Prohibition of discrimination on grounds of Religion, Race, Caste, Sex or Place of birth

Article 15(1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15(2): 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- Access to shops, public restaurants, hotels and places of public entertainment; or 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.

Article 15(3): Nothing in this article shall prevent the State from making any special provision for women and children.

Article 15(4): Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 15(5): Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause

(1) of Article 30.

Explanation:

- Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. The two crucial words in this provision are 'discrimination' and 'only'.
- The word 'only' indicates that the discrimination cannot be made merely on the ground that one belongs to a particular caste, religion, race etc. It can be made on other grounds.
- Article 15 does not provide the safeguards against foreigners. It is available to the 'citizens' only.
- The third clause empowers the State to make special provisions for the protection of women and children.
- The fourth clause which was added by the 1st Constitutional Amendment Act 1951 enables the State to make special provisions for the protection of the interests of the Backward Classes and is, therefore, an exception to Article 15 and 29(2) of the Constitution.

What is the limit of Quotas?

- According to the Supreme Court, under Art 15 (4), state can make special and not exclusive provisions for backward classes. The state should not be justified if advancement of communities is ignored altogether. National interest would suffer if qualified and competent people are ignored.

93rd Amendment Act

The 93rd amendment to the Constitution came in 2006. It added a clause in Article 15 of the Constitution in the form of Article 15(5).

- The 5th clause of Article 15 empowers the centre and the states to provide for quota to the candidates of other backward classes (OBCs) in the higher educational institutions.
- Pursuant to the 93rd amendment, central government in 2006 made Central Institutions (Quota in Admission) Act 2006 to provide quota to the OBC candidates in the central institutions including AIIMS and IITs.

Latest judgement on 93rd Amendment

- The Supreme Court on April 10, 2008 upheld the constitutionality of the Central Institutions (quota in admission) Act 2006 and the 93rd amendment but it has directed the central government to exclude the Creamy Layer' among the OBCs while implementing the law.
- The court said that the 93rd Amendment Act does not violate the basic structure of the Constitution so far as it relates to State maintained institutions and aided educational institutions. Article 15(5) of the Constitution is constitutionally valid and Articles 15(4) and 15(5) are not mutually contradictory.
- It agreed with the decision to exclude the minority institutions from Article 15(5). It does not violate Article 14 as minority educational institutions are a separate class and their rights are protected by other constitutional provisions.
- However, the court directed that a review of the lists of backward classes be made after five years.

Creamy Layer

The children of the following different categories of people belong to 'creamy layer' among OBCs and thus will not get the quota benefit:

- Persons holding constitutional posts like President, Vice-President, Judges of SC and HCs, Chairman and Members of UPSC and SPSCs, CEC, CAG and so on.
- Group 'A' / Class I and Group 'B' / Class II Officers of the All India, Central and State Services; and Employees holding equivalent posts in PSUs, Banks, Insurance Organisations, Universities etc., and also in private employment.
- Persons who are in the rank of colonel and above in the Army and equivalent posts in the Navy, the Air Force and the Paramilitary Forces.
- Professionals like doctors, lawyers, engineers, artists, authors, consultants and so on.
- Persons engaged in trade, business and industry.
- People holding agricultural land above a certain limit and vacant land or buildings in urban areas.
- Persons having gross annual income of more than 8 lakh or possessing wealth above the exemption or possessing wealth above the exemption Limit.

Article 16: Equality of opportunity in matters of publicemployment

Article 16 (1): There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

Article 16 (2): No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence

or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State

Exceptions:

Article 16 (3): Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment

Article 16 (4): Nothing in this article shall prevent the State from making 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 16 (5): Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Mandal Commission and Indra Sawhney Case

Background

- On January 1, 1979, the Government headed by the Prime Minister Morarji Desai constituted the second Backward Classes commission under Article 340 of the Constitution to research the SEBCs inside the region of India and recommend measures to be taken for their progressions.
- The commission submitted its report in December 1980 and recognized 3743 castes as socially and instructively in backward classes and recommended a reservation of 27 % in Government employments.
- Due to change in government the findings of the report were not implemented.
- In 1990, then Prime Minister P.V. Narasimha Rao declared reservation of 27% government jobs for the OBCs. Again in 1991, the Narasimha Rao Government introduced two changes:
  (a) preference to the poorer sections among the OBCs in the 27% quota, i.e., adoption of the economic criteria in granting reservation, and
  (b) reservation of another 10% of jobs for poorer (economically backward) sections of higher castes who are not covered by any existing schemes of reservation.

Judgement:

Apex Court struck down the second provision and rejected the 10% reservation for economically backward classes among higher. Following are the highlights of the judgement:

1. Creamy layer must be excluded from the backward classes.
2. Article 16(4) grants characterization of backward classes into backward & more backward classes.
3. A backward class of citizen can't be distinguished just and solely with reference to financial criteria.
4. Reservation should not exceed 50% limit.
5. Reservation can be made by the Executive Order.
6. No reservation in promotion.
7. Permanent Statutory body to examine complaints of over – inclusion /under – inclusion.
8. Disputes with respect to new criteria can only be raised in the Supreme Court.

The 76th Amendment Act of 1994 has placed the Tamil Nadu Quotas Act of 1994 in the Ninth Schedule to protect it from judicial review as it provided for 69 per cent of quota, far exceeding the 50 per cent ceiling.

103rd Constitutional Amendment Act

The 103rd Constitutional Amendment Act provided 10 per cent quota in government jobs and education to economically backward section in the general category. Economic quota in jobs and education is proposed to be provided by inserting clause (6) in Articles 15 and 16 of the Constitution

SR Sinho Commission (2006) on Economically Backward Classes

- The quotas in government jobs and education should be given to general category poor and a constitutional amendment is necessary with this respect. The commission highlighted that non-income tax payee general category people were economically backward, at par with the OBCs, they should be treated like the latter.
- EBC children should be made eligible for soft loans for higher education, scholarships, coaching for central and state civil services examinations, subsidized health facilities and government support

in the housing sector and suggested establishing a National Commission for providing financial assistance to EBCs.

Background:

- The past few years have seen influential castes like the Marathas, Rajputs and Jats seeking quota benefits.
- Though governments in states have tried to pass laws to meet such demands in the past, they are often struck down by the courts on the grounds of the famous Indra Sawhney case, where the Supreme Court had set a cap of 50% on quotas.
- But in November 2018, the government in Maharashtra announced a 16% quota to the politically influential Marathas as a "social and educationally backward class".

Constitutional provisions of 103rd Constitutional Amendment Act:

- The Act amends Articles 15 and 16 of the Constitution, by adding a clause which allows states to make "special provision for the advancement of any EWS of citizens".
- These "special provisions" would relate to "their admission to educational institutions, including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions".
- It also said the quota would be "in addition to the existing quotas and subject to a maximum of 10 per cent of the total seats in each category".
- According to the objects of the act, "The directive principles of state policy contained in Article 46 of the Constitution enjoins that 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."

Who all are eligible for quota:

- To those who are not covered in existing quotas
- Family income below 8 lakhs a year or agricultural land below 5 acres.
- Residential flat of 1000 sq.ft. and above
- Residential plot of 100 sq.yards and above in notified municipalities.
- Residential plot of 200 sq.yards and above in areas other than the notified municipalities

Judicial scrutiny of 103rdAmendment Act:

- If the Supreme Court indeed agrees to lift the 50% cap, all States of India can extend the quantum of quota and "upper castes" will stand to lose in State services.
- If the Supreme Court rejects the idea of breaching the 50% cap, EWS quotas can be provided only by eating into the SC, ST and OBC quota pie, which will have social and political implications.

Supreme Court's views on Quota:

- Recently, the Supreme Court has ruled that quota in the matter of promotions in public posts is not a fundamental right, and a state cannot be compelled to offer the quota if it chooses not to. The idea that quota is not a right may be in consonance with the Constitution, however, the government is still under the obligation to perform Quota for vulnerable sections of society.
- The Supreme Court held that Quota programmes allowed in the Constitution are derived from "enabling provisions" and are not rights as such.
- In other words, it argued that there is neither a basic right to quotas nor a duty of the State government to provide it.
- The Supreme Court referred to Article 16(4) and 16(4A) while delivering its judgment in the matter.It had been inferred from Article 16(4) and 16(4A), that these are exceptions to the equality of opportunity in government jobs, which state can exercise in order to provide social mobility to vulnerable classes.
- Also, through this judgment, the court reiterated its stand in M. Nagraj case, which stated that the state is not bound to provide quota in promotions, but if it does so, it must be in favour of sections that are backward and inadequately represented in the services based on quantifiable data.

Amendments to ensure Right to Equality

- ***77th Amendment:*** It introduced Clause 4A to the Constitution, empowering the state to make provisions for quota in matters of promotion to SC/ST employees if the state feels they are not adequately represented.
- ***81stAmendment:*** It introduced Clause 4B, which

says unfilled SC/ ST quota of a particular year, when carried forward to the next year, will be treated separately and not clubbed with the regular vacancies of that year to find out whether the total quota has breached the 50% limit set by the Supreme Court.

- ***82nd Amendment:*** It inserted a proviso at the end of Article 335 to enable the state to make any provision for SC/STs "for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for quota in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State".
- ***85th Amendment:*** It said quota in the promotion can be applied with consequential seniority for the SC/ST employee.

Article 335
❒ Article 335 of the Constitution relates to claims of SCs and STs to services and posts.
❒ ***It reads:*** "The claims of the members of the SC's and ST's 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 the affairs of the Union or of a State."

Article 17: Abolition of Untouchability

- "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.
- Untouchability: not to be understood in its literary or grammatical sense; to be understood as the practise 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.
- The Constitution itself does not prescribe any punishment under this Article.
- The Parliament enacted the 'Untouchability (offences) Act, 1955' which prescribes the punishment for the practice of untouchability. This Act was amended by the 'Untouchability (offences) Amendment Act, 1976', in order to make the untouchability laws more stringent. The name of the original Act was changed to 'Civil Rights (Protection) Act, 1976'.
- Later, when there was spurt in physical violence against members of Scheduled Castes and Scheduled Tribes, leading to brutalities such as mass murder, rape, arson, grievous injuries, etc. enactment of a special law for their protection was resorted to known as Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to provide for strong punitive measures which could serve as a deterrence.
- The Act does not define 'untouchability'.According to the Supreme Court, 'untouchability' should not be understood in its literal or grammatical sense. It is to be understood as the 'practice as it had developed historically'.
- Parliament has amended the SC/ST (Prevention of Atrocities) Act, 1979 in 2018.
- The Supreme Court has upheld the constitutional validity of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Amendment Act of 2018 in which Supreme Court nullifies the conduct of a preliminary enquiry before registration of an FIR, or to seek approval of any authority prior to arrest of an accused.

Article 18: Abolition of Titles

Article 18(1): No title, not being a military or academic distinction, shall be conferred by the State.

Article 18(2): No citizen of India shall accept any title from any foreign State.

Article 18(3): 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.

Article 18(4): 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.

Is Bharat Ratna a Violation of Article 18?

- The conferment of titles of 'Bharat Ratna', 'Padma Vibhushan', 'Padmashree', etc. are not violative of Article 18. These awards merely denote the State's recognition of good work by citizens in various fields of activities. These fit in the category of academic distinctions.
- But they cannot be used as a title and cannot be used as a suffix or prefix.

- It is necessary that there should be a system of awards and decorations to recognise the excellence in performance of duties.So, these awards are not violative of the provisions of Article 18.
- Art 18 doesn't prescribe any punishment for the offences. But Parliament is open to make a law for punishments.

Right to Freedom

Article 19. Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right-

a) to freedom of speech and expression;

b) to assemble peacefully and without arms;

c) to form associations or unions;

d) to move freely throughout the territory of India;

e) to reside and settle in any part of the territory of India; and

f) The right to acquire hold and dispose of property. (Deleted by the 44th Amendment Act of 1978).

g) to practise any profession, or to carry on any occupation, trade or business.

These freedoms are pillars of democracy. But state can impose 'reasonable' restrictions on grounds of reasonable restrictions.

Restrictions:

1. the sovereignty and integrity of India,
2. the security of the State,
3. friendly relations with foreign States,
4. public order,
5. decency or morality
6. in relation to contempt of court, defamations incitement to an offence.

Article19 (1) (a): Freedom of speech and expression meaning:

- Right to express one's opinion freely and openly
- Right to express other's opinion
- Right to have access to the opinion of other individuals.
- But right to information is subject to Official Secrets Act.

Article 19 (1) (b): Right to assemble peacefully

- Every citizen has the right to assemble peacefully and without arms.
- It includes the right to hold public meetings, demonstrations and take out possessions.
- This freedom can be exercised only on public land.
- This right does not include the Right to Strike.

Article19 (1) (c): Right to form associations

- All citizens of India are given the right to form associations or co-operative societies, this includes the right to the formation of political parties, companies, partnership firms, clubs, etc.
- Is Right to strike a Fundamental Right?
  - Strike is the most effective and final resort in the hands of workers to secure economic justice.
  - This meaning of strike has undergone various changes across the world and most of the nations have given the right to strike to the workers.
  - The right to strike is a statutory right in India guaranteed under Section 22(1)(a) of the Industrial Disputes Act, 1957.
- Restrictions for Armed forces.

Article 19(1)(d): Right to freely move throughout the Indian territory

- This right guarantees the freedom of movement and entitles every citizen of India to move freely throughout the territory of India.
- Every citizen of India has been given the right to move freely from one state of the country to another. The purpose is to promote national feeling among the citizens of the nation.

Article 19(1)(e): Right to reside and settle also in any part of India

- This right grant every citizen of India with the right to reside and settle in any part of the territory of India.
- Article is also subjected to reasonable restrictions.

Article 19(1)(g): Right to practice any kind of profession or any occupation, trade, or business

- All the citizens of India have been granted the right to practise any profession or carry on any occupation or business of their wish. But this right does not include the right to carry on a profession or business which involves anything which is immoral (such as trafficking) or dangerous in nature (drugs or explosives).

- Previously, Article 19 contained seven rights but later on the right to acquire, hold and dispose of the property was removed by the Amendment Act of 1978.
- The State can also impose reasonable restrictions on the enjoyment of these rights which are mentioned in Article 19 itself.

Freedom of Press

- The Indian Constitution does not provide for the freedom of press separately.
- It is implicit in Art. 19, which grants freedom of speech and expression.
- Freedom of expression includes not only expression of one's own views but of others' as well.
- The restrictions that limit the freedoms in the case of individuals apply to the press also.

  The laws that apply to press include:
- taxation;
- laws regulating industrial relations;
- regulations of the conditions of service of the employees;
- Defamation, contempt of House and Court etc.
- In its interpretation of Art. 19 in the 'airways case' (February, 1995), the Supreme Court reiterated that the press would be bound by the rules of the Government. expressed through an autonomous body.

Sedition Law Vs Freedom of Speech

Constitutional provisions:

- Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, subject to reasonable restrictions provided under article 19(2) of the Constitution.
- Article 19(2) imposes "reasonable restrictions" on the limited grounds of interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation etc.

What is sedition?

Section 124 A of the IPC:

- This section defines sedition and makes every speech or expression that "brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India" a criminal offence punishable with a maximum sentence of life imprisonment.
- It is classified as "cognisable"- the investigation process (including the powers to arrest) can be triggered merely by filing an FIR, without a judicial authority having to take cognisance- and "non-bailable"- the accused cannot get bail as a matter of right, but is subject to the discretion of the sessions judge.

Brief about the History of Section 124A

- Drafted by Thomas Macaulay, it was introduced in the 1870s, originally to deal with 'increasing Wahabi activities between 1863 and 1870 that posed a challenge to the colonial government'.
- In the 19th and early 20th centuries, the law was mainly used against Indian political leaders seeking independence from British rule.
- Mahatma Gandhi, who was charged with sedition, famously said the law was 'designed to suppress the liberty of the citizen'.
- In 1962, the Supreme Court imposed limits on the use of the law, making incitement to violence a necessary condition.

Why section 124A of IPC is in debate?

- It is often under debate because Centre and the States have invoked the section against activists, detractors, writers and cartoonists seeking to silence political dissent by accusing dissenters of promoting disaffection
- According to the National Crime Records Bureau, 35 cases of sedition were reported in 2016. Many of these cases did not involve violence or incitement to violence.
- The sedition law came into focus in 2016 after the JNU row in which three students of the Jawaharlal Nehru University were arrested for allegedly raising anti-national slogans. Critics of sedition law have even demanded to scrape of the law by calling it a "draconian law".

Maneka Gandhi case, 1978:

- In Maneka Gandhi judgement, Supreme Court stated that criticizing and drawing general opinion against the government policies and decisions within a reasonable limit that does not incite people to rebel

and is consistent with the freedom of speech.

- The judgment saved the citizens from unquestionable actions of Executive.
- Recently, in 2016 - The apex court held that criticism of government does not constitute sedition without incitement to violence.

Right to protest: a fundamental right with restrictions

- The Shahen Bagh protest was an iconic protest launched in December of 2019 by women, children and senior citizens against the Citizenship (Amendment) Act, 2019.
- The protest was in the form of a mass-sit in the Kalindi Kunj-Shaheen Bagh present in the north-eastern part of Delhi and resulted in the closure of the entire stretch of road.

Because of the block-in, numerous petitions were filed demanding a clearance of the road. The petition on which the Court decided to give its judgment was Amit Sahni v. Commissioner of Police and Ors. (2020).

- The Court held that even when the right to protest was a fundamental right granted by the Indian Constitution, it had to be subjected to reasonable restrictions related to public order, sovereignty and integrity of India and "regulation by the concerned police authorities in this regard".
- While recognizing the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1) (b), the Court held that public spaces could not be occupied, especially indefinitely. While "democracy and dissent went hand-in-hand", dissent could take place only in designated places. Shaheen Bagh could not be a designated place because it was a road used frequently by commuters and the sit-in was causing a lot of inconvenience to said commuters.

Article 20: Protection in respect of conviction for offences

Article 20 (1) No person shall be convicted of any offence except for violation of a 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.

Article 20 (2) No person shall be prosecuted and punished for the same offence more than once.

Article 20 (3) No person accused of any offence shall be compelled to be a witness against himself.

Explanation:

Article 20 of the Constitution of India allows protection against unreasonable and excessive punishment to an accused individual, whether a citizen of India or a citizen of any foreign nation or even a legal person like a company or a corporation.

a) Ex-post facto legislation
   - This means enacting a law and giving it a retrospective (i.e. from a previous date /year) effect.
   - This power has been conferred to the Parliament by the Constitution.
   - This is applicable only for civil legislations while criminal legislations cannot be given retrospective effect.

b) Double Jeopardy
   - This means that an individual can be punished for a crime only once and also not beyond the period prescribed by the authority.
   - If a civil servant is dismissed on criminal charges, his dismissal does not come under Double Jeopardy and he could be well prosecuted further in the Court.

c) Prohibition against self-incrimination
   - No person, accused of an offence, shall be compelled to be a witness against himself.
   - The cardinal principle of criminal law is, an accused should be presumed to be innocent till the contrary is proved.
   - It is the duty of the prosecution to prove the offence.

Article21: Right to Life

"Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law."

- This fundamental right is available to every person, citizens and foreigners alike.
- Article 21 provides two rights:

- Right to life
- Right to personal liberty

- The fundamental right provided by Article 21 is one of the most important rights that the Constitution guarantees.
- The Supreme Court of India has described this right as the 'heart of fundamental rights.
- The right specifically mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that this right has been provided against the State only. State here includes not just the government, but also, government departments, local bodies, the Legislatures, etc.
- Any private individual encroaching on these rights of another individual does not amount to a violation of Article 21. The remedy for the victim, in this case, would be under Article 226 or under general law.
- The right to life is not just about the right to survive. It also entails being able to live a complete life of dignity and meaning.
- The chief goal of Article 21 is that when the right to life or liberty of a person is taken away by the State, it should only be according to the prescribed procedure of law.

Interpretation of Article 21

Judicial intervention has ensured that the scope of Article 21 is not narrow and restricted. It has been widening by several landmark judgements.

A few important cases concerned with Article 21:

- ***AK Gopalan Case (1950):*** Until the 1950s, Article 21 had a bit of a narrow scope. In this case, the Supreme Court held that the expression 'procedure established by law', the Constitution has embodied the British concept of personal liberty rather than the American 'due process'.
- ***Maneka Gandhi vs. Union of India Case (1978):*** This case overturned the Gopalan case judgement. Here, the Supreme Court said that Articles 19 and 21 are not watertight compartments. The idea of personal liberty in Article 21 has a wide scope including many rights, some of which are embodied under Article 19, thus giving them 'additional protection'. The court also held that a law that comes under Article 21 must satisfy the requirements under Article 19 as well. That means any procedure under law for the deprivation of life or liberty of a person must not be unfair, unreasonable or arbitrary.
- ***Francis Coralie Mullin vs. Union Territory of Delhi (1981):*** In this case, the court held that any procedure for the deprivation of life or liberty of a person must be reasonable, fair and just and not arbitrary, whimsical or fanciful.
- ***Olga Tellis vs. Bombay Municipal Corporation (1985):*** This case reiterated the stand taken earlier that any procedure that would deprive a person's fundamental rights should conform to the norms of fair play and justice.
- ***Unni Krishnan vs. State of Andhra Pradesh (1993):*** In this case, the Supreme Court upheld the expanded interpretation of the right to life.

The Court gave a list of rights that Article 21 covers based on earlier judgments. Some of them are:

1. Right to privacy
2. Right to go abroad
3. Right to shelter
4. Right against solitary confinement
5. Right to social justice and economic empowerment
6. Right against handcuffing
7. Right against custodial death
8. Right against delayed execution
9. Doctors' assistance
10. Right against public hanging
11. Protection of cultural heritage
12. Right to pollution-free water and air
13. Right of every child to a full development
14. Right to health and medical aid
15. Right to education
16. Protection of under-trials

Speedy Trial is a Constitutional Guarantee

- Observing that speedy trial is a fundamental right of an accused, the Supreme Court has directed the Centre and all State Governments to prevent unreasonable delay in disposal of criminal cases.

The Article stands not merely for the right to life and personal liberty, but also for the right to dignity and all other attributes of human personality that is

essential for the full development of a person. Article 21 has become the 'Foundation Stone of Part III' of the Constitution.

- In some judgements, the Supreme Court held that the right to clean and hygienic conditions of life is a part of Right to Life.
- Article 21 protects an individual both against legislative and executive actions.
- Domiciliary visit by police during night is an invasion of personal liberty and hence Art 21.
- Flight to travel abroad: Part of personal liberty - hence part of Art 21.
- Right to have primary education is a fundamental right under Art 21.
- Art 21 includes the principles of Natural Justice.
- Right to health and medical assistance: It is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting for legal formalities.
- Right to get pollution free water & air: Protection of ecology and environment come under Art 21.
- Right to free legal aid and speedy trial are guaranteed under Art 21. According to Supreme Court - "This is the State's duty and not Government charity".
- Rights against hand-cuffing: There must be clear and present danger of escape—breaking out of police control—and for this there must be clear material evidence.
- In Chakma migrants' case, Supreme Court declared that even non- citizens are entitled for right to life.
- Right against inhuman treatment. According to Art 21, use of "third degree" method by police is violative of Art 21.
- Telephone tapping is an invasion on right to privacy, hence violates Art 21.

Right against Custodial Death

- In Hemadhar Hazarika vs Union of India, 2007 case, the Guwahati High Court declared that every citizen has a right to life and to live with human dignity under Art 21 of the Constitution.
- Since the death in police custody is a violation of the fundamental right to life, the legal heirs can claim compensation.
- Even the custodial death in Army is a violation of Art 21 by the state.

Procedure Established by Law and the Due Process of Law

- The procedure established by law means the uses and practices as laid down in the statute or law.
- Under this doctrine, the Court examines a law from the point of view of the Legislature's competence and sees whether the prescribed procedures have been followed by the Executive.The Court cannot go behind the motive of the law and cannot declare it unconstitutional, unless the law is passed without procedure established by law.
- Therefore, the Court relies more on the good sense of the Legislature and strength of the public opinion. This doctrine protects individual only against the executive actions.
- On the other hand, the phrase due process of law means that the court should examine the law, not only from the point of view of legislature's competence, but also from the broad view of the intention of the law.Thus, it provides greater power to the court.
- The Constitution of India provides for the procedure established by law.
- But, the Supreme Court in the Maneka Gandhi case, in 1978, interpreted Art. 21 to include the phrase "due process of law" in it.
- Thus, Art. 21 now protects an individual both against legislative and executive actions.

Right to Privacy

What is privacy?

- A precise legal definition of 'privacy' doesn't exist. Some legal experts define privacy as a human right and international charters, like the Article 12 of the Universal Declaration of Human Rights, protect persons against "arbitrary interference" with one's privacy.
- Privacy can mean a range of things: the right to be left alone, freedom to dissent or protection from state surveillance.

Is privacy an Indian citizen's, right?

- The Supreme Court's landmark judgment

unequivocally declares privacy a guaranteed fundamental right.

How is privacy protected in India?

- Courts in India have interpreted that the constitution guarantees a limited right to privacy primarily through Article 21, the right to life and liberty. Such court rulings protect citizens' rights in a range of matters: from freedom of movement to interception of communication.

Why does privacy matter?

- The public debate about right to privacy arose after the government started collecting biometric data of citizens for Aadhaar. The government is pushing for Aadhaar, saying it is necessary to plug leakages in subsidy schemes and to ensure benefits reach the right people. But critics say the move violates privacy, is vulnerable to data breaches and potentially helps government spy on people.

Right to Internet Access

Recently, Citizens have witnessed a number of internet shutdown issues throughout the country whether it is Delhi, Mangaluru, Assam, and Jammu. These bans are imposed under various provisions like 144 of CrPC and Section 5(2) of Indian Telegraph Act, 1885 etc. It's imperative to understand the importance of the internet and are bans justified under the right to internet access.

Importance of internet:

- The Internet is certainly now not only the main source of information & communication and access to social media but it is much more than that.
- Today, the internet has entered into all the walks of life of a person for example:
- Thousands of delivery workers for Swiggy, Dunzo and Amazon and the cab drivers of Uber and Ola- depend on the Internet for their livelihoods and affect the people involved in India's gig economy.
- It is a mode of access to education for students who do courses and take exams online.
- Provides access to transport for millions of urban and rural people.
- A mode to access health care for those who avail of health services online.
- More than anything, it is a means for business and occupation for thousands of small and individual-owned enterprises that sell their products and services online, especially those staffed by women and home-based workers.

Is right to Internet access a Fundamental Right?

- Internationally, the right to access to the Internet can be rooted in Article 19 of the Universal Declaration of Human Rights which states that "everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."
- The Human Rights Council of the United Nations resolution affirmed that the same rights that people have offline must also be protected online, in particular, freedom of expression, which is applicable regardless of frontiers and through any media of one's choice and includes the Internet.

Way Forward:

- The High Court of Kerala made a start to the domestic recognition of the right to Internet access with its judgment in Faheema Shirin R.K. vs State of Kerala & Others which can be replicated pan India is opined.
- The time has come for the legislature and judiciary to recognize the right to internet access as a fundamental right within our constitutional guarantees.

Right to Education (Article 21A)

Art 21 A: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

- The Constitution (86th Amendment) Act 2002, enacted in December 2002 seeks to make free and compulsory education a Fundamental Right for all children in the age-group 6-14 years by inserting a new Article 21A in Part III of the Constitution.
- It is intended to benefit India's 190 million 6 to 14-year-olds, especially some 35 million, currently not attending school.
- The government is trying to target such children through a Sarva Shiksha Abhiyan and a series of measures and facilities - such as free mid-day meals, uniforms and textbooks.

- Steps are being taken to provide mobile schools to help certain students who are not staying long enough at one address - construction workers' children, for instance - or giving examination on demand to kids unable to meet regular schedules.
- Also, as per the Act, "the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years".

Article 22: Protection against arrest and detention in certain cases

No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

1. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty- four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Exceptions

a) To any person who for the time being is an enemy alien; or

b) To any person who is arrested or detained under any law providing for preventive detention.

Preventive Detention

- A person can be detained under preventive detention, if there is a suspicion or reasonable probability of that person committing some act, which is likely to cause harm to the society and endanger the security of the society.
- Article 22 does not apply in the case of Preventive Detention.
- There are certain provisions in Article 22 for the protection of such persons, they are:
    1. A person detained on the ground of suspicion shall be detained for a maximum period of three months.
    2. The detained person must be informed about the reason of his arrest, as soon as possible.
    3. The detained person must have the earliest opportunity to present his case before the authority of law.
- If the government seeks to detain the arrested person beyond the period of three months, his detention must be authorised by an 'Advisory body', which is purely judicial.
- The Parliament is given the power to determine the maximum period for which a person can be detained on the preventive grounds.
- India is one of the few countries in the world where laws allowing preventive detention enjoy constitutional validity even during peace time.
- Normally, preventive detention is resorted to against enemy aliens in emergencies such as war when the evidence in possession of the detaining authority is not sufficient to secure the immediate conviction of the detenu by the normal legal process.

Supreme Court ruling on preventive detention

- According to the Supreme Court judgement an order passed by a detaining authority under the preventive detention law cannot be set aside by the High Court at the pre-arrest stage unless it is satisfied that there are exceptional circumstances.
- The court must be conscious and mindful of the fact that this is a 'suspicious jurisdiction'and action is taken 'with a view to preventing' a person from acting in any manner prejudicial to certain activities enumerated in the relevant detention law.
- Interference by a court of law at that stage must be an exception rather than a rule and such an exercise can be undertaken by a writ court with extreme care, caution and circumspection. A detenu cannot ordinarily seek a writ of mandamus if he does not surrender and is not served with an order of detention and the grounds in support of it.
- The primary object of preventive detention is not to punish a person for having done something but to intercept him before he does it. It was not a penalty for past activities of an individual but was intended to pre-empt the person from indulging in activities be prohibited by a relevant law and to prevent him from doing harm in future.

- Underlining the need for striking a balance between personal liberty and security of the country, the Bench said: "Liberty of an individual has to be subordinated, within reasonable bounds, to the good of the people. Security of the state, maintenance of the public order and services essential to the community, prevention of smuggling and black-marketing activities, etc, demand effective safeguards in the larger interests of sustenance of a peaceful democratic way of life."
- The Bench said that without doubt, it is the duty of the court to safeguard against any encroachment on the life and liberty of individuals; at the same time the authorities who have the responsibility to discharge the functions vested in them under the law of the country should not be impeded or interfered with without justification.

Right of an Accused to be Defended

Recently the Karnataka High Court observed that it is unethical and illegal for lawyers to pass resolutions against representing accused in court. This is not the first time that bar associations have passed such resolutions, despite a Supreme Court ruling that these are "against all norms of the Constitution, the statute and professional ethics".

What does the Constitution say about the right of an accused to be defended?

- Article 22(1) gives the fundamental right to every person not to be denied the right to be defended by a legal practitioner of his or her choice.
- Article 14 provides for equality before the law and equal protection of the laws within the territory of India.
- Article 39A, part of the DPSP, states that equal opportunity to secure justice must not be denied to any citizen by reason of economic or other disabilities, and provides for free legal aid.

Unlawful Activities Prevention Act

Unlawful Activities (Prevention) Act or UAPA Act is Indian law aimed at effective prevention of unlawful activities associations in India. Its main objective was to make powers available for dealing with activities directed against the integrity and sovereignty of India.

The National Integration Council appointed a Committee on National Integration and Regionalisation to look into, the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India. Pursuant to the acceptance of recommendations of the Committee, the Constitution (Sixteenth Amendment) Act, 1963 was enacted to impose, by law, reasonable restrictions in the interests of the sovereignty and integrity of India. In order to implement the provisions of 1963 Act, the Unlawful Activities (Prevention) Bill was introduced in the Parliament.

It enables Parliament to impose by law, reasonable restrictions in the interests of sovereignty and integrity of India, on the:

- Freedom of Speech and Expression;
- Right to Assemble peaceably and without arms; and
- Right to Form Associations or Unions.

The objective of this Bill was to make powers available for dealing with activities directed against the integrity and sovereignty of India.

The most recent Amendment has been done in 2019. It was amended allowing the government to designate an individual as a terrorist without trial.

Right Against Exploitation

Article 23: Prohibition of Traffic in Human Beings and Forced Labour.

Article- 23 (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Article- 23(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them

Explanation-

- Traffic in human beings and forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- Traffic in Human Beings: Selling and buying men and women like goods and it includes immoral traffic in women and children for immoral and other purposes.
- It is prohibited making a person to render service where he was lawfully entitled not to work or to receive remuneration of services rendered by him.

- No one shall not be forced to provide labour or services against his will even if remuneration is paid.
- If remuneration is less than minimum wages, it amounts to forced labour under Art 23.

Human Trafficking: This refers to the sale and purchase of human beings mostly for the purpose of sexual slavery, forced prostitution or forced labour.

Begar: This is a form of forced labour which refers to forcing a person to work for no remuneration.

Other forms of forced labour: This includes other forms of forced labour in which the person works for a wage less than the minimum wage. This includes bonded labour wherein a person is forced to work to pay off his debt for inadequate remuneration, prison labour wherein prisoners sent in for rigorous imprisonment are forced to work without even minimum remuneration etc. One shall not be forced to provide labour or services against his will even if remuneration is paid.

Article 23 (2) also provides for an exception to this provision. It allows state to impose compulsory service for public purposes like military service or social service, for which state is not bound to pay. While imposing such services the state is not permitted to make any discrimination on grounds only of religion, race, caste or class or any of them.

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018

Highlights of the Bill

- The Bill creates a law for investigation of all types of trafficking, and rescue, protection and rehabilitation of trafficked victims.
- The Bill provides for the establishment of investigation and rehabilitation authorities at the district, state and national level. Anti-Trafficking Units will be established to rescue victims and investigate cases of trafficking. Rehabilitation Committees will provide care and rehabilitation to the rescued victims.
- The Bill classifies certain purposes of trafficking as 'aggravated' forms of trafficking. These include trafficking for forced labour, bearing children, begging, or for inducing early sexual maturity. Aggravated trafficking attracts a higher punishment.
- The Bill sets out penalties for several offences connected with trafficking. In most cases, the penalties set out are higher than the punishment provided under prevailing laws.

Article 24: Prohibition of Employment of Children in Factories, etc.

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Explanation-

- Article 24 must be read with Article39(e) and Article39(f) of DPSP which provides for the protection of health and strength of children and that the tender age of children should not be abused.
- This provision is in the interest of public health and safety of life of children.
- M.C. Mehta Vs State of Tamil Nadu: The Supreme Court held that state authorities should protect economic, social and humanitarian rights of millions of children working illegally in public and private sectors.

Child Labour (Prohibition and Regulation) Amendment Act, 2016 amended the Child Labour (Prohibition and Regulation) Act, 1986.

- The amendment act prohibited the employment of children below 14 years of age in all occupation and industries except those runs by the child's own family. Before the amendment employment of children below 14 years in domestic work was completely legal.
- A complete prohibition has been imposed on the employment of child labour (i.e. a person below the age of 14 years) in any establishment whether hazardous or not. A child is permitted to work only to help the family in family enterprise after school hours or during vacations.
- The act introduced a new category called adolescents which cover person between14-18years of age. The amendment permits the employment of adolescent labour except in hazardous processes or occupation.
- The number of hazardous occupations and processes has been reduced from 83 to only 3-mining, explosives, occupations mentioned in the Factories Act,1948. It leaves children open

to employment in all other kinds of hazardous industries including construction, asbestos, brick kilns, glass factories and garbage picking.

- It provides for the setting up of the Child and Adolescent Labour Rehabilitation Fund in which all the amounts of penalty have to be realized. This provision has been drawn from MC Mehta judgment.
- India finally ratified convention number 182 of the International Labour Organization which deals with prohibition and elimination of worst forms of child labour and provides that no child shall be employed in a hazardous occupation. Interestingly, India is one of the last countries to ratify the convention.

Article 25 - Right to freedom of religion

Article 25 (1): Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion.

Article 25 (2): Nothing in this article shall affect the operation of any existing law or prevent the State from making any law:

- ***Article 25 (2) (a):*** regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- ***Article 25 (2) (b):*** providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation-

Article 25 (1):

- India is a secular state. It is never considered as an irreligious or atheistic state.
- It is the ancient doctrine in India that state protects all religions; but interferes with none.
- The State is concerned with relations between man and man; not man and God.
- ***Definition of Religion:*** A religion has its basis in "a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual wellbeing.
- ***Conscience:*** Absolute inner freedom of the citizen to mould his own relation with God in whatever manner he likes.
- ***Profess:*** To declare freely and openly one's faith and belief.
- ***Practise:*** To perform the prescribed religious duties, rites and rituals and to exhibit his religious beliefs.
- ***Propagate:*** Spread and publicise his religious view for the edification of others. It only indicates persuasion and exposition without any element of coercion.

Article 25 (2):

Article 25 also consists of two explanations:

- One, the wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.
- Two, Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

Karnataka Hijab Issue:

- Six female students belonging to the Government PU College for Girls in Udupi were not allowed to attend classes wearing Hijab. State Government passed an order regarding the dress code for students mentioning Karnataka Education Act. Students needed to follow the dress code decided by their respective college Development Committee. In case of not having a uniform, students are not allowed to wear any piece of clothing that affects public law and order, equality and integrity.
- The Karnataka High Court upheld the ban on Hijab by the educational institutes. The court ruled that Hijab is not an essential religious practice under Islam and, hence, it is not protected by the Article 25 of the constitution setting out the fundamental right to practice one's religion.

Restrictions on Freedom of Religion

Religious liberty is subject to public order, morality and health. For example: In the name of religion,

- One cannot practise untouchability.
- There cannot be indecent dressing.
- One cannot forcibly convert another person. In order to ensure this, various states government has implemented “Freedom of Religion” legislation to restrict religious conversions through force, fraud or

allurement. Freedom of Religion laws are currently enforced in Odisha, Madhya Pradesh, Arunachal Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand and Uttarakhand.

The Supreme Court in Noise Pollution case, has given certain directions to be followed to control noise pollution in the name of religion:

- ***Firecrackers:*** A complete ban on sound-emitting firecrackers from 10 pm to 6 am.
- ***Loudspeakers:*** Restriction on the beating of drums, tom-tom, blowing of trumpets, or any use of any sound amplifier between 10 pm to 6 am except in public emergencies.
- ***Generally:*** A provision shall be made by the State to confiscate and seize loudspeakers and such other sound amplifiers or equipment that creates noise beyond the limit prescribed.

Article 26: Freedom to Manage Religious Affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

- To establish and maintain institutions for religious and charitable purposes;
- To manage its own affairs in matters of religion;
- To own and acquire movable and immovable property; and
- To administer such property in accordance with law.

Religious denomination

The word 'religious denomination' is not defined in the constitution. The word 'denomination' came to be considered by the Supreme Court in the case of Commissioner, Hindu Religious endowment Madras v. Shri Laxmindra Thirtha Swamiar of Shri Shirur Mutt. In this case, the meaning of 'Denomination' was picked out from the Oxford dictionary, "A collection of individuals classed together under the same name, a religious sect or body having a common faith and organization designated by a distinctive name".

Right to establish and maintain-institutions for religious and charitable purposes: Azeez Basha v. Union of India

In this case, certain amendments were made in the year 1951 and 1965 to the Aligarh Muslim University Act, 1920. These amendments were challenged by the petitioner on the ground that:

- They infringe on the fundamental right under Article 30 to establish and administer educational institutions.
- Rights of the Muslim minority under Article 25, 26, 29 were violated.

It was held by the Supreme Court that prior to 1920 there was nothing that could prevent Muslim minorities from establishing universities. The Aligarh Muslim University was established under the legislation (Aligarh Muslim University Act, 1920) and therefore cannot claim that the university was established by the Muslim Community as it was brought into existence by the central legislation and not by the Muslim minority.

Right to manage its own affairs in the 'Matters of Religion'

- Matter of religion includes religious practices, rituals, observances, ceremonies, mode and manner of worship, etc., regarded as the essential and integral part of the religion.
- For instance, in Acharaj Singh v. State of Bihar it was held that, if Bhog offered to the deity is a well-established practice of that religious institution, such a practice should be regarded as a part of that religion.

Taking over management of secular activities of the temple: Bira Kishore Dev v. State of Orissa

- In this case, the validity of the Shri Jagannath Temple Act, 1954 was challenged on the ground that the Act is discriminatory in nature and violates Article 26 (d) of the Constitution. It was contended by the petitioner (Raja of Puri) that the temple was his private property and he had the sole right over management as well as superintendence of the temple.
- The Act took away the sole management of the temple from the appellant and vested it with the Committee. Dismissing the appeal, the Supreme Court held that there was no violation of the fundamental right of freedom of religion of the petitioner and the Act only dealt with the secular management of the institution.
- Chardham Devasthanam Board: Recently Uttarakhand govt aimed to form an autonomous body Chardham Devastahanam Board to regulate the Chardhams — Yamunotri, Gangotri, Badrinath

and Kedarnath — along with 45 other temples affiliated to them in Uttarakhand. High court ruled out that the ownership of the temple properties would vest in Chardham shrines and power of the board would be confined only to the administration and management of the properties.

Right to administer property owned by denomination

- ***Article 26 (d)*** says that a religious denomination has the right to administer its own property but it should be in accordance with Law. In Durgah Committee Ajmer v. Syed Hussain Ali, the Supreme Court observed that if the religious denomination never had the right to administer property or if it has lost its right then such right cannot be created under Article 26 and therefore cannot be invoked.
- The Supreme Court in the case of State of Rajasthan v. Sajjanlal Panjawat observed that even though the state has the power to administer or regulate the properties of a trust, but it cannot by law take away the right to administer such property and vest it in such other authority that does not even comprise the denomination. This would certainly amount to a violation of Article 26(d) of the Constitution.
- The right to religion under Article 26 is subject to certain limitations and not absolute and unrestricted. If any religious practice is in contravention to any public order, morality or health then such religious practice cannot claim the protection of the state.

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

Article 27: No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

- The state would not spend the public money for the promotion or maintenance of any particular religion. This provision prevents the state from favouring and supporting one religion over another. Money from the taxes can be used for promotion or maintenance of all religion. A fee can be levied on the pilgrims to provide them special or safety measures.
- In the case of Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, the Madras legislature enacted the Madras Hindu Religious and Charitable Endowment Act, 1951 and contributions were levied under the Act. It was contended by the petitioner that the contributions levied are taxes and not a fee and the state of madras is not competent to enact such a provision. It was held by the Supreme Court that though the contribution levied was tax but the object of it was for the proper administration of the religious institution.

Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions

Article 28 (1) No religion instruction shall be provided in any educational institution wholly maintained out of State funds

Article 28 (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution

Article 28 (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto Cultural and Educational Rights.

Explanation-

- In simpler words, religious instructions in educational institutions are,
  - ***Prohibited*** in institutions wholly maintained by state.
  - ***Permitted*** in institutions administered by state, but established by trust
  - ***Voluntary*** in institutions receiving aid from state and institutions recognised by state.

Cultural and Educational Rights– Article 29 & 30

Article 29: Protection of interests of minorities

Article 29(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right

to conserve the same.

Article 29(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them

Explanation:

Religious minorities: Article 29 and Article 30 of the Constitution do not specify 'minorities' in India, it is classified into religious minorities and linguistic minorities.

Religious Minorities in India

The basic ground for a community to be nominated as a religious minority is the numerical strength of the community. For example, in India, Hindus are the majority community. As India is a multi-religious country, it becomes important for the government to conserve and protect the religious minorities of the country.

Section 2, clause (c) of the National Commission of Minorities Act, declares six communities as minority communities. They are:

- Muslims
- Christians
- Buddhists
- Sikhs
- Jains and
- Zoroastrians (Parsis)

Linguistic Minorities

Class or group of people whose mother language or mother tongue is different from that of the majority groups is known as the linguistic minorities. The Constitution of India protects the interest of these linguistic minorities.

- Every time minority has fear about losing their identity and culture, has been ensured by article 29.
- The first provision article 29(1) protects the right of a group.
- While the second provision article 29(2) guarantees the right of a citizen as an individual irrespective of the community to which he belongs.
- Article 29 (1) It is an absolute right for the minorities to preserve its language and culture through educational institutions and cannot be subject to reasonable restrictions in the interest of the general public.
- Article 29(2) is an individual right given to citizen and not to any community. The present clause gives guarantee to an aggrieved person, who has been denied admission on the ground of his religion. If a person has the academic qualifications but is refused admission only on the grounds of religion, race, caste, language or any of them, then there is a clear breach of the fundamental right under this section.
- Article 29 grants protection to both religious minorities as well as linguistic minorities.
- This means only two types of minorities mentioned in the constitution-
  - Religious
  - Linguistic.
- Not mention the caste, representation, or other types of the minority.
- However, the Supreme Court held that the scope of this article is not necessarily restricted to minorities only, as it is commonly assumed to be. This is because of the use of the words 'section of citizens' in the Article that includes minorities as well as the majority. The Supreme Court also held that the right to conserve the language includes the right to agitate (By maintaining Law and Order) for the protection of the language. Hence, the political speeches or promises made for the conservation of the language of a section of the citizens does not amount to corrupt practice under the Representation of the People Act, 1951.

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

Article 30 (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice

Article 30 (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

Article 30 (2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language

Explanation:

In a significant ruling in T.M.A. Pai Foundation versus State of Karnataka case, the Supreme Court laid down the guidelines related to Article 29 and 30 of the Constitution. The religious and linguistic minorities shall be determined state-wise and not nationally. Regulation around the proper functioning, well-being of students and teachers can be imposed by the government. The government can impose standard regulations, they should not destroy the minority character of the institution and the interference of the government should be very limited in the minority educational institution.

Highlights:

- All citizens have right to establish and administer educational institutions.
- The right to administer Minority Education Institution (MEI) not absolute.
- State can apply regulations to unaided MEIs to achieve educational excellence.
- Aided MEIs should admit certain percentage of non-minority students.
- Percentage of non-minority students to be admitted to an aided MEI to be decided by the State or university.
- Fees to be charged by unaided MEI cannot be regulated but no institution can charge capitation fee.
- State can prescribe minimum qualification for teachers and principal in an unaided MEI.
- Tribunal headed by District Judge should be constituted for redressal of grievance of employees of MEI.
- State can provide the manner of admission in case of an aided MEI to ensure that it is done on the basis of merit.
- Merit could be determined through common entrance test.
- Unaided MEI could have their own procedure for admission but the same had to be fair and transparent.

There are three types of minority educational institutions –

- Institutions that demand recognition and aid from the State.
- Institutions that demand recognition from the State and not aid.
- Institutions that neither demand recognition nor aid from the State.

The institutions which demand recognition from the State and are aided or not from the State are bound to follow the rules of the State and these regulations are related to the employment of teaching staff, discipline, academic standards, and sanitation, etc.

And the institutions that neither demand recognition nor aid from the State are free to administer their rules but have to follow the general laws like labour law, contract, industrial law, etc. Furthermore, these institutions have to follow the eligibility criteria prescribed by the state. They are free to appoint teachers only by the rational procedure.

The judgment delivered in case of Malankara Syrian Catholic College (2006), the Supreme Court held that under Article 30 of the Constitution the right conferred to minorities is to ensure equality with the majority that does not mean to give the advantageous position to the minorities and the general laws will apply to all the educational institutions.

Rights of Minority Institutes not Absolute: Supreme Court [NEET Case]

- Few colleges challenged the notifications issued by the Medical Council of India (MCI) and the Dental Council of India (DCI) under Sections 10D of the Indian Medical Council Act of 1956 and the Dentists Act of 1948 for uniform entrance examinations.
- The management of such minority-run medical institutions held that uniformly bringing them under the ambit of NEET would be a violation of their fundamental right to occupation, trade and business [Article 19(1)(g)] and would violate their fundamental rights of religious freedom and to manage their religious affairs (Article 25-28) and to

administer their institutions (Article 30).

- The Supreme Court of India gave its judgement on the admission criteria of minority institutions. It held that National Eligibility cum Entrance Test (NEET) is mandatory for admission to all the medical colleges and the right of minority institutions is not absolute and is amenable to regulation.
- The SC held that the fundamental and religious rights of minorities and rights available under Article 30 are not violated by provisions carved out in Section 10D of the MCI and Dentists Act. The right to freedom of trade or business is not absolute. It is subject to reasonable restriction in the interest of the students' community to promote merit, recognition of excellence, and to curb the malpractices. A uniform entrance test qualifies the test of proportionality and is reasonable.

Article 31 Right to property repealed

Article 32: Right to Constitutional Remedies

Dr Ambedkar stated that:

"If I was asked to name any particular article in this Constitution as the most important- an article without which this Constitution would be a nullity— I could not refer to any other article except this one. It is the 'heart and soul' of the Constitution."

Article 32: Remedies for enforcement of rights conferred for this Part

Article 32 (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

Article 32 (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Article 32 (3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

Article 32 (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

Explanation: The Supreme Court has been constituted as a defender and guarantor of a fundamental right of the citizens. It has been vested with the 'original' and 'wide' powers of that purpose. Original, because an aggrieved citizen can directly go to the Supreme Court. Wide, because its power is not restricted to issuing or orders or directions but also writs of all kinds.

Types of Writs

There are five types of Writs as provided under Article 32 of the Constitution:

1. ***Habeas Corpus:*** It is one of the important writs for personal liberty which says "You have the Body". The main purpose of this writ is to seek relief from the unlawful detention of an individual.

   It is for the protection of the individual from being harmed by the administrative system and it is for safeguarding the freedom of the individual against arbitrary state action which violates fundamental rights under Articles 19, 21 & 22 of the Constitution. This writ provides immediate relief in case of unlawful detention.

   When can it be issued?

   Writ of Habeas Corpus is issued if an individual is kept in jail or under a private care without any authority of law. A criminal who is convicted has the right to seek the assistance of the court by filing an application for "writ of Habeas Corpus" if he believes that he has been wrongfully imprisoned and the conditions in which he has been held falls below minimum legal standards for human treatment. The court issues an order against prison warden who is holding an individual in custody in order to deliver that prisoner to the court so that a judge can decide whether or not the prisoner is lawfully imprisoned and if not then whether he should be released from custody.

2. ***Mandamus:*** Writ of Mandamus means "We Command" in Latin. This writ is issued for the correct performance of mandatory and purely ministerial duties and is issued by a superior court to a lower court or government officer. However, this writ cannot be issued against the President and the Governor. Its main purpose is to ensure that the powers or duties are not misused by the

administration or the executive and are fulfilled duly. Also, it safeguards the public from the misuse of authority by the administrative bodies. The person applying for Mandamus must be sure that he has the legal right to compel the opponent to do or refrain from doing something.

Conditions for issue of Mandamus

- There must rest a legal right of the applicant for the performance of the legal duty.
- The nature of the duty must be public.
- On the date of the petition, the right which is sought to be enforced must be subsisting.
- The writ of Mandamus is not issued for anticipatory injury.

3. ***Certiorari:*** Writ of Certiorari means to be certified. It is issued when there is a wrongful exercise of the jurisdiction and the decision of the case is based on it. The writ can be moved to higher courts like the High Court or the Supreme Court by the affected parties.

   There are several grounds for the issue of Writ of Certiorari. Certiorari is not issued against purely administrative or ministerial orders and that it can only be issued against judicial or quasi-judicial orders.

   When is a writ of Certiorari issued?

   - Either without any jurisdiction or in excess.
   - In violation of the principles of Natural Justice.
   - In opposition to the procedure established by law.
   - If there is an error in judgement on the face of it.

   Writ of certiorari is issued after the passing of the order.

4. ***Prohibition:*** It is a writ directing a lower court to stop doing something which the law prohibits it from doing. Its main purpose is to prevent an inferior court from exceeding its jurisdiction or from acting contrary to the rules of Natural Justice.

   When is the writ of Prohibition issued?

   - It is issued to a lower or a subordinate court by the superior courts in order to refrain it from doing something which it is not supposed to do as per law.
   - It is usually issued when the lower courts act in excess of their jurisdiction. Also, it can be issued if the court acts outside its jurisdiction. And after the writ is issued, the lower court is bound to stop its proceedings and should be issued before the lower court passes an order. Prohibition is a writ of preventive nature. The principle of this is 'Prevention is better thancure'.

5. ***Quo Warranto:*** Writ of Quo Warranto implies thereby "By what means". This writ is invoked in cases of public offices and it is issued to restrain persons from acting in public office to which he is not entitled to. Although the term 'office' here is different from 'seat' in legislature but still a writ of Quo Warranto can lie with respect to the post of Chief Minister holding an office whereas a writ of Quo Warranto cannot be issued against a Chief Minister, if the petitioner fails to show that the minister is not properly appointed or that he is not qualified by law to hold the office. It cannot be issued against an Administrator who is appointed by the government to manage Municipal Corporation, after its dissolution. Appointment to public office can be challenged by any person irrespective of the fact whether his fundamental or any legal right has been infringed or not.

   When can it be Issued?

   - When the public office is in question and it is of a substantive nature. A petition against a private corporation cannot be filed.
   - The office is created by the State or the Constitution.
   - The claim should be asserted on the office by the public servant i.e., respondent.

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

- The Supreme Court issues the Writ (under Art. 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 Supreme Court.
- Art. 32 imposes on the Supreme Court a duty to issue the Writs, whereas no such duty is imposed

on the High Court by Art. 226.

- The jurisdiction of the Supreme Court extends all over the country, whereas that of the High Court only to the territorial confines of the particular state and the Union Territory to which its jurisdiction extends.

Limitations to Article 32

There are certain circumstances during which the citizens do not get the privileges which they ought to get under Article 32

- Under Article 33, the Parliament is empowered to make changes in the application of Fundamental Rights to armed forces and the police are empowered with the duty to ensure proper discharge of their duties.
- During the operation of Martial law in any area, any person may be indemnified by the Parliament, if such person is in service of the state or central government for the acts of maintenance or restoration of law and order under Article 34.
- The President can suspend the remedies provided under Art. 32 during the period of National Emergency.
- Article 359 confers the power to the President to suspend Article 32 of the Constitution. The order is to be submitted to the Parliament.

Article 33: Power of Parliament to modify the rights conferred by this Part in their application etc Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to

Article 33(a) the members of the Armed Forces; or

Article 33(b) the members of the Forces charged with the maintenance of public order; or

Article 33(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

Article 33(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Explanation:

- Article 33 gives the Parliament the authority to limit or abolish the fundamental rights of members of the armed forces, paramilitary forces, police forces, intelligence agencies, and similar forces. The purpose of this provision is to ensure that they carry out their duties properly and that they maintain discipline among themselves.
- Article 33 grants the power to make laws only to Parliament, not to state legislatures. Any such law enacted by Parliament cannot be challenged in a court of law on the basis of a violation of any of the fundamental rights.
- The Armed Forces have imposed restrictions on a limited number of fundamental rights, as specified in Articles 14, 15, and 19 of the Constitution. The provisions of these special acts (Army Act, Air Force Act, or Navy Act) cannot simply be challenged on the grounds that they violate fundamental rights. This is because these acts are laws duly enacted by Parliament in the exercise of its plenary legislative jurisdiction, as stated in Article33 of the Indian Constitution.
- Aside from the three branches of the armed forces, these rights have been revoked in respect of members of the police and paramilitary forces, persons employed in intelligence or counter-intelligence services, and communication systems set up for the aforementioned organizations.
- The Central Government, in exercising its rule-making power under the Army Act of 1950 (as well as the Air Force Act), has limited the rights to freedom of speech and expression, freedom of assembly, and freedom to form associations and unions enshrined in Article 19 of the Constitution.
- The Supreme Court has ruled that these rights can be limited even for members of the armed forces who serve in non-combat roles.

Article 34: Restriction on rights conferred by this Part while martial law is in force in any area Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence

passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

- It provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India. The expression 'martial law' has not been defined anywhere in the Constitution but literally, it means 'military rule'.
- There are also no specific provisions in the constitution that authorises the executive to declare martial law. However, it is implicit in Art 34 under which martial law can be declared in any area within the territory of India. The martial law is imposed under extraordinary circumstances like war, invasion, insurrection, rebellion, riot or any violent resistance to law.
- Article 34 empowers the Parliament to indemnify (compensate) any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force.
- The Act of Indemnity made by the Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.
- During the operation of martial law, the military authorities are vested with abnormal powers to take all necessary steps they impose restrictions and regulations on the rights of the civilians, can punish them and even condemn them to death.

Article 35: It lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures.

Article 35: Legislation to give effect to the provisions of this Part Notwithstanding anything in this Constitution,

Article 35(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws

Article 35(i) with respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by Parliament; and

Article 35 (ii) prescribe punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub clause (ii);

Article 35(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub clause (i) of clause (a) or providing for punishment for any act referred to in sub clause (ii) of that clause shall, subject to the terms there of and to any adaptations and modifications that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament

Explanation:

- Powers of Parliament (only) to Make Laws:
- Prescribing residence as a condition for certain employment or appointments in a state/UT/local or any other authority (Article 16).
- Empowering courts other than the Supreme Court and the high courts to issue directions, orders and writs for the enforcement of fundamental rights (Article 32).
- Restricting or abrogating the application of Fundamental Rights to members of armed forces, police forces, etc (Article 33).
- Indemnifying any government servant or any other person for any act done during the operation of martial law in any area (Article 34).
- The Parliament has powers to make laws prescribing punishment for offences such as untouchability (Article 17) and traffic in human beings and forced labour (Article 23).
- Article 35 extends the competence of the Parliament to make a law on the specified matters even those matters which may fall within the sphere of the state legislatures (i.e., State List).

Exceptions to Fundamental Rights

Article 31A: Saving of Laws that provide for Acquisition of Estates

- Under Article 31A of the Constitution of India, five categories of laws have been defined from being challenged on the grounds of violation of Fundamental rights granted by Article 14 and 19 of the Constitution. These categories are related to
  - Acquisition of estates and the rights related to it by the State.
  - An amalgamation of various corporations.
  - Modification of mining leases or even Extinguishment.

- Taking over the management of properties by the State.
- Modification of the rights of the directors of various corporations.

- Article 31A does not immunise a state law from judicial review unless it has been reserved for the president's consideration and has received his assent.
- This article also provided for the payment of compensation at market values when the state acquires the land held by a person under his personal cultivation and the land is within the statutory limit.
- Uttar Pradesh government put a ceiling on a large number of permissible landholdings under the Land Holdings Act, 1960.
- Also, under Section 3(17) of the land acquisition act, only the 'male' was considered as the landholder and owner whereas 'unmarried female' or 'woman whose husband is the landowner', wasn't considered as the owner of the land. Apart from the acquisition part, many people have also looked at this discriminatory side of the Act. The court upheld the constitutional validity of Article 31(1)(a).

Article 31B: Validation of Some Acts and Regulations

- Under Article 31B of the Constitution of India, the Acts and the Regulations which are included in the Ninth Schedule are protected from being challenged on the grounds of violation of Fundamental right. Article 31B immunises any law which is included in the Ninth Schedule from all the Fundamental rights and it does not matter if any of the laws included in the Ninth Schedule falls under any of the five categories which are defined under Article 31A.
- Article 31B did not allow the government to make provisions blatantly against the provisions of the constitution but only which were fair with the provision of the constitution and which are inconsistent should be made void. This article stood as a shield for the laws contained in the Ninth Schedule as it makes certain that no question arises on any law contained in that schedule.
- Waman Rao v. Union of India 1981, On 24th April 1973, a famous case judgment laid down the Doctrine of the basic structure, Keshavananda Bharati v. the State of Kerala. In reference to that judgment, this case ruled out that any amendment made in the IX Schedule before the Keshavananda Bharti case will not be challenged in the court but any amendments made after that, will be.

Article 31C: Saving of laws that give effect to some Directive Principles

Under Article 31C (which was inserted by the 25th Amendment Act of 1971), are contained two provisions, these are:

i. It states that if there is a law which seeks to implement the socialistic directive principles defined under Article 39(b) or 39(c) then it shall not be declared void on the grounds of the violation of the fundamental rights defined under the Article 14 and Article 19 of the Constitution of India.
ii. And, if there's a law which contains a declaration for giving effect to such a policy then it shall not be called in question in the Court of law.

Decisions given by court on the constitutionality of Article 31C

- The validity of the 25th Constitutional Amendment was questioned in Keshavananda Bharti v State of Kerala, Sikri C.J. held that since Parliament cannot under Article 368 abrogate fundamental rights; equally it cannot enable the legislature to abrogate them. Therefore, Article 31C must be declared unconstitutional. The second part of Article 31C was held unconstitutional on the ground that it ousted the jurisdiction of the Courts which is a basic feature of the constitution and which cannot be done away with an amendment under Article 368.
- Minerva Mills Ltd. v. Union of India, the extended version of Article 31C was struck down by the Supreme Court. The Court ruled that the extension of the shield of Article 31C to all the Directive Principles was beyond the amending power of Parliament under article 368 because by giving primacy to all Directive Principles over the Fundamental Rights in Articles 14 and 19, the basic or essential features of the constitution viz., judicial review has been destroyed.
- Waman Rao v. Union of India, The Supreme Court maintained that Article 31C as it stood prior to the 42nd Amendment Act made in 1978, was valid as its constitutionality had been upheld in Keshavananda Bharti case.

- I.R. Coelho v. State of Tamil Nadu the Supreme Court held that any law which infringes basic structure of the Constitution can be struck down. Parliament has power to amend Part III so as to abridge or take away fundamental rights but that power is subject to the limitation of basic structure doctrine. There should be a balance between fundamental rights a Directive Principles of State Policy.

Conditions for applicability of Article 31C

There are two conditions which must be fulfilled for the application of Article 31 C

- A law for giving effect to the policy of the state to implement a Directive Principle in Article 39(b) or (c).
- The Legislature making a declaration to that effect.

But the question that whether the act is intended to secure the object contained in Article 39(b), (c) does not depend upon the declaration made by the legislature but upon the contents of the act as found by the court.

Criticism of Fundamental Rights

- ***Immoderate Limitations***
  - The Fundamental rights enshrined by the Constitution are subjected to reasonable restrictions as well as exceptions hence they are criticised on this remark.
- ***Lack of Social and Economic Rights***
  - The list of Fundamental rights mainly consists of political rights. There are no provisions which make important social and economic rights such as the right to social security, the right to work, right to employment, etc. Whereas the Constitutions of other nations such as China provides for such rights.
- ***Lacks Clarity***
  - Many phrases and words used under the definitions of various fundamental rights are found to be not clear or vague as their explanation is not given anywhere in the Constitution of India. Words such as, 'Public order', 'minorities', reasonable restrictions', etc. belong to this category.
- ***No Permanency***
  - The Parliament can curtail or abolish the fundamental rights. An example of this is the abolition of the fundamental right to property. They have been criticised for becoming a play tool in the hands of the politicians having majority support in the Parliament. Hence, they lack permanency.
- ***Suspended during Emergencies***
  - Fundamental rights are criticised on the basis of their temporary suspension during the operation of a National Emergency (except for the fundamental rights defined under Articles 20 and 21) all fundamental rights are suspended during an emergency.
- ***Preventive Detention***
  - Provisions for the concept of Preventive Detention are criticised by many and the reason for this is said to be that it takes away the spirit and substance of fundamental rights as it confers arbitrary powers on the State.
- ***Expensive Remedy***
  - The judicial processes are way too expensive and hinder the common man from getting his rights enforced in the Courts as not every person has the money or even time to afford such proceedings.

Significance of Fundamental Rights

- They form a defensive wall of individual liberty.
- They protect the interest of minorities.
- They ensure the dignity and respect of individuals.
- They constitute the basis of the democratic system in the country.
- They strengthen the secular fabric of the Indian State.
- Check the absoluteness of the authority of the government.
- Facilitate the participation of people in the political and administrative process.
- Lays the foundation of social equality and social justice.

Some Rights that are mentioned in other parts of the Constitution

Apart from the Fundamental Rights included in Part III, there are certain other rights contained in other parts of the Constitution. These rights are known as constitutional rights or legal rights or non-fundamental

rights. They are:

- No tax shall be levied or collected except by authority of law (Article 265 in Part XII).
- No person shall be deprived of his property save by authority of law (Article 300-A in Part XII).
- Trade, commerce and intercourse throughout the territory of India shall be free (Article 301 in Part XIII).
- The elections to the Lok Sabha and the State Legislative Assembly shall be on the basis of adult suffrage (Article 326 in Part XV).

Though the above rights are also equally justiciable, they are different from the Fundamental Rights. In case of violation of a Fundamental Right, the aggrieved person can directly move the Supreme Court for its enforcement under Article 32, which is in itself a fundamental right. But, in case of violation of the above rights, the aggrieved person cannot avail this constitutional remedy. He can move the High Court by an ordinary suit or under Article 226 (writ jurisdiction of high court).

Conclusion

- The fundamental rights have been included in the Constitution because they were considered to be essential for the development of the personality of each and every individual and are there to preserve human dignity and respect. Most of these rights are enforceable against the state by way of their language while some of these rights can be directly enforced against both the state as well as, a private individual.
- One of the most important aspects of the fundamental rights is that it gives Judiciary clear criteria as to how the regulation of relations between the citizens and the government will take place.
- Another positive aspect of the Fundamental rights is that these empower the young children of our nation as they are granted the right to receive free education up to the age of 14. The fundamental rights may have flaws but it does provide more protection to the citizens of the nation than most of the flaws.

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8 Directive Principles of State Policy

Introduction

- Directive Principles are certain ideals, particularly aiming at socio-economic justice, which according to the framers of the Indian Constitution, Stateshould strive for.
- Dr B. R. Ambedkar described Directive Principles as a "Novel Feature" of the Constitution. They are in the nature of general directions, instructions or guidelines to the State. Directive Principles embody the aspirations of the people, objectives and ideals which Union and the State governments must bear in mind while making laws and formulating policies.

Nature

- Directive Principles of State Policy are positive in nature as it requires the State to do certain things as opposed to restricting State.
- The directive principles ensure that the State shall strive to promote the welfare of the people by promoting a social order in which social, economic and political justice is informed in all institutions of life.
- The State shall work towards reducing economic inequality as well as inequalities in status and opportunities, not only among individuals, but also among groups of people residing in different areas or engaged in different vocations.

PART IV of the Constitution (Arts. 36-51) contains the Directive Principles of State Policy. They are of the following classes:

1. Certain ideals, particularly economic, which, according to the framers of the Constitution, the States should strive for.
2. Certain directions to the Legislature and the Executive intended to show in what manner the State should exercise their legislative and executive powers.
3. Certain rights of the citizens which shall not be enforceable by the Courts like the 'Fundamental Rights', but which the State shall nevertheless aim at securing, by regulation of its legislative and administrative policy.

A Brief History of DPSP

The basic sources from which the directive principles of state policy have been derived are as follows.

Constitution of Ireland

- The Directive Principles of State Policy, which are incorporated in Part IV of the Constitution of India, are inspired and adopted by the Irish Constitution, which had copied it from the Spanish Constitution.
- The Indian Constitution's drafting committee was largely inspired by the Irish nationalist movement, and the principle of Directive Principles of State Policy was derived from Article 45 of the Irish Constitution, which is Directive principles of social policy.

Nehru report 1928

- DPSP and Fundamental Rights have a common origin. The Nehru Report of 1928 (chaired by Motilal Nehru) contained the Swaraj Constitution of India which contained some of the fundamental rights and some other rights such as the right to education which were not enforceable at that time.

Government of India Act, 1935

- 'Instrument of Instructions' under Government of India Act 1935 were instructions issued to Governors of the colonies or Governor in general by British government.

Thoughts of Famous Personalities

- ***Dr B.R Ambedkar:-*** The Directive Principles are the novel feature of the Indian Constitution.
- ***Granville Austin:-*** He described the DPSP as "Conscience of the Constitution". Directive Principles are aimed at furthering the goals of social revolution or to foster this revolution by establishing the conditions necessary for the achievements.

- ***Sir B.N. Rau (constitutional advisor to the constituent assembly):-*** Directive Principles are intended as 'moral precepts for the authorities of the State'. They have at least an educative value.
- ***Jawaharlal Nehru's statement in Parliament in 1955:-*** The responsibility for economic and social welfare policies of the nation should lie with the Parliament and not with the Courts. In the case of contradiction, it was for Parliament to remove the contradiction and make Fundamental rights subserve the Directive Principles of State Policy (DPSP).

Article 36: The State has the same meaning as in Part III

Explanation:

As Part IV talks about the principles that a state needs to follow for proper governance, this Article explains what a state is. It holds the same meaning as a state does under Part III of the Constitution. A state, therefore, consists of the following:

1. The Central Government and the State Governments,
2. The Parliament at the Centre and the different state legislatures,
3. Any other local body or authority that is under the control of India or is a part of its territory.

Article 37: Application of the principles contained in this Part. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Explanation:

- This Article talks about the non-enforceable nature of the Directive Principles of State Policy. DPSP cannot be enforced in a court of law; however, it does not mean that the states do not have a duty to follow through with the principles.
- They are mere guidelines that the states are supposed to consider throughout their governance.
- The court emphasized that their non-enforceability does not make them any less important than the Fundamental Rights.

Article 38: State to secure a social order for the promotion of welfare of the people

Article 38(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life

Article 38(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations

Explanation:

The current Article is the one that reflects the characteristics embedded in the Preamble of the Constitution, especially Justice and Equality.

- Sub-clause (1) states that the ultimate goal of the State is to secure justice in all forms – social, political, and economic, across the country.
- Subclause (2) talks about how the state has to ensure that there are low to nil inequalities among the public with relation to income, facilities, and services, opportunities, etc. The 44th Amendment Act in the year 1978 expanded sub-clause (2) to state that efforts should be made to reduce inequalities not only among individuals but also among different groups of people residing in different areas of the country.

This particular Article shows the socialist status of the DPSP in which the main characteristic of a state is that it is societal -welfare-oriented.

Article 39: Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

Explanation:

This Article lays down some basic and general principles that the DPSP proclaims. They are the following:

a) Presence of equal means to a sufficient livelihood. Livelihood consists of food, clothing, medical facilities, education, etc.

b) Ownership and authority over material resources should be distributed in a utilitarian manner.

c) There should not be any concentration of wealth

in the hands of a few people/groups of people that might result in a detriment of the common good of the public.

d) Presence of equal pay for equal work done, no matter if it is a man, a woman, or any other gender.

e) The health as well as the strength of the public workers that can be man, woman, child, etc. should not be abused. The people should not be compelled to enter into vocations that are not suitable for either their age or strength simply by economic necessity.

f) As inserted by the 42nd Amendment, the state should ensure that children have a healthy environment around them for their holistic growth and development into able adults in the future.

Though given under Article39(d) of the Constitution, the concept of equal pay for equal work is not enforceable under a court of law. As stated in the case Harbans Lal v. the State of H.P., (1989), this principle is not enforceable as a separate fundamental right. It can only be read with Articles 14 and 16 of the Constitution that are subjected to certain conditions.

Article 39A: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Explanation:

- This Article was inserted by the 42nd Amendment and talks about free legal aid that is provided by the state to administer justice in the country by creating schemes, programs, and provisions and ensuring that people do not lose the opportunity to secure justice just because of economic disadvantages.
- The court also stated that the state is duty-bound to provide a lawyer to an accused person if circumstances of the case and needs of justice so require such as poverty, indigence, etc. as long as the accused does not object to the provision of providing a lawyer.

Article 40: The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Explanation:

This Article talks about the creation and establishment of Panchayats. Under this, the state should grant the necessary powers for these Panchayats that would result in them being self–governing units of small areas in the country.

- The Constitution (73rd Amendment) Act, 1992 has added a new part IX consisting of 16 Articles and the Eleventh Schedule to the Constitution.
- The 73rd Amendment contains the Gram Sabha as the foundation of the Panchayat Raj System to perform functions and powers entrusted to it by the State Legislatures.
- The amendment provides for a three tier Panchayat Raj System at the village, intermediate and district levels.

Article 41: Right to work, to education and to public assistance in certain cases. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want

Explanation:

- The State plays the role of a welfare government under this Article by focusing on the parts of society that needs its help to flourish.
- Therefore, issues such as unemployment, food scarcity, old age, disability, etc. are looked after by the government through schemes and programs such as MGNREGA, Pension schemes, social assistance programs, etc.
- The state also ensures that adequate education and job opportunities are available to the best of its current economic abilities.

Article 42: Provision for just and humane conditions of work and maternity relief. The State shall make provision for securing just and humane conditions of work and for maternity relief

Explanation:

- The Article talks about the working conditions of the citizens.
- The state needs to ensure that the conditions and fair, just, and humane to every employee.
- The state also needs to ensure that people who can be pregnant are given maternity relief.Maternity Benefit Amendment Act, 2017 is an example of this directive principle.

Article 43: Living wage, etc, for workers. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas

Explanation:

- This goes back to the fair and equal wages principle under Article-39(d).
- The state, under this Article, states that the wages and salaries of people working in any kind of job – agricultural, industrial, etc. should be fair and enough to provide them with a decent standard of living and be able to enjoy the luxuries of their lives.
- In particular, under this Article, the state should give more focus and help to the cottage industries of the country either on its own or on a co-operative basis.

Article 43B: Promotion of co-operative societies. The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Explanation:

- Cooperative societies
  - A Co-operative Society is an organization that is formed by a group of people whose primary objective is the promotion of the economic interests of its members. This is achieved by the Cooperative sharing its profits amongst its members, in proportion to their contribution to the Cooperative's business, from which its overall profits are derived.
  - The 97th Amendment Act of 2011 has inserted Article 43B so that the state would also promote the co-operative societies on their formation and functioning.
- Ministry of Cooperation
  - In a historic move, a separate 'Ministry of Co-operation' has been created by the Government of India in 2021 for realizing the vision of 'Sahkar-se-Samriddhi'.
  - This ministry will provide a separate administrative, legal and policy framework for strengthening the cooperative movement in the country.
  - It will help deepen co-operatives as a true people-based movement reaching up to the grassroots.
  - In our country, a Co-operative based economic development model is very relevant where each member works with a spirit of responsibility.
  - The Ministry will work to streamline processes for 'Ease of doing businesses for co-operatives and enable development of Multi-State Co-operatives (MSCS).
  - The Central Government has signalled its deep commitment to community based developmental partnership.

Article 44: Uniform civil code for the citizens. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Explanation:

- The Indian Constitution states that "the State shall endeavour to secure for the citizens a uniform civil code (UCC) throughout the territory of India."
- The desirability of a uniform civil code is consistent with human rights and the principles of equality, fairness and justice.

Article 45:Provision for free and compulsory education for children. The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Explanation:

- The current Article was inserted by the 86th Amendment.
- This Article talks about the right of children to obtain compulsory and free pre-school education up to 6 years of age for their holistic growth and development.
- It shall also provide free and compulsory education up to 14 years of age within which the child would have basic education to survive.

Article 46: ***Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes 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***

Explanation:

- This Article is about the protection of the minority and weak communities of the country such as the SCs, STs, etc. against any exploitation.
- As they are the weaker sections of the society, they may find it more difficult to prosper as compared to their counterparts.
- Therefore, the state needs to ensure that they are received with enough care and adequate economic and educational opportunities are also available to them.

Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health. 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 and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health

Explanation:

- This Article brings about the duty of the state to ensure that the country has moderate to high standards of nutrition and public health.
- Steps need to be taken by the state to provide nutrition to the poor and deserving, and also to prohibit or limit the consumption of drinks and drugs that are injurious to public health.
- Through these steps, the state tries to promote the standard of living of people in the country.
- Programs such as the National nutrition mission, Mid-day meal scheme, National Health Mission, etc. are already in function to achieve these objectives.

Article 48: Organisation of agriculture and animal husbandry. The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle

Explanation:

- The current Article talks about the need of the state to engage in the promotion of agriculture and animal husbandry through scientific lines and methods.
- Through this manner, the state shall also ensure that unnecessary slaughtering of cows, calves, and other milch and draught cattle is prohibited as well as take scientific steps to improve the breeds of the cattle.
- In the case of State of Gujarat v. Mirzapur Jamat, (2005), the court had held that the term 'milch and draught cattle' was used to distinguish other kinds of cattle that neither belong to milch or draught. It is simply a form of classification.

Article 48 A: Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country

Explanation:

- This article added by 42nd Amendment Act, talks about the protection and safeguard of the environmental surroundings as well as the flora and fauna of nature.
- The court had held that preservation and protection of open spaces such as parks are of vital interest to the public.
- The state authorities are dutybound to act in trusteeship for common spaces such as air, water, forests, etc.

Article 49: Protection of monuments and places and objects of national importance. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be

Explanation:

- This Article talks about preserving and protecting monuments and objects that are of national importance from any sort of destruction, disfigurement, etc.
- It shall be the duty of the State to protect every monument or place or any object of historic or artistic interest which has some national importance, from any form of disfigurement, destruction, etc.
- Examples can be the Taj Mahal, Qutab Minar, etc. that hold the memories and history of Indian culture.

Article 50: Separation of judiciary from executive. The State shall take steps to separate the judiciary from the executive in the public services of the State

Explanation:

- This is the only direct evidence of separation of powers between at least two organs of the state that is present in Part IV of the Constitution.
- It states that the state should ensure that the executive and judiciary work as separate organs concerning public services.
- In the case of S.P Gupta v. Union of India, 1981, the court had reiterated the importance of the independence of the judiciary from executive pressure and influence.

Article 51: Promotion of international peace and security The State shall endeavour to

Article 51(a)promote international peace and security;

Article 51(b) maintain just and honourable relations between nations;

Article 51(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration PART IVA FUNDAMENTAL DUTIES

- The last directive principle is about the international dealings of the state.
- According to it, the state's main international aim is to maintain and preserve peace and security across borders, foster healthy relationships with other states, respect international law and other treaty obligations with another state, etc.

Classification of Directive Principles

- Socialist Principles:
  - These principles contemplate the ideology of socialism and lay down the framework of a democratic socialist state. The concept envisages providing social and economic justice, so that state should achieve the optimum norms of the welfare state
- Gandhi's principles:
  - These principles reflect the ideals of Gandhi during the national movement of India. In order to fulfil the dreams of Gandhi, some of his ideas were included in DPSP and they direct the state.
- Liberal policy
  - The aim of these principles is to establish a liberal socio-political system in India and to make the state an instrument of socio-economic welfare.
- International Policies:
  - Those principles which do not belong to any ideology and are of generic nature and also deal with the formulation of foreign policy of India and its role as member of the international community come under this category.
  - In accordance with Article 51, the State of India shall endeavour to promote international peace and security and to respect the treaty of law.

Amendments in Directive Principles

- 42nd Amendment Act of 1976

  Four new Directive Principles were added in the 42nd Amendment Act of 1976 to the original list. They are requiring the state:

  1. An added clause in Article 39: To secure opportunities for the healthy development of children
  2. An added clause in Article 39 as Article 39A: To promote equal justice and to provide free legal aid to the poor

3. An added clause in Article 43 as Article 43 A: To take steps to secure the participation of workers in the management of industries
4. An added clause in Article 48 as Article 48A: To protect and improve the environment and to safeguard forests and wildlife

- 44th Amendment Act of 1978

  The 44th Amendment Act of 1978 necessitated the state to abate inequalities in income, status, facilities and opportunities under Article 38.

  - They have paved the way for confiscatory taxation and for equalising salaries and wages for different vocations and different categories of work, which would usher in a socialistic society, even without resorting to nationalisation of the means of production.

- 86th Amendment Act of 2002

  The 86th Amendment Act of 2002 made the elementary education a fundamental right under Article 21 A and modified the subject-matter of Article 45.

  The 86th Amendment Act necessitated the state to provide early childhood care and education for all children until they complete the age of six years.

- 97th Amendment Act of 2011

  A new Directive Principle was added during 97th Amendment Act relating to co-operative societies. It necessitated the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies under Article 43B.

Directives in other parts of the Constitution

- (Article 335) instruct that the claims of the members of the 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 the affairs of the Union or of a State.
- (Article 350A) It is the duty of every state and its local administration to ensure that education through mother tongue is provided to the minority community at the primary level
- (Article 351) enjoins the Union to promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression of all the elements of the composite culture of India.
- The Directives contained Articles 335, 350A, 351 are not included in Part IV, Courts have given similar attention to them on the application of the principle that all parts of the Constitution should be read together.

DPSP under Preamble

- The Preamble of the Constitution is called the key to the mind of the drafters of the Constitution. It lays down the objectives that our Constitution seeks to achieve.
- Many scholars believe that DPSPs is the kernel of the Constitution. The Directive Principles of the State Policy (DPSPs) lay down the guidelines for the state and are reflections of the overall objectives laid down in the Preamble of Constitution.
- The expression Justice- social, economic, political is sought to be achieved through DPSPs. DPSPs are incorporated to attain the ultimate ideals of preamble i.e., Justice, Liberty, Equality, and Fraternity.
- Moreover, it also embodies the idea of the welfare state which India was deprived of under colonial rule.

Comparison between Directive Principle & Fundamental Rights

Fundamental Rights	DPSP
The Fundamental Rights guaranteed to Indian people are included in Part IIIof the Indian Constitution. Fundamental Rights are addressed in Articles 12-35 of the Indian Constitution.	Part IV of the Indian Constitution contains the Directive Principles. Articles 36-51 of the Indian Constitution contain these provisions.
Fundamental rights are rules within which the policy should be framed and can be challenged in court.	The Indian constitution's Directive Principles are the rules that the government must follow when formulating policy.
Fundamental Rights enshrined in the Indian Constitution contribute to establish political democracy in the country.	The Directive Principles of State Policy help to develop Economic and Social Democracy.
Fundamental Rights promote the well-being of each and every individual.	Directive Principles are used to promote the well-being of the entire community.
Violations of Fundamental Rights are penalised under the law.	In contrast to violations of Fundamental Rights, violations of Directive Principles are not penalised.

Fundamental Rights are justiciable in the sense that they can be lawfully enforced by the courts if they are violated.	Directive Principles are not justiciable in the sense that they cannot be enforced by the courts if they are broken.
If a law violates fundamental rights, the courts have the authority to declare it void and unconstitutional.	The courts do not have the authority to declare a law unlawful and unconstitutional if it violates the Directive Principles.
Fundamental Rights are sometimes viewed as a set of constraints placed on the government.	Directive Principles are guidelines for the government to follow in order to attain specific goals.

During a national emergency, fundamental rights might be suspended. However, Articles 20 and 21 protect rights that cannot be interrupted. Under no circumstances can the State Policy Directive Principles be suspended.

According to Article 13 (2), the law against fundamental rights can be repealed. Laws contrary to the directive policy of the state cannot be repealed.

Relationship with Fundamental Rights through various judgements

The main objective behind both the Fundamental Rights and Directive principle is to secure the pleasure of social, economic and political Justice. It is not only used for the dignity of the citizen but also helps in the welfare of every individual. They are complementary and supplementary to each other. The basic feature of the constitution is to maintain harmony between fundamental rights and DPSP. The theme of fundamental rights must be made in light to DPSP. Here are few important judgements:-

- In the Champakam Dorairajan vs Madras case (1951), the Supreme Court ruled that in case of any conflict between the fundamentals right and the Directive Principles, the Fundamental rights would prevail.
- Parliament made first Amendment Act (1951), the Fourth Amendment Act (1955), and the Seventeenth Amendment Act (1964) to implement some of the Directives.
- In Kerala Education Bill (1957) Court said that in case of conflict between Fundamental Right and DPSPs, the principle of harmonious construction should be applied.

Doctrine of Harmonious Construction

It says that you need to constitute the provision of the constitution in such a way that Fundamental Rights and DPSP go hand in hand so this was there to avoid the situation of conflict while enforcing DPSP and Fundamental Rights. But still after applying the doctrines of interpretation, there is a conflict between Fundamental Right and DPSPs, then the former should be upheld.

- In Venkataraman vs State of Madras (1966), Court gave precedence to Fundamental Rights over DPSPs.
- In the Golaknath vs state of Punjab case 1967, the Court held that the Fundamental Rights cannot be amended for implementation of the Directive Principles.
- In Keshavananda Bharti (1973), The Apex Court placed the bedrock of basic structure. Supreme Court held that Parliament can amend any part of the Constitution but without destroying the basic structure of the constitution. The second clause of Article 31C was as declared as unconstitutional and void as it was against the Basic Structure of the Constitution propounded in this case itself.
- In the case of Pathumma vs. the State of Kerala, 1978, the Supreme Court emphasised the purpose of DPSP that is to fix some social-economic goals.
- Ultimately in the case of Minerva Mills vs. Union of India (AIR 1980 SC 1789), the question before the court was whether the directive principles of State policy enshrined in Art IV can have primacy over the fundamental rights conferred by Part III of the Constitution. The court held that the doctrine of harmonious construction should be applied because neither of the two has precedence to each other. Both are complementary therefore they are needed to be balanced. the Supreme Court also held that 'the Indian constitution founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.
- In Ashok Kumar Thakur Vs. Union of India, 2008, the Supreme Court said that no difference can be made between the 2 sets of rights. Fundamental Rights deal with Civil and political rights whereas DPSP deals with social and economic rights. DPSP are not enforceable in a court of law doesn't mean it is subordinate.

Conflicts between Directive Principles and

Fundamental Rights

- It may be observed that the declarations made in Part IV of the Constitution under the head 'Directive Principles of State Policy' are in many cases of a wider important than the declarations made in Part III as 'Fundamental Rights'.
- The question of priority in case of conflict between the two classes of provisions may easily arise. But while the Fundamental Rights are enforceable by the Courts and the Courts are bound to declare as void any law that is inconsistent with any of the 'Fundamental Rights', the Directives are not so enforceable by the Courts [Art. 37], and the Courts cannot declare as void any law which is otherwise valid, on the ground that it Contravenes any of the 'Directives'.
- In case of any conflict between Parts III and IV of the Constitution, the former should prevail in the Courts. If any law is made to Implement any of the Directives contained in Part IV of the Constitution, it would be totally immune from unconstitutionality on the ground of contravention of the fundamental rights conferred by Arts. 14 and 19.
- This attempt to confer a primacy upon the Directives as against the Fundamental Rights has, however, been foiled by the majority of the Supreme Court in the Minerva Mills case in two respects:
  - It has struck down the widening of Art. 31C to include any or all of the Directives in Part IV, on the ground that such total exclusion of judicial review would offend the 'basic structure' of the Constitution. In the result, Art. 31C is restored to its pre-1976 position, so that a law would be protected by Art. 31C only if it has been made to implement the directive in Art. 39(b)-(c) and not any of the other Directives included in Part IV.
  - It has been also held that there is a fine balance in the Original Constitution as between the Directives and the Fundamental Rights, which should be adhered to by the Courts, by a harmonious reading of the two categories of provisions, instead of giving any general preference to the Directive Principles.
- It is also to be noted that outside these two fundamental rights [in Arts. 14 and 19], the general proposition laid down in 1951 shall subsist. Thus, by way or implementing the Directive in Art. 45, to provide free and compulsory education to children, -the State cannot override the fundamental right, under Article 30(1), of minority communities to establish educational institutions of their own choice.
- Present Order of Precedence

  What will prevail if dispute arises? The present order of precedence is as below:

  1. FR except Article 14 and Article 19
  2. DPSP except Article 39(b) and Article 39(c)

  This means that DPSP 39(b) and 39(c) has been given precedence over Fundamental Right 14 (Right to Equality) and Fundamental Right 19 (Freedom of Speech and Expression).

Enforceability of DPSPs

- Many times, the question arises that whether an individual can sue the state government or the central government for not following the directive principles enumerated in Part IV. The answer to this question is in negative.
- The reason for the same lies in Article 37 which states that:
  - The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.
  - Therefore, by the virtue of Article 37 no provision of this part can be made enforceable in the court of law thus these principles cannot be used against the central government or the state government. This non-justiciability of DPSPs make the state government or the central government immune from any actionagainst them for not following these directives.
- Another question arises that whether the Supreme Court or High Court can issue the writ of mandamus if the state does not follow the directive principles. The literal meaning of mandamus is “to command.”

It is a writ which is issued to any person or authority who has been prescribed a duty by the law. This writ compels the authority to do its duty.

- The Writ of mandamus is generally issued in two situations. One is when a person files writ petition or when the Court issues it suo moto i.e., own motion. As per Constitutional Principles, a Court is not authorized to issue the writ of mandamus to the state when the Directive Principles are not followed because the Directive Principle is a yardstick in the hand of people to check the performance of government and not available for the courts. But the Court can take Suo moto action when the matter is of utmost public importance and affect the large interest of the public.

DPSP and Governance

- The Constitution itself affirms that they are fundamental to the governance of the nation. The Directive Principles are the life-giving provisions of the Constitution. They constitute the stuff of the Constitution and its philosophy of social justice.
- Although the implementation of the principles laid down in Part IV are not directly visible yet there are large and excessive of laws and government policies which reflect the application of the principle of Part IV. Though these Directives are not enforceable by the Courts and ifthe Government of the day fails to carry out these objects no court can make the Government ensure them, yet these principles under Article 37 have been declared to be fundamental in the governance of the country and a government which rests on popular vote can hardly ignore them, while shaping its polity. "It shall be the duty of the State to apply these principles in making laws".
- Though paucity of the financial resources of the States is the primary reason for the failure to fully implement this Directive so far, it would be only candid to record that ultimately, failure of the people to imbibe the Gandhian ideal of life is at the back of this failure.
- Policies like Mahatma Gandhi National Rural Employment Guarantee Act(MGNREGA) get their authority from Article 39(a) which talks about the right to adequate means of livelihood. Laws such as the Child Labour (Prohibition and Regulation) Act 1986 bolster the canons of Article 39(g) which deals with the protection of children.
- A large number of laws have been enacted to implement the directive in Art. 40 to organise village panchayats and endow them with powers of self-government. The panchayats, elected by the entire adult population in the villages, have been endowed with powers of civic administration such as medical relief, maintenance of village roads, streets, tanks and wells, provision of primary education, sanitation and the like.
- For the promotion of cottage industries [Art 43], which is a State subject, the Central Government has established several Boards to help the State Governments, in the matter of finance, marketing and the like.
- Legislation for compulsory primary education [Art. 45] has been enacted in most of the States and in Union Territories.
- For raising the standard of living [Art. 47], particularly of the rural population, the Government of India launched Its Community Development Project in 1952. Later on, Integrated Rural Development. Programme (IRDP) (1978-79), National Rural Employment Programme (NREP), Rural Landless Employment Guarantee Programme (RLEGP), Drought Prone Areas Programme (DPAP), National Skill Development Programme, Pradhan Mantri Kaushal Vikas Yojana (PMKVY), Desert Development Programme (DDP) and some other schemes were launched.
- The legislation relating to prohibition of Intoxicating drinks and drugs (Art. 47) had taken place in some of the provinces long before the Constitution came into being, not much of effective work bad been done until, in pursuance of the Directive in the Constitution, the Planning Commission took up the matter and drew up a comprehensive scheme through its Prohibition Enquiry Committee. Since then, prohibition has been introduced in several States in whole or in part.
- As to the separation of the executive from the

Judiciary [Art. 50], the slow progress and diverse methods in the various States has been replaced by a uniform system by Union legislation, in the shape of the Criminal Procedure Code, 1973, which has placed the function of judicial trial in the hands of the Judicial Magistrates', who are members of the judiciary and are under the complete control of the High Court

- In case of refusal to comply with such directions issued by the Union, it may apply Art 365 against such recalcitrant State. Otherwise, the Directives in Part IV shall ever remain
- It would also be a potent weapon at the hands of the Opposition -to discredit the Government on the ground that any of its executive or legislative acts is opposed to the Directive Principles.
- Even if the directive policies impose certain responsibilities on the state, the state cannot pass any law on the strength of the directive policy alone.

Importance of DPSPs for an Indian citizen

- They facilitate stability and continuity in domestic and foreign policies in political, economic and social spheres in spite of the changes of the party in power.
- They are supplementary to the fundamental rights of the citizens. They are intended to fill in the vacuum in Part III by providing for social and economic rights.
- Their implementation makes a favourable atmosphere for the full and proper enjoyment of the fundamental rights by the citizens. Political democracy, without economic democracy, has no meaning.
- They enable the opposition to exercise influence and control over the operations of the government. The Opposition can blame the ruling party on the ground that its activities are opposed to the Directives.
- They serve as a crucial test for the performance of the government. The people can examine the policies and programmes of the government in the light of these constitutional declarations.
- They serve as common political manifesto. 'A ruling party, irrespective of its political ideology, has to recognise the fact that these principles are intended to be its guide, philosopher and friend in its legislative and executive acts'.

Problems in implementation of DPSP

There are several problems in implementation of DPSP as follows:

1. Historical factors: India was under control of Britishers for a long period of time. During this time period, India became more and more poor. Also, divisions in Indian society grew stronger. Thus, historical factors have further contributed to economic and social factors.
2. Social factors: Several social factors such as gender inequality, poverty, illiteracy, caste-based inequality, etc., inhibit implementation of some DPSP.
    - On account of gender inequality, equal pay for equal work is difficult to be ensured.
    - On account of high poverty in India, adequate means of livelihood are not available to everyone. Illiteracy hampers workers' participation in management, etc.
3. Economic factors: Some DPSP cannot be implemented because of lack of financial resources with the State. For instance, right to work, education, and public assistance requires expenditure on behalf of State.
4. Constitutional factors: As many subjects such as health, forest etc which are mentioned in state list where the interference by centre can impact on federal structure of nation.

Criticism of the Directive Principles

Many constitutional and political experts as well as members of the constituent assembly criticised the Directive Principles on the following grounds:

No Legal Force

- The criticism of the Directive principles was mainly the consequence of their non-justiciable nature. While K T Shah dubbed them as 'pious superfluities' and compared them with 'a cheque on a bank, payable only when the resources of the bank permit'.
- K.C Wheare called them as a manifesto of aims and aspirations and suggested that they serve simply as moral homily, and Sir Ivor Jennings observed them only as pious aspirations.
- T.T Krishnamachari described the Directives as a veritable dust-bin of sentiments, whereas

Arrangement of DPSP

- According to the critics, the Directive Principles are not arranged in a sensible manner on the basis of a consistent philosophy. The declaration blends with the relatively insignificant issues with the most important economic and social questions. It combines rather inappropriately the modern with the old and provisions suggested by the reason and science with provisions based purely on sentiment and prejudice.

Conservative

- Sir Ivor Jennings observed the Directives to be on the basis of the political philosophy of the 19th century England. He remarked: 'The ghosts of Sydney Webb and Beatrice Webb stalk through the pages of the text. Part IV of the Constitution expresses Fabian Socialism without the socialism'. He suggested that the Directives are deemed to be suitable in India in the middle of the twentieth century.

Constitutional Conflict

- K Santhanam has stated that the Directive principles arise a constitutional conflict between centre and state. According to him, the Centre can give directions to the states with respect to the implementation of these principles, and in case of non-compliance, can dismiss the state government.

For instance, when the Prime Minister gets a bill which is violating the Directive Principles and is passed by the Parliament, the President may reject the bill on the ground that these principles are fundamental to the governance of the country and hence, the Ministry has no right to ignore them. The same constitutional conflict may arise at the state level between the Governor and the Chief Minister.

Conclusion

Keeping in mind the arguments put forth above and the aim of the Constituent Assembly while creating the non-justiciable rights, it can be concluded that making the DPSPs enforceable is unnecessary. The Assembly did not want to enforce the Directives because they feared that they would become out of date over time. Secondly, most of their provisions have been enforced through various legislations; those that are not enforceable have debatable relevance in today's world.

The parties that form governments today are not concerned with the well-being of the nation. They play divisive politics for their betterment. They are concerned with the furtherance of their ideologies that the nation may not even share. In this environment, the DPSPs is a yardstick for the government's performance and also a check on arbitrary legislation.

The current position of the Directives is balanced and desirable. But it is also recommended that they must be made secular and free of morals that they impose on citizens. They must incorporate the sentiments held by the nation as a whole and not those held by only a particular class.

Related Topic in News

Uniform Civil Code

Uniform Civil Code or UCC, a single personal law for all citizens irrespective of religion, sex, gender and sexual orientation. Even the constitution says the state should "endeavour" to provide such a law to its citizens.

Article 44as a Directive Principle of State Policy state about uniform civil code. It states that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India".

History

Pre independent era

- The debate for a uniform civil code dates back during the colonial period in India. Prior to the British rule try to reform local social and religious custom under the East India Company (1757-1858).
- The Lex Loci Report of October 1840 emphasised the importance and necessity of uniformity in codification of Indian law, relating to crimes, evidences and contract but it recommended that personal laws of Hindus and Muslims should be kept outside such codification.
- This separation of Hindus and Muslims before law was part of the Divide and Rule policy of the British Empire that allowed them break the unity among the various communities and rule over India.
- According to their understanding of religious divisions in India, the British separated this sphere which would be governed by religious scriptures and customs of the various communities (Hindus, Muslims, Christians and later Parsis).

- These laws were applied by the local courts or panchayats when dealing with regular cases involving civil disputes between people of the same religion; the State would only intervene in exceptional cases.

Post Independent Era

- Mohd. Ahmed Khan Vs Shah Bano case (1985)
- The discussion for the implementation of UCC started with the Shah Bano case wherein the apex court called for the implementation of UCC.
- Here, Supreme Court observed that, "A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies."

Need of Uniform civil code

Ensuring equality for women

Across all religions, castes, and classes of society, UCC promoted the fundamental rights of women. Provides women's an equal right to inheritance, decisions in adoption, marriage, divorce, etc. This can bring in the essential economic and social reforms in society and ameliorate the situation of women in India.

Promote Gender Justice

- UCC will promote gender justice by separating the inbuilt discriminatory allocation of personal laws.
- Under the Hindu law, the Mitakshara branch of law refused to a Hindu daughter a right by birth in the joint family estate and this proceeded logically from the fact that her place in the paternal family was only provisional as she was belonged to her husband's family on marriage.
- Islamic law stipulated that generally a man's share of the inheritance is double that of a woman in the same degree of relationship to the diminished.
- Under Muslim law, the father is the sole protector of the person and property of his minor child.

Important for national Integration

- Uniform Civil Code will distinguish religion from social relations and personal laws, securing equality and thus create harmony in the society.
- It will help for the integration of India, as a lot of the animosity is caused by favorable treatment by the law of certain religious communities. This could in time persuade custodians of faith to look inwards and seek to codify and reform age-old personal laws in accordance with current modernizing and integrative tendencies.

Implementing UCC

- State of Goa is the first and the only State to implement a uniform civil code since its liberation from the Portuguese in 1961.
  - The Supreme Court has even hailed Goa as a shining example where the uniform civil code is applicable to all, regardless of religion except while protecting certain limited rights.
- The States of Uttar Pradesh and Uttarakhand have also underscored upon the UCC being the need of the hour and how their state governments want to take appropriate measures in furtherance of its implementation.

Challenges in the implementation of Uniform Civil Code:

- Diverse personal laws: India is a land where diverse culture custom practice is found. The customary practices among communities differ a lot. The vast diversity of the personal laws, along with the allegiance to which they are adhered to, makes uniformity of any sort very difficult to attain. It is very tough to find a common ground between various communities.
- False penetration: Many people still not aware, what the uniform civil code really means. There are still false dissemination surrounding it, especially among the minorities, which make a various reasonable debate on its implementation quite challenging.
- Encroachment on religious freedom: Many communities, particularly minority communities fear that a common code will restrict their traditions and impose rules which will be mainly influenced by the majority religious communities
- Fundamental rights violation: There is an agitation that the uniform civil code may be in conflict with the fundamental rights of freedom of conscience of free profession, practice and propagation of religions under and the freedom to manage religious affairs under Article 25 and Article 26 respectively.
- Opposition from the different religious groups:

This is one of the most insignificant and obvious obstacles to bring up the Uniform Civil Code. The fundamentalism which is deep-rooted in numerous religions in India doesn't seem to end even in the 21st century.

Way forward:

1. ***Acknowledgement:*** Major realisation are needed to reform current personal law to improve which should first be instituted by the communities themselves.
2. ***Progressive approach:*** The social transformation from various civil code to uniformity shall be progressive and cannot happen in a day. Therefore, the government need to adopt a piecemeal approach.
3. ***Recommendations of Law Commission:*** The commission stresses on initiatives to adapt the country's diversity with universal debated on human rights. It suggested codification of all personal laws:
   - So that the prejudices and stereotypes can be brought light for all the religions.
   - In due course of time, they can test against the fundamental rights in the constitution.
   - It could help arrive at determined Universal principles.
   - Instead of the imposition of UCC, these may facilitate prioritising equality.

Conclusion

The UCC provides protection to vulnerable sections as contemplated by Ambedkar including women and religious minorities, while also encouraging nationalistic fervour through unity.

All citizen will share the same set of personal laws with the implementation of UCC. There will be no scope of politicization of subjects of the discrimination or concessions or remarkable privileges enjoyed by a certain community on the basis of their specific religious personal laws.

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9 Fundamental Duties

Mahatma Gandhi aptly stated that:

"The true source of right is duty. If we all discharge our duties, rights will not be far to seek. Rights accrue automatically to him who performs his duties. The right to perform one's duties is the only right worth living for and dying for. It covers all legitimate rights."

The Fundamental Duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. These duties set out in Part IV–A of the Constitution, concern individuals and the nation.

Fundamental Duties	
Particulars	**Fundamental Duties**
Covered	Part IV A, Article 51 –A
Inspired from	USSR
Amendment	42nd Amendment 1976, introduced Article 51 A in the constitution
Recommended by	Swaran Singh Committee.
Numbers	Originally -10 duties Now -11 duties (added by 86th Amendment Act, 2002)
List of Fundamental Duties	1. Abide by the Constitution and respect national flag & National Anthem 2. Follow ideals of the freedom struggle 3. Protect sovereignty & integrity of India 4. Defend the country and render national services when called upon 5. Sprit of common brotherhood 6. Preserve composite culture 7. Preserve natural environment 8. Develop scientific temper 9. Safeguard public property 10. Strive for excellence 11. Duty of all parents/guardians to send their children in the age group of 6-14 years to school

Nature

Neither there is a direct provision in the Constitution for the enforcement of these duties nor there is hardly any legal sanction in order to prevent violation of these duties. These duties are obligatory in nature.

The reason for not making these duties enforceable is because the majority of the population being illiterate in India, many are unaware of their Constitutional obligations. In this scenario, if the fundamental duties were enforced, it would have resulted in causing chaos and harassment among people.

How did Fundamental Duties become part of the Constitution?

- In 1976 Swaran Singh Committee was formed to 'formulate some proposals for inclusion in the Constitution certain fundamental duties and obligations which every citizen owes to the nation. The need and necessity of which was felt during the operation of the internal emergency (1975–1977).
- The committee recommended the inclusion of a separate chapter on fundamental duties in the Constitution. It stressed that the citizens should become conscious that in addition to the enjoyment of rights, they also have certain duties to perform as well.
- By November 1976, both Houses of Parliament passed the 42nd amendment. This amendment added a new part, namely, Part IVA to the Constitution, which included a new fundamental duties chapter to the Constitution containing 10 duties.
- In 2002, one more duty was added to the list. It said that every citizen 'who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen year'.

11 Fundamental Duties in detail

Only one Article that is Article -51A is there in Part-IV-A of the Indian Constitution that deals with fundamental duties. It was added to the Constitution by the 42nd Amendment Act, 1976. For the first time, a code of 10 fundamental duties was provided to the citizens of India(11th Fundamental Duty was added later by 86th Amendment Act of 2002). Article 51-A states that it is the duty of every citizen of India:

a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.

b) To cherish and follow the noble ideals which inspired our national struggle for freedom.

c) To uphold and protect the sovereignty, unity, and integrity of India.

d) To defend the country and render national service when called upon to do so.

e) 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.

f) To value and preserve the rich heritage of our composite culture.

g) To protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures.

h) To develop the scientific temper, humanism and the spirit of inquiry and reform.

i) To safeguard public property and to abjure violence.

j) To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

k) Who is a parent or guardian, to provide opportunities for education to his child, or as the case may be, ward between the age of six to fourteen years.

Need & Importance of Fundamental Duties

- Any ambiguous statute can be interpreted with the help of fundamental duties.
- In case there is a violation of fundamental duties, Article 51A of the Constitution categorizes it as contempt of the constitution which is punishable under Prevention of Insults to National Honour Act, 1971.
- The court can consider the law reasonable if it gives effect to any of the fundamental duties. In this way, the court can save such law from being declared as unconstitutional.
- These duties were drafted on the lines of moral, ethical, and cultural code of conduct which is to be followed by the people to uphold and protect the sovereignty, unity, and integrity of our country.
- These duties are a constant reminder to citizens to build a free, healthy, and responsible society and they are expected to not act as recklessly and not indulge in anti-social activities.
- For the growth of a democratic country like India, it is imperative that all fundamental duties are followed by the citizens while respecting the integrity and promotion of cultural harmony in the country.
- These duties of an Indian citizen provide education to children, especially to children below 14 years of age, safeguards the human rights, and is a major step towards the abolition of social injustice that is prevalent in the society today.
- Environmental pollution has become a great cause of concern, not only for Indians but for humanity around the globe. Unless we all take the pledge to keep our environment free from pollutants, there remains the threat of undesirable consequences.

Relationship between Fundamental Rights and Fundamental Duties

- Fundamental rights and duties do not contradict each other. They are, on the other hand, extremely compatible and even complementary to each other when it comes to announcing the rights and duties of the citizens.
- Even though fundamental duties are not legally enforceable before the Court unlike the fundamental rights. The judiciary has time and again stated that the duties will not be taken for granted and strict implementation of these principles will be seen by the Government.
- In the case of Chandra Bhawan Boarding v. State of Mysore 1970, the court had opined that it is a grave mistake to think that the Constitution only primarily guarantees the Fundamental Rights and not the duties. The Supreme Court further stated that Part IV and Part IV A of the Constitution are also present that aims at establishing Indian society as welfare – oriented society both nationally and internationally.
- The Fundamental Duties have been defined as the moral obligations of all the citizens to help promote the welfare of the country and to uphold the unity of the nation. These duties are set out in Part IVA of the Indian Constitution concerning the individuals

and the nation. Just like the Directive Principles, these duties represent guidelines that the citizens should obey for the welfare of a democratic nation.

The 11 fundamental duties are not merely the expression of morals or religion, as the courts can take cognizance in the matter to enforce and give effect to these constitutional obligations. Under Article 51A and as per the definition of fundamental duties, it's the responsibility of the citizens to build a free and healthy society, where all citizens are treated equally.

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10 Amendment to the Constitution of India

AMENDMENT TO THE CONSTITUTION

Change is rule of nature. It is in our human nature to change. We do not stay in the same state for long time and it is true for the society too. No generation has a monopoly of wisdom nor has it a right to constrain future generations to mould the machinery of the government according to their requirements.No constitution can provide for all eventualities that would occur in a society. Constitution of India was drafted almost seven decades back catering to the needs of the society of that time. In order to adapt to the changing needs of new era of technological advancements and circumstances of growing people that would happen in future, framers of our constitution have tried to make it flexible.

Constitution is a document made by human beings and may need reassessment, modification and re-examination. It is true that the constitution reflects the dreams and aspirations of the society. It must also be kept in mind that the constitution is a framework for the democratic governance of the society. Article 368 of the Indian Constitution provides the procedure of Amendment. Making changes to the constitution, which is the governing law of the land, is known as a constitutional amendment.The constitution's amendment requires it to go through a specific procedure, which includes passing it via both legislative bodies (Lok Sabha and Rajya Sabha) before being sent to the President for final approval and signature.

Article 368: Refers to the Power of Parliament to amend the Constitution and procedure therefore

Article 368(1) Notwithstanding anything in the Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of the Constitution in accordance with the procedure laid down in the Article368.

Article 368(2) An amendment of the Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the bill and thereupon the Constitution shall stand amended in accordance with the terms of the bill, provided that if such amendment seeks to make any change in

- ***Article 368(2) (a)*** Article 54, Article 55, Article 73, Article 162 or Article 241, or
- ***Article 368(2) (b)*** Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- ***Article 368(2) (c)*** any of the Lists in the Seventh Schedule, or
- ***Article 368(2) (d)*** the representation of States in Parliament, or
- ***Article 368(2) (e)*** the provisions of thearticle, the amendment shall also require to be ratified by the Legislature of not less than one half of the States by resolution to that effect passed by those Legislatures before the bill making provision for such amendment is presented to the President for assent.

Article 368(3) Nothing in Article 13 shall apply to any amendment made under the article

Article 368(4) No amendment of the Constitution (including the provisions of Part III) made or purporting to have been made under article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground.

Article 368(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of the

Constitution under article 368 PART XXI TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS.

Explanation:

The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

- An amendment of the Constitution can be initiated only by the introduction of a bill in either House of Parliament (Lok Sabha & Rajya Sabha) and not in the state legislatures.
- The bill can be introduced either by a Minister or by a private member and does not require prior permission of the President.
- 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.
- 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.
- If the bill intends 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.
- 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.
- 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
- 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.

Types Of Majorities
There are Simple Majority,Absolute Majority, Effective Majority and Special Majority.
Simple Majority This refers to the majority of more than 50% of the members present and voting. Eg: On a particular day, out of the total strength of 545, 45 were absent and 100 abstained from voting on an issue. So only 400 members were present and voting. Then the simple majority is 50% of 400 plus 1, ie. 201.
Effective Majority Effective Majority of the house means more than 50% of the effective strength of the house. This implies that out of the total strength, we deduct the vacant seats. For example, in Rajya Sabha, out of the total strength of 245 members if there are 45 vacancies, then the effective strength of the house is 200. Then the effective majority is 50% of 200 plus 1, ie 101.
Absolute Majority It refers to a majority of more than 50% of the total membership of the house. For example, as the total membership of Lok Sabha is 545, an Absolute majority in Lok Sabha means – 50% of 545 plus 1, ie. 273.
Special Majority All types of majorities other than the absolute, effective or simple majority is known as the special majority. A special majority are of 4 types, with different clauses.
• ***Type 1 – Special Majority as per Article 249.*** ▪ Special majority as per article 249 requires a majority of 2/3rd members present and voting. ▪ For example, if out of the 245 members in Rajya Sabha, if only 150 are present and voting, then the special majority required as per article 249 would be 101. ▪ It can be used to pass the Rajya Sabha resolution to empower the Parliament to make laws in the State list.

- ***Type 2 – Special Majority as per Article 368.***
  - Special majority as per article 368 requires a majority of 2/3rd members present and voting supported by more than 50% of the total strength of the house.
  - To pass a Constitution Amendment bill in Rajya Sabha, in addition to getting the support of 123 members, the bill should be favoured by more than 2/3rd of the members presents and voting.
- ***Type 3 – Special Majority as per Article 368 + 50 percent state ratification by a simple majority.***
  - Special majority as per article 368 plus state ratification requires a majority of 2/3rd members present and voting supported by more than 50% of the State legislatures by a simple majority.
  - Example: the bill which introduced the National Judicial Appointments Commission (NJAC). It required the support of at least 15 state legislatures out of the 29 states.
    - The Bill provided for the procedure to be followed by the NJAC for recommending persons for appointment as Chief Justice of India and other Judges of the Supreme Court (SC), and Chief Justice and other Judges of High Courts (HC), later it got struck down by the judiciary stating the act as unconstitutional.
- ***Type 4 – Special Majority as per Article 61.***
  - Special majority as per article 61 requires a majority of 2/3rd members of the total strength of the house. In Lok Sabha, the special majority as per article 61 is 364 while in Rajya Sabha, the special majority as per Article 61 is 164

Types of Amendments in Indian Constitution

The list of types of amendments can be found below. There are three ways in which the Constitution can be amended:

- Amendment by simple majority of the Parliament
- Amendment by special majority of the Parliament
- Amendment by special majority of the Parliament and the ratification of at least half of the state legislatures.

1. ***By Simple Majority of Parliament:*** A number of provisions in the Constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Article 368. These provisions include:

- Admission or establishment of new states. (Article 2)
- Formation of new states and alteration of areas, boundaries or names of existing states. (Article 3)
- Abolition or creation of legislative councils in states. (Article 169)
- Second Schedule-emoluments,
- Allowances, privileges and so on of the President, the Governors, the Speakers, Judges, etc.
- Quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Use of the English language in Parliament.
- Number of puisne judges in the Supreme Court.
- Conferment of more jurisdictions on the Supreme Court.
- Citizenship-acquisition and termination.
- Elections to Parliament and State legislatures.
- Delimitation of constituencies.
- Union territories
- Fifth Schedule-administration of scheduled areas and scheduled tribes.
- Sixth Schedule-administration of tribal areas.

2. ***By Special Majority of Parliament:*** The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.

The special majority is required only for voting at the third reading stage of the bill but by way of abundant

caution, the requirement for the special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill.

The provisions which can be amended by this way include (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories of amendment in the Constitution.

3. ***By Special Majority of Parliament and Consent of States:*** Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

- Election of the President and its manner.
- Extent of the executive power of the Union and the States.
- Supreme Court and High courts.
- Distribution of legislative powers between the Union and the States.
- Any of the lists in the Seventh Schedule.
- Representation of states in Parliament.
- Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

Supreme Court and the Amendment Power of Parliament

In Shankari Prasad v. Union of India

- In this case, for the very first-time question was raised on the amendment of Fundamental Rights i.e., whether the Fundamental Rights can be amended under Article 368 or not. In this case the validity of the First Amendment through which Article 31A and 31B were added in the Constitution.
- **The five judges' bench stated that Article 368 provides general and strict power to the Parliament to amend the Constitution by following proper procedure.**

In Sajjan Singh v. the State of Rajasthan

- In this case, the **validity of the Seventeenth Amendment was challenged.** The question raised was that the Seventeenth Amendment puts a limit on the jurisdiction of the High Court and therefore rectified.
- , the court disposed of the contention. But choose to deal with the 2nd contention i.e., the reconsideration of Shankari Prasad case, the court stated that, even if the Article 368 does not expressly declare the power of Parliament regarding amendment of Fundamental Rights, the Parliament could by a suitable amendment assume those powers.

In Golaknath v. the State of Punjab

- In this case, the validity of first, fourth and seventeenth amendment were challenged. This time from the eleven judges' bench, the majority of six judges decided that the Parliament has no power to amend Part III(Fundamental Rights)of the Constitution.
- the other hand, the Court considered that the Parliament has a duty to correct the errors in the law, therefore adopted the doctrine of prospective overruling through which the 3 Amendments discussed were continued to be valid but in future, the Parliament has no power to amend the Part III (Fundamental Rights)of the Constitution.

After the judgment of Supreme Court in Golaknath case the 24th Amendment was passed in 1971, and made a change in Article 13 and 368:

A new clause added in Article 13 which says; Nothing in this article apply to amendment in the Constitution under Article 368.

New clauses were added in Article 368:

- A new heading was introduced as; Parliament's power to amend the Constitution.
- Parliament may change, add and repeal any provision of this Constitution in accordance with the procedure provided.

In Keshavananda Bharati v. State of Kerala

- This case was considered as the landmark case, where for the first-time Supreme Court recognized the basic structure concept. In this case, the validity of the 25th Amendment was challenged with the 24th and 29th Amendment was also questioned.
- The court by majority overruled the judgement of Golaknath case. It was held that even before the 24th Amendment the parliament has the limited

power to amend the Constitution by following the proper procedure.

- The Supreme Court also declared that Article 368 of the Constitution does not allow the Parliament to change, damage the basic structure of the Constitution. This landmark judgement changes the history of the Constitution.

Current stance regarding Amendment Power of Parliament:

- The Amendment must not alter the basic structure of the Constitution. Some examples are Free and Fair Election, the nation's Federal nature, Judicial Review, and Power Separation. It notes that some basic legislative frameworks and founding values constitute the foundation of the Constitution. These cannot be touched by anyone.
- An Amendment relating to the federal structure of the government can be made only with a special majority and consent by half of the State legislatures.

Some Important Amendments		
Amendment	***Changes***	***Objective***
1st	15, 19, 85, 87, 174, 176, 341, 342, 372 and 376. Insert articles 31A and 31B. Insert schedule 9.	Added special provision for the advancement of any socially and educationally backward classes or for the Scheduled Castes and Scheduled Tribes (SCs and STs). To fully secure the constitutional validity of zamindari abolition laws and to place reasonable restriction on freedom of speech. A new constitutional device, called Schedule 9 introduced to protect against laws that are contrary to the Constitutionally guaranteed Fundamental Rights. These laws encroach upon property rights, freedom of speech and equality before law.
4th	Amend articles 31, 31A, and 305. Amend schedule 9.	Restrictions on property rights and inclusion of related bills in Schedule 9 of the constitution.
17th	Amend article 31A. Amend schedule 9	To secure the constitutional validity of acquisition of Estates and place land acquisition laws in Schedule 9 of the constitution.
24th	Amend articles 13 and 368	Enable parliament to dilute Fundamental Rights through amendments to the Constitution.
25th	Amend article 31. Insert article 31C	Restrict property rights and compensation in case the state takes over private property. However, the Supreme Court quashed a part of Article 31C, to the extent it took away the power of judicial review. This was done in the landmark case of Keshavananda Bharati v. State of Kerala (1973) 4 SCC 225 which for the first time enunciated the Basic structure doctrine.
29th	Amend schedule 9	Place land reform acts and amendments to these acts under Schedule 9 of the constitution.
42nd	Amend articles 31, 31C, 39, 55, 74, 77, 81, 82, 83, 100, 102, 103, 105, 118, 145, 150, 166, 170, 172, 189, 191, 192, 194, 208, 217, 225, 226, 227, 228, 311, 312, 330, 352, 353, 356, 357, 358, 359, 366, 368 and 371F. Insert articles 31D, 32A, 39A, 43A, 48A, 131A, 139A, 144A, 226A, 228A and 257A. Insert parts 4A and 14A. Amend schedule 7.	Amendment passed during internal emergency by Indira Gandhi. Provides for curtailment of fundamental rights, imposes fundamental duties and changes to the basic structure of the constitution by making India a "Sovereign Socialist Secular Democratic Republic". However, the Supreme Court, in Minerva Mills v. Union of India, quashed the amendments to Articles 31C and 368 as it was in contravention with the basic structure of the Constitution.

Conclusion:

- It may be said that Amenability is an absolute necessity to make the Constitution a more relevant document in light of changing circumstances, reality and match society's evolving needs and ambitions. It guarantees that the constitutional framework and the current government's policies and programmes are in harmony.
- Amendments should be confined to parts of the Constitution that do not comprise the core philosophy.

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11 Basic Structure

What is the Basic Structure Doctrine of Indian Constitution?

There is no mention of the term "Basic Structure" anywhere in the Constitution of India. The idea that the Parliament cannot introduce laws that would amend the basic structure of the constitution evolved gradually over time and many cases. The idea is to preserve the nature of Indian democracy and protect the rights and liberties of people. This Basic Structure doctrine of the Indian Constitution helps to protect and preserve the spirit of the constitution document.

It was the Keshavananda Bharati case that brought this doctrine into the limelight. It held that the "basic structure of the Indian Constitution could not be abrogated even by a constitutional amendment". The judgement listed some basic structures of the Constitution as:

- Supremacy of the Constitution
- Unity and sovereignty of India
- Democratic and republican form of government
- Federal character of the Constitution
- Secular character of the Constitution
- Separation of power
- Individual freedom

Over time, many other features have also been added to this list of basic structural features. Some of them are:

- Rule of law
- Judicial review
- Parliamentary system
- Rule of equality
- Harmony and balance between the Fundamental Rights and DPSP
- Free and fair elections
- Limited power of the parliament to amend the Constitution
- Power of the Supreme Court of India under Articles 32, 136, 142 and 147
- Power of the High Court under Articles 226 and 227

Any law or amendment that violates these principles can be struck down by the SC on the grounds that they distort the basic structure of the Constitution.

The concept of the basic structure of the constitution evolved over time. Few Cases that helped in the evolution of the doctrine of basic structure are as follows:

Shankari Prasad Case (1951)

- The Supreme Court contended that the Parliament's power of amending the Constitution under Article 368 included the power to amend the Fundamental Rights guaranteed in Part III as well.

Sajjan Singh Case (1965)

- The Supreme Court held that the Parliament can amend any part of the Constitution including the Fundamental Rights.
- It is noteworthy to point out that two dissenting judges, in this case, remarked whether the Fundamental Rights of citizens could become a plaything of the majority party in Parliament.

Golaknath Case (1967)

- Supreme Court reversed its earlier stance that the Fundamental Rights can be amended.
- It said that Fundamental Rights are not amenable to the Parliamentary restriction as stated in Article 13 and that to amend the Fundamental rights a new Constituent Assembly would be required.
- Also stated that Article 368 gives the procedure to amend the Constitution but does not confer on Parliament the power to amend the Constitution. This case conferred upon Fundamental Rights a 'transcendental position'.
- The majority judgement called upon the concept of implied limitations on the power of the Parliament to amend the Constitution. As per this view, the Constitution gives a place of permanence to the fundamental freedoms of the citizens.
- In giving to themselves the Constitution, the people had reserved these rights for themselves.

In Keshavananda Bharati Case (1973)

- This case was considered as the historical landmark

case, where for the first-time Supreme Court recognized the basic structure concept. In this case, the validity of the 25th Amendment was challenged with the 24th and 29th Amendment was also questioned. The court by majority overruled the judgement of Golaknath case.

- It was held that even before the 24th Amendment the Parliament has the limited power to amend the Constitution by following the proper procedure. The Supreme Court also declared that Article 368 of the Constitution does not allow the Parliament to change, damage the basic structure of the Constitution. This landmark judgement changes the history of the Constitution.

In Indira Nehru Gandhi v. Raj NarayanCase (1975)

- Under this case, once again the basic structure concept was reaffirmed. The Supreme Court applied the same theory and struck down the 4th clause of Article 329 A on the ground that the Amendment is beyond the power of the Parliament and it destroyed the basic structure of the Constitution. The Amendment was made regarding the jurisdiction of all courts including the Supreme Court, regarding the dispute of an election of the Prime Minister of India.

Article 329: Bar to interference by courts in electoral matters, Notwithstanding anything in this Constitution
Article 329(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;
Article 329(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature

42nd Amendment

- Immediately after the decision of the Supreme Court in Keshavananda Bharti and Indira Gandhi case, the Parliament introduced the 42nd Amendment and added the word Secular, Socialist and Integrity in the Preamble and add clause 4 and 5 to the Article 368 of the Constitution.
- It indirectly declares that there is no limitation on the power of the Parliament regarding the amendment. Even after the judgement of the Supreme Court, the Parliament has the unrestricted power to change or repeal any part of the Constitution.
- Thus, this amendment creates a question regarding the supremacy i.e., who is supreme Parliament or Supreme Court? Through this Amendment, the Parliament declared the concept of basic structure invented by the Supreme Court is vague and unlawful.

In Minerva Mills Case (1980)

- In this case, the validity of the 42nd Amendment was challenged, as it destroyed the basic structure of the Constitution and regarding clause 4 and 5 of Article 368.
- The Supreme Court by majority struck down the clauses added by the 42nd Amendment and stated that the limited power of the Parliament is in the basic structure itself.

Waman Rao Case (1981)

- The SC again reiterated the Basic Structure doctrine.
- It also drew a line of demarcation as April 24th, 1973 i.e., the date of the Keshavananda Bharati judgement, and held that it should not be applied retrospectively to re-open the validity of any amendment to the Constitution which took place prior to that date.
- The Waman Rao case held that amendments made to the 9th Schedule until the Keshavananda judgement are valid, and those passed after that date can be subject to scrutiny.

Indra Sawhney and Union of India (1992)

- SC examined the scope and extent of Article 16(4), which provides for the reservation of jobs in favour of backward classes. It upheld the constitutional validity of 27% reservation for the OBCs with certain conditions (like creamy layer exclusion, no reservation in promotion, total reserved quota should not exceed 50%, etc.)
- Here, 'Rule of Law' was added to the list of basic features of the constitution.

S.R. Bommai Case (1994)

- The government at the Centre dismissed the State Government using Article 356, without giving Bommai a chance to prove his majority and imposed President's Rule.
- In this judgement, the Supreme Court tried to curb

the blatant misuse of Article 356 (regarding the imposition of President's Rule on states).

- In this case, there was no question of constitutional amendment but even then, the concept of basic doctrine was applied.
- The Supreme Court held that policies of a state government directed against an element of the basic structure of the Constitution would be a valid ground for the exercise of the central power under Article 356.

In L. Chandra Kumar Case (1997)

- Under this case, the validity of the Article 323A and 323B was challenged, both deals with the exclusion of the High Court under Article 226 and 227 and the Supreme Court under Article 32 was inserted by the 42nd Amendment.
- The SC, in this case, declared both the provisions unconstitutional and held that the power of judicial review under Article 226, 227, and 32 were given by the basic structure and the Parliament has no power to amend that.

Articles 226 and 227 are the parts of the constitution which define the powers of the High Court
Article 226, empowers the High courts to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto, Certiorari or any of them.
Article 227 determines that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction (except a court formed under a law related to armed forces).

Evaluation of the various Judgements of Supreme Court

The Supreme Court through Golaknath, Keshavananda Bharti, S.R. Bommai and various other cases tried to put an implied limitation on the amending powers of the Parliament, if we summarize the judgements of all the cases discussed in this Article, the court always tries to pressurise on few things that are:

- Parliament has limited power to amend the Constitution.
- The Parliament cannot damage the basic structure of the Constitution
- Article 368 does not provide the power to the Parliament regarding the amendment in Part III of the Constitution.
- The Parliament by amending Article 368 cannot increase its amendment powers.

Criticism

- There is no provision for a special body to change the Constitution, such as a Constitutional Convention (as in the United States) or a Constitutional Assembly.
- The Parliament has the authority to propose a constitutional modification. Except in one situation, when passing a resolution seeking the creation or elimination of Legislative Councils in the states, State Legislatures are unable to introduce any bill or proposal to modify the Constitution.
- The majority of the Constitution can be changed by Parliament alone, using either a special majority or a simple majority. The assent of state legislatures is required only in a few circumstances, and even then, only in half of them.
- The Constitution makes no provision for the State Legislatures to ratify or reject an amendment that is presented to them. It is also silent on the question of whether nations can revoke their permission after giving it.
- If there is a deadlock over the passage of a constitutional change bill, there is no provision for a joint sitting of both Houses of Parliament.
- The procedure for amending a document is comparable to the procedure for enacting legislation. The constitutional amendment legislation must be carried by Parliament in the same way as other laws, with the exception of the special majority requirement.
- They give a lot of room for the courts to intervene.

Conclusion

Article 368 of the Indian Constitution provides the procedure of Amendment. Indian Constitution is neither rigid nor flexible because under Article 368 the Constitution can be amended.

In 72 years of the Constitution, 105 Amendments are already done. The 42nd Amendment is considered as the mini-Constitution, the terms Socialist, Secular, Integrity was inserted through it. The First Amendment was done in the year 1950, itself.

The court by giving the judgements tries to increase their powers and put express limitations on the Parliament. The Article 368 is silent on the matter whether the Parliament has the power to amend the basic structure or not, but that also does not mean that the Article 368 put the limitation regarding the Amendment of basic structure as well as Part III of the Constitution.

12 Parliamentary System

India chose a Parliamentary System for the governance of the country after independence. It is so because the Constitution-makers in the country were greatly influenced by the Parliamentary system prevalent in the United Kingdom. Also, seeing the diverse and varied groups and their culture, religion and behaviour somewhere forced our founding fathers to accommodate this system keeping in mind the political setup.

The principle of strict separation of power, being one of the key features of the Presidential System leads to a lot of problems between the legislature and the executive. This hampers the effectiveness and efficiency in work, which our country was not in a position to afford. The condition of India at the time of Independence was such that it needed a system that was already tested and successful, this also led the makers to choose this system.

In this kind of system, generally, the Parliament is supreme and the executive is responsible to the legislature. It is also known as 'Cabinet form of Government' or 'Responsible Government'.

Features

Key features of the Parliamentary System are as follows:

The close relation between Executive and Legislature

- In a Parliamentary form of Government, the Prime Minister along with the Council of Ministers forms the executive. They are elected as the members of the Parliament which means that the executive emerges from the legislature. Only a member of Parliament can be appointed as part of the Executive. There is no strict separation of powers between the executive and legislature as it is present in the Presidential form of Government. Therefore, in a Parliamentary system, the executive and the legislature are so closely related that sometimes it becomes difficult to separate their functions.

The Executive is responsible to the Legislature

- One of the key features that differentiate the Presidential and Parliamentary system is that in latter the executive is responsible to the legislature. The Prime Minister and the Council of Ministers are collectively answerable in Lok Sabha and individually to the President. The executive loses its power when it loses confidence in the Lok Sabha. Legislature makes the laws and then relies on the executive for its implementation which practices delegated legislation.

Secrecy of the procedure

- One of the prerequisites for this form of Government is the secrecy of the cabinet meetings and the discussions held therein. In fact, even in the oath taken by the Ministers, they promise to keep faith and secrecy as given in Article 75 of the Constitution. As per Article 75(2) of the Constitution, the advice given by the Council of Ministers can be inquired in any court of India which ensures secrecy.

Dual executive

- India has a dual executive means it has two executives – the real and the titular. The titular or nominal executive is the head of the state i.e., the President or the monarch and the real head is the Prime Minister who is the real head of the Government. Legally all the powers and privileges are conferred on the President as per different law and Constitution but in practice, all these powers are enjoyed by the Prime Minister and Council of Ministers. The President in India works on the aid and advice given by the Council of Ministers. The President can return the suggestion for reconsideration, but if the same suggestion is sent to him with or without changes, he is bound to accept it. This makes the President somewhere bound by the advice given by the Ministers and work according to them.

The leadership of Prime Minister

- The leader in the Parliamentary form of Government is the Prime Minister. He is the leader of the majority party in Lok Sabha. He is also the head of the Government and is selected through elections held through universal adult franchise.

No fixed tenure

- In a Parliamentary System, the term or the duration of the ruling Government is not fixed. They are dependent on confidence in the lower house. If anyone of the Council of Ministers resigns or the majority party is not able to prove its confidence in the house then the Government falls. After that new election will be conducted and the party having a majority of the members in Lok Sabha forms the Government. In normal circumstances the tenure of the Government is for 5 years and after that election are held again.

Bicameral Legislature

- 'Bi' means two and 'camera' means chamber. So Bicameral Legislature is the system of having two legislative or judicial chambers. Generally, one of the houses is more powerful than the other. Many Parliamentary democracies have the practice to follow bicameralism.
- In India, at the centre level, it has two houses (Rajya Sabha and Lok Sabha) to deliberate and discusses policies, laws, and issues of national importance. At the state level, the institution equal to or performs somewhat the same function is Vidhan Sabha (State Legislative Assemblies) and Rajya Sabha is Vidhan Parishad (State Legislative Council). Though not all states in India have their respective Legislative Council as many argue that just like the Rajya Sabha, the State Council does not perform many functions and poses stress on state finances. Till now, only 6 states (Andhra Pradesh, Bihar, Maharashtra, Uttar Pradesh, Karnataka, and Telangana) have Legislative Councils.

Merits

The advantages or merits of a Parliamentary System are as follows:

Better coordination between executive and legislature

- In a Parliamentary system, the executive is part of the legislature and usually, the majority party has a stronghold in the Parliament which makes it easier for the law and policies to be passed and implemented. We can see a lot more coordination in the Parliamentary system as compared to the Presidential system as the organs of the Government is strictly separated from each other. The possibility of disputes and conflict is reduced as the party enjoys a majority in the lower house.

Responsible Government

- The Parliamentary form of Government is also known as 'Responsible Government'. In the legislature, all other members raise questions which are matters of public interest and national importance. Through this process, there can be checks on the activities of the Government. The opposition needs to be strong enough to point out the mistakes and inefficiency of the ruling Government. This makes the majority party accountable and hence responsible for their duties and actions in general.

Represents diversity

- Many countries in the world have people living from different backgrounds, cultures, religions, races, and gender. The Parliamentary system is suited best to accommodate all these diverse groups as every group is represented in the legislature. In this way, the interests and demands of various groups can be discussed at a big platform and a solution can be found out more effectively. With a country like India which was in a very fragile state after independence, it was important to adopt a system that was tried and tested and was familiar to the people. In our country, we see people from various groups coming together in Parliament and discussing matters to promote and preserve the interests of all of them.

Flexibility

- The Prime Minister can be removed from power very easily as compared to the Presidential system in which generally the President serves the entire term and can be replaced only through impeachment and incapacity which is a time-consuming process. If the demands that were promised by the ruling party before the elections are not fulfilled the Parliament may pass a no-confidence motion and the Government can be replaced.

Prevents Authoritarianism

- In the Presidential System, we see a concentration of power primarily with the President. He has the authority to choose members of the cabinet. On the other hand, in the Parliamentary system power is divided among the council of ministers and the ruling party does not become all-powerful the Government may resign if a vote of no confidence is passed against them. There are many institutions that keep vigilance on the activities of the Government.

Demerits

The demerits of the Parliamentary System are as follows:

No separation of powers

- As there is no true separation of powers in this system, the legislature cannot always blame the executive for the non-implementation of policies. Especially when the Government has a majority in the legislature. Additionally, because of factors relating to anti-defection laws legislators cannot exercise their will power and vote as per their understanding and opinions. They have to consider and follow the party whip.

Unqualified legislature

- Many times, situations where people who just want to fill executive positions enter the legislature also. They are not even qualified or rather properly acquainted with their jobs. Most of them are not even familiar with the laws of their country.

Instability

- Parliamentary system is not stable as the Government may fall anytime as compared to the Presidential system. There is no fixed tenure of the Government. The moment no confidence motion is passed in the house the Government will be replaced with a new Government. It can happen by a mere political disagreement between the party members. Thus, the Prime Minister has to depend on the support from the party members or any other party in the Parliament. Coalition Governments are mainly transitory and unstable. Therefore, the majority party concentrates more on having support in the house rather than on the welfare of the society.
- It can hamper the implementation of laws and policies as the policy started by the previous Government may not be much supported and carried on by the new Government in power.

Failure to taking a prompt decision

- This system's instability somewhere forces the Government to take prompt decisions in times of need. The Government is scared to take bold and long-term decisions. This may affect the welfare of the nation and its people.

Party Politics

- In the Parliamentary system party, politics is very evident where politicians are motivated by self-interest more than national interest. The Multi-party system is more popular in the Parliamentary system than the Presidential system as they use the method of proportional representation. Many parties compete with each other in elections and each party has a chance of winning the election.

Difference between the Parliamentary and Presidential forms of the Government		
Basis	***Parliamentary Form of Government***	***Presidential Form of Government***
Meaning	It is a form of Government where the legislature and executive are closely related to each other. It is a system in which the citizens elect representatives to the legislative Parliament.	It is a system of Government in which the three organs of the Government – • the executive, • judiciary, • legislature work separately. In it, the President is the chief executive and is elected directly by the citizens.
Executive	There is dual executive as leader of the state and leader of the Government are different.	There is a single executive as the leader of the state and the leader of the Government is the same.
Ministers	The ministers belong to the ruling party and are Members of Parliament. No outsider is allowed to become a minister.	The ministers can be chosen from outside the legislature, and are usually industry experts.
Accountability	The Executive is accountable to the Legislature.	The Executive is not accountable to the Legislature.
Dissolution of lower house	The Prime Minister can dissolve the lower house.	The President cannot dissolve the lower house.
Tenure	The tenure of the Prime Minister depends upon the majority support in the Parliament, and is thus, not fixed.	The tenure of the President is fixed.
Separation of Powers	The principle of separation of powers is not followed strictly. There is concentration and fusion of powers between the Legislative and the Executive.	The principle of separation of powers is strictly followed. Powers are divided and the Legislature, the Executive and the Judiciary work separately.
Party Discipline	Party discipline is stronger and the system leans towards unified action, block voting and distinct party platforms.	Party discipline is comparatively less and failure to vote with one's party does not threaten the Government.
Autocracy	This type of Government is less autocratic as immense power is not given to only one person.	This type of Government is more autocratic as immense power is concentrated in the hands of the President.

Reason for adoption for Parliamentary System in India

The makers of the Constitution wisely chose the Parliamentary model. The reasons for it lie in India's colonial political legacy as well as India's socio-political structure. The reasons for this were as follow:

- By the time of Constitution framing, India already had some experience of the Parliamentary system under the Government of India Act 1919 and 1935. So Indians were familiar with it.
- This experience also showed that the executives can be effectively controlled by the representatives of the people.
- The makers of the Constitution wanted to make the Government responsible to people's demands and should be accountable to them.
- The makers were reluctant to go for the Presidential system as it gives excessive powers to the President who works independently with the legislature.
- The Presidential system is also prone to the personality cult of the President.
- The makers of the Constitution wanted to have a strong executive branch but with strong safeguards to avert the risk of a personality cult.
- In the Parliamentary system, there are several mechanisms to make the executive more answerable to and controlled by the people's representatives.
- So, the Constitution adopted a Parliamentary system for India.

Comparison between United Kingdom and Indian Parliamentary Syste	
United Kingdom	***India***
Britain has a monarchical system.	India is a republican country.
The head of state in Britain is King who enjoys the hereditary position and is not elected.	The head of state is the President who is elected on the basis of proportional representation.
In the UK, the Parliament is the supreme authority as they follow the principle of Parliamentary sovereignty.	Indian Parliament is not very supreme as some restricted powers and is limited due to the presence of a written Constitution, the federal system, judicial review, and fundamental rights.
In Britain, the Prime Minister should be a member of the House of Commons (Lower House) of the Parliament.	In India, the Prime Minister can be a member of any house Rajya Sabha or Lok Sabha in the Parliament.
In Britain, usually, the members of Parliament only become Ministers.	But in India, a person who is not a member of any house can also become Minister but only for a maximum period of 6 months.
In Britain, the Minister also has legal responsibility also.	In India, the ministers are only accountable for their legislative and executive functions.
In Britain, ministers are required to countersign the official acts of the Head of the state.	Ministers in India do not need to sign such a document.
There is a concept of 'Shadow Cabinet' in the UK. The shadow Cabinet is basically a cabinet formed by the opposition who keeps a check on the activities and policies of the ruling Government and can replace it once the ruling party falls.	There is no such concept as Shadow Cabinet in India.

Every system whether it is Presidential or Parliamentary has its own pros and cons. It is upon the Government of a particular country to decide the system which will be most suited for their country. Every country is different in its structure, population and culture, it is important to identify the needs of the country.

If we see a larger picture then there are mainly these two forms. Many nations in the world have chosen one of them with some changes. We also see new trends and conventions. Many countries have changed their political system from democratic to monarchy but it is remarkable that India even after 75 years of independence has stayed a democratic country having a republican head and a strong Constitution. It is considered as one of the largest democracies in the world.

There were some discussions that were made regarding whether India needs a Presidential system. But these debates were very academic. But then the concentration of power in a single hand will lead to abuse of power which is very dangerous to our democracy. Also, our Constitutional setup does not allow us to do so because of the basic structure doctrine. So, for now, the country will stick to the Parliamentary system which suits our diversity.

13 Centre-State Relations

Introduction

The Constitution of India, being federal in structure, divides all powers (legislative, executive and financial) between the Centre and the States. Federal structure of India is no longer a hindrance for better Centre-State relations but rather it has given new hope to the mixed efforts of the Centre and States which may be referred to as co-operative federalism.

The Centre-State relations can be studied under three heads:

- Legislative relations.
- Administrative relations.
- Financial relations

Part XI of the Indian Constitution specifically deals with Centre-State relations. It has been bifurcated into legislative and administrative relations. Further, in Part XII, provisions related to financial relations are laid down.

Legislative Relations

The legislative ties between the centre and State are governed by Article 245 to 255 of Part XI of the Constitution. It sets out a double division between the Union and the States with legislative powers i.e., in territorial recognition and relation to the subject.

There are four aspects in the Centre-States legislative relations, viz.,

- Territorial extent of Central and State Legislation;
- Distribution of legislative subjects;
- Parliamentary legislation in the State List; and
- Centre's control over State Legislation.

Territorial extent of Central and State Legislation

Article 245(1), requires a State Legislature to make law for the entire or any part of the State to which it belongs, subject to the dispositions of this Constitution. Unless the boundaries of the State itself are broadened by an act of the Parliament, a State Legislature cannot broaden territorial jurisdiction in any circumstance.

On the other hand, Parliament has the right to legislate "on all or part of India's territory, which does not only include the States but also Indian Union territory."

It also has the strength of extra-territorial laws that no State Legislature has. This means that the laws made by Parliament would apply not only to individuals and territory but also to Indian subjects living anywhere in the world.

However, there are other limitations on Parliament's territorial competence. Certain unique clauses of the Constitution are subject to the plenary territorial competence of Parliament. These are the following:

- The President can make regulations that are equivalent to the laws of Parliament, some territories of the Union, such as the Andaman and Lakshadweep Region, and these regulations may revoke or amend a law adopted by Parliament on the said territories (Article 240).
- Notifications can be issued by the Governor (Para 5 of Schedule 5(3) of Indian Constitution) that prevent or change the application of the Acts of Parliament to any programmed area of Government.
- Schedule VI says that, the Governor of Assam may likewise direct that an act of Parliament does not apply to a tribal area (autonomous district) in the State or apply with specified modifications and exceptions. The President enjoys the same power with respect to tribal areas (autonomous districts) in Meghalaya, Tripura and Mizoram.

The extent of laws made by Parliament and by the legislatures of States

The Constitution uses the Government of India Act, 1935 as its basis and subdivides authority into three lists between the Union and the States. These are:

- The Union list,
- The State list, and
- The Concurrent list.

There are 98 subjects on the Union List, over which the Union has exclusive authority. The topics on the

Union list, for example, security and foreign relations, are of national significance, etc.

There are 59 topics in the State List over which countries have exclusive jurisdiction. The concerns listed on a State list, such as public order, police and public safety, are of local or national importance.

The Concurrent List contains 52 subjects like criminal and civil cases, marriage and divorce, economic and special planning unions, money, media, magazines, employment, management of the population and preparation of the families, etc. and both the Union and States can enact laws on this list but the federal rule prevails over State law in the case of a dispute between the Central and the State law.

The purpose of the Constitutional inclusion of the list was to ensure continuity in key legal principles across the country. Legislatures both in the Parliament and in the State may make laws on matters mentioned above, but a preliminary and ultimate right of the centre is to legislate on established matters. In the event of a conflict between the law of the State and the law of the Union on a subject in the Concurrent List, the law of the Parliament shall prevail.

The power to make laws with respect to residuary subjects (i.e., the matters which are not enumerated in any of the three lists) is vested in the Parliament. This residuary power of legislation includes the power to levy residuary taxes.

Parliament's power to legislate on State List

Although the Central Government does not have the power in the common circumstances to legislate on matters mentioned in that State, the Parliament of the Union may only make laws on such matters under some special conditions. These special conditions are:

- ***In the National Interest (Art.249)***
  - Article 249 States that, where Rajya Sabha has declared, by a resolution approved by not less than two-thirds of the members present and voting, that it is required or reasonable, in the national interest for Parliament to lay down laws in respect of any matter mentioned in the State List. For the time in question, such a resolution was in place not for more than one year. However, the Rajya Sabha could extend the term of such a resolution for a further duration of one year from the date on which it would otherwise have ceased to operate. The law of Parliament, which Parliament should have been responsible for passing such a resolution by Rajya Sabha, ceased to have any effect on the expiry of a term of six months after the date on which the resolution ceased to be in force, except in the case of things done or omitted to be done before the expiry of that time. This provision allowed the Rajya Sabha, representing the States, to place any matter of local significance but national interest in the concurrent list. The Rajya Sabha can do so at any moment, whether emergency or not.
- ***Under Proclamation of National Emergency (Art. 250)***
  - Article 250 notes that in the case of a declaration of emergency, Parliament shall have the power to make law on any item on the State List. This legislation shall extend in the case of a national emergency (Art. 352) and every State in compliance with the Order of the President (Art. 356) or the event of a financial emergency (Art. 360).
  - Under this time, the laws of the State or States shall remain inoperative to the degree that they are contrary to the law of the centre (Art. 251). Thus, the Parliament as a whole will legislate on the subjects specified in the State List while the National Emergency Declaration is in effect. However, the laws enacted by the Parliament according to this clause shall cease to affect the expiration of a period of six months after the termination of the Proclamation, except in the case of items done or omitted to be done before the expiration of that time.
- ***By Agreement between States (Art. 252)***
  - Article 252, provides for regulation by invitation. If the Legislatures of two or more States adopt a resolution and order the centre to make a law on a specific item of the State List, it shall be legal for the Parliament to make a law.
  - In the first place, such law shall apply to the States which have made such a request, unless any other State may subsequently follow it by passing such a resolution. Such laws can only be amended or repealed by Parliament.

- The Parliament may also make laws about a State subject if two or more States' legislatures agree that a Parliament is allowed to make laws concerning any issue mentioned in the State List concerning that Matter.
- Subsequently, any act passed by the Parliament shall extend to those States and to any other State which has passed such a resolution. Parliament also has the power to amend or revoke any act of this kind.
- Some examples of laws passed under the above provision are Prize Competition Act, 1955; Wild Life (Protection) Act, 1972; Water (Prevention and Control of Pollution) Act, 1974; Urban Land (Ceiling and Regulation) Act, 1976; and Transplantation of Human Organs Act, 1994.

- ***To Implement Treaties (Art. 253)***
  - To implement treaties or international conventions, Parliament shall have the power to legislate concerning any subject. In other words, even about a State issue, the usual distribution of powers does not prevent Parliament from passing legislation to satisfy its foreign obligations or through such legislation (Art 253).
  - The Parliament may pass any treaty, international agreement or convention, with any other country or State, or any decision taken during an international conference, association or other entity, within the whole and any part of the territory of India.
  - Some examples of laws enacted under the above provision are United Nations (Privileges and Immunities) Act, 1947; Geneva Convention Act, 1960; Anti-Hijacking Act, 1982 and legislations relating to environment and TRIPS.
- ***Under Proclamation of President's Rule (Art. 356)***
  - By Article 356 and 357 of the Indian Constitution, the prevalence of Parliament was further defined.
  - Article 356 stipulated that if the President was satisfied that there existed a situation in which the Government of the State cannot be enforced according to the provisions of the Constitution, he may declare exercisable by or under the competence of the Parliament the powers of the Legislature of that State.
  - Parliament must delegate the legislative power to the President, as provided for in Article 357. The President may also allow the Parliament to exercise the powers of the State Legislature during the Declaration of the Rule of the President as a result of the collapse of Constitutional machinery in the State.
  - Nevertheless, all such regulations passed by Parliament cease functioning six months after the declaration of the rule of the President is over.

Centre's control over State Legislation

The Constitution empowers the Centre to exercise control over the State's legislative matters in the following ways:

- 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.
- Bills on certain matters enumerated in the State List can be introduced in the State Legislature only with the previous sanction of the President. (For example, the bills imposing restrictions on the freedom of trade and commerce).
- The Centre can direct the States to reserve money bills and other financial bills passed by the State Legislature for the President's consideration during a financial emergency.

Administrative Relations

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.

Articles 256 to 263 in Part XI of the Constitution deal with the administrative relations between the Centre and the States. In addition, there are various other articles pertaining to the same matter

Centre-State relations during normal time

- ***Executive Powers of State be exercised in compliance with Union Laws:*** According to Article

256, each State's executive power must be used to ensure adherence to all laws passed by Parliament and any other laws that apply in that State. The executive power of the Union also includes the authority to give any directions to a State that the Government of India deems necessary for achieving this goal.

- ***Executive Powers of State not to interfere with Executive Power of Union:*** According to Article 257 of the Constitution, each State's executive power must be used in a way that does not interfere with or adversely affect the Union's executive power.

  Union's executive power includes the ability to provide a State any instructions it deems 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.

- ***Duty of the Centre to protect States:*** Article 355 imposes two duties on the Centre:

  (a) to protect every State against external aggression and internal disturbance; and

  (b) to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution.

- ***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.

- ***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.

- ***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.

- ***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.

- ***To ensure development of the Hindi language:*** Union can direct the State Governments to ensure the development of the Hindi language.

- ***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.

- ***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.

- ***Appointment and Removal 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.

  The Governor of a State is appointed by the President. He holds office during the pleasure of the President.

  The State Election Commissioner, though appointed by the Governor of the State, can be removed only by the President

- ***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 appointment 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.

- ***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.
- ***Extra Constitutional Devices:*** There are extra-Constitutional devices to promote cooperation and coordination between the Centre and the States. These include a number of advisory bodies and conferences held at the Central level.

  The non-Constitutional advisory bodies include the NITI Aayog, the National Integration Council, the Central Council of Health and Family Welfare, the Central Council of Local Government, the Zonal Councils, the North Eastern Council, the Central Council of Indian Medicine, the Central Council of Homoeopathy, the Transport Development Council, the University Grants Commission and so on.

Centre State Relations During Emergencies

- ***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 the 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.
- ***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 with the executive power of the State is to be exercised relating to any matter.
- ***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 Centre

Financial Relation

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.

GST Regime – 101st Amendment

101st Amendment to the Constitution and the introduction of GST in the Indian Economy has significantly changed the landscape of financial relations between the centre and States. Therefore, it is extremely important to have a basic knowledge of what GST is, its application and its different forms.

Position before GST

Before the introduction of GST, there were multiple taxes imposed by the centre and States separately and the distribution of which was confusing and non-uniform. It included Service Tax, Central Excise, Customs duty and State VAT etc. But after the GST, the principle of one nation one tax was adopted.

Position after GST

GST is categorized into CGST, SGST or IGST depending on whether the transaction is Intra-State or Inter-State supplies.

- Intra-State supply of goods or services: In these

kinds of transactions, the location of the supplier and the place of supply are in the same State.

- Inter-State Supply of Goods and Services: As per the Section 7 of IGST act, 2017 it can be understood that "Inter-State" trade or commerce basically means:
  - when the supplier is located in some other State or union territory and the place of the supply is in another State/UT, or
  - when the supply of goods or services is made to or by a Special Economic Zone (SEZ) unit.

Central Goods and Services Tax (CGST)

- CGST is a tax imposed on Intra-State supplies of goods and services and is governed by the CGST Act. Along with this SGST/UTGST will also be levied on the same transaction and shall be governed by the SGST/UTGST Act.
- It implies that in the case of Intra-State supplies of goods and services both CGST and SGST are combined which are collected simultaneously; where CGST goes to the centre and SGST goes to the State.
- The proportion of SGST and CGST is equal.
- However, it must be noted that any tax levied on Intra-State supplies of goods and/or services by the centre and State shall not exceed 14% each.

State Goods and Services Tax (SGST)

- The SGST is a tax levied by the State on the Intra State supplies of goods and/or services by the State Government.
- It is governed by the SGST Act.
- As already mentioned above it is levied and collected simultaneously with the CGST.
- In the case of Union territories, it is called UTGST and governed by the UTGST Act.

Integrated Goods and Services Tax (IGST)

- IGST or Integrated Goods and Services Tax is a tax levied on all Inter-State supplies of goods and/or services.
- It is governed by the IGST Act.
- IGST applies on any supply of goods and/or services in case of both import into India and export from India. Though the exports will be zero-rated.
- Tax obtained under IGST is shared between centre and States as per Article 269 A

The biggest achievement of GST is that it introduced a single uniform tax system with dual tax features where the revenue is shared between both centre and State.

The GST council as mentioned under Article 279 A, shall make decisions in relation to the GST rate, inter supply transactions and other matters related to GST etc.

Article 268- Duties levied by the Union but collected and appropriated by the State

To summarise it can be said that following are some key elements of Article 268

- It imposes a certain types of stamp duties.
- It is levied by the centre but collected and appropriated by the States.
- It forms a part of the Union list and does not form the part of the consolidated fund of India.
- The scope of the revenue obtained under this Article is limited which has been further reduced by the 101st Amendment.

Article 269 Taxes levied and collected by the Union but assigned to the States

To summarise it can be said that following are some key elements of Article 269

- It is a tax levied on all the Inter-State sale, purchase and consignment of goods (except on the goods mentioned under Article 269 A and newspapers).
- The tax is collected and levied by the Central Government but appropriated by the State Governments.
- The amount collected from the Inter-State trade is appropriated to the consuming State.
- The power to lay down laws regarding the Inter-State and commerce and the distribution of share rests with the Parliament only.
- The tax collected under this article does not form the part of the consolidated fund of India.

Article 269 (A) – Position in GST Regime

Article 269A, relates to GST. It states that in case of inter-State supply, taxes i.e., IGST shall be levied and collected by the Central Government and will be distributed by the Centre to the States.

With the latest 101st Amendment a new article 269 A was inserted which brought some considerable changes.

Subclause (1) of Article 269

Article 269A (1) basically involves the following aspects:

- Levying and collection of goods and services tax (GST).
- It applies in the case of inter-State trade or commerce.
- The tax collected shall be appropriated between the States and the Union.
- The Parliament has the power to lay down the law regarding the sharing of taxes collected under this article as per the recommendations of the Goods and Services Tax (GST) Council.

The Parliament, in Section 17 of the IGST Act, 2017 in the exercise of its powers provided in Article 269A (1) of the Constitution has provided the manner in which integrated tax collected by the Union under the IGST Act can be apportioned in between the Union and the States.

Import of goods is a tax on supply

Article 269A (1) is followed by an explanation that in the context of India, all the imports of goods and services in the course of inter-State trade, shall be deemed to be considered as the part of the supply of goods and services.

Position after GST

This authorises the Central Government to levy IGST instead of CVD (countervailing duty) on the import transactions after the 101st Amendment.

Position before GST

Before the introduction of GST, instead of IGST, Counter-Vailing Duty was applied in the case of inter-State trade or commerce. This was a specific form of tax that was imposed by the Government of India for the protection of domestic producers and to mitigate the adverse impact of import subsidies.

Amount collected shall not form a part of Consolidated fund: Article 269A (2) further provides that the amount appropriated to the State by the procedure contemplated under clause (1) will not form a part of the Consolidated fund of India and shall directly be given to States.

Subclause (5) of Article 269(A)- Parliament will make laws on the Inter-State trade and commerce: Article 269A (5) deals with conferring the Parliament certain powers to determine the scope or to decide the place of supply, as regards to when the supply of goods or services will constitute inter-State trade or commerce.

This a reformative step as it follows dual structure of GST wherein both the Centre and States are involved.

Article 270- Taxes levied and distributed between the Union and the States

Article 270 deals with taxes that are levied and collected by the Central Government and how they are distributed between the central Government and the State Government according to a predetermined formula which is provided by the Finance Commission once every 5 years

Article 270(1) lays down the procedure for the appropriation of all taxes except,

- Taxes mentioned in Article 268
- Taxes mentioned in Article 269
- Taxes mentioned in Article 269A
- surcharge on taxes and duties mentioned in Article 271
- any cess levied for a specific purpose

These taxes are levied and collected by the Union and shall be distributed between the States and the Central Government.

It may include taxes such as Excise Duty on Non-GST products, Income Tax, Basic Customs Duty etc.

- The 101st Constitutional Amendment added Articles 270(1A) and 270(1B). Article 270(1A) provides that taxes collected under Article 246(1) are distributed between the Centre and the State. Similarly, Article 270(1B) provides that tax collected on Inter-State trade (IGST) is also distributed between Centre and State.
- Article 270(2) provides the manner of distribution of the collected taxes and it doesn't become a part of the Consolidated Fund of India.
- According to Article 270(3), the President of India will prescribe the manner in which all central taxes formed in one central pool shall be distributed as per the Finance Commission recommendations.

Article 271 – Surcharge on certain duties and taxes for purposes of the Union

Article 271, has the following key elements:

- Parliament has the power to increase any duty or tax anytime by levying a surcharge except in the case of GST mentioned under Article 246A.
- All the proceeds obtained from the surcharges will be part of the consolidated fund of India.

- All the amount from such an increase in tax shall be retained by the Parliament and it is not shared amongst the States.
- The Article has its basis to Section 137 and Section 136(1) of the Government of India Act, 1935.
- Further, no authority has the power to prevent the Parliament from imposing a surcharge.

Article 272 repealed

Article 273 – Grants in lieu of export duty on jute and jute products

According to Article 273, the Government of India before independence provided the provision regarding the sharing of net proceeds of the jute export duty with the jute growing provinces. But under the Constitution, the States are not entitled to obtain any apportion of such duty.

The Provision specifies that for a period of 10 years from the commencement of the Constitution, the jute growing States of West Bengal, Bihar, Orissa and Assam will receive grants-in-aid from the Union from the share of the jute export duty. But as this provision was applicable only up to 10 years after the commencement of the Constitution, so now this Article does not hold any relevance.

Article 274- Prior recommendation of President required to Bills affecting taxation in which States are interested

As per this article, any bill or amendment on the following listed subject matters cannot be moved or introduced in either house of the Parliament before a prior sanction from the President which include bills/ amendments dealing with:

- The imposition or varying of any tax within which the States are interested; or
- It modifies or changes the meaning of the expression "Agricultural Income" as laid down in the Indian Income-Tax Act; or
- It lays down, modifies or amends any principle by which money is distributed to the States; or
- It levies a surcharge on the State taxes for the purpose of the Union.

Grants from the Union to certain States

Apart from the distribution of taxes between the Centre and the States, there are certain articles in the Constitution which provide the scope for Grants-in-aid.

Under Article 275 and Article 282, the Parliament may make grants-in-aid from the Consolidated Fund of India to such States as are in need of assistance, particularly for the promotion of the welfare of tribal areas, including a special grant to Assam.

Types of Grants

Essentially speaking there are two major types of grants that are Statutory grants and Discretionary grants.

- Statutory grants are provided under Article 275 of the Constitution of India.
- While discretionary grants are provided under Article 282 of the Constitution of India.

Article 275 – Statutory grants

These grants are given by the Parliament to the specific States who are in need of assistance. Under this, different amounts of grants are fixed for different States. The amount is given out of the consolidated fund of India.

- The Constitution also provides for specific grants for promoting the welfare of the scheduled tribes in a State or for raising the level of administration of the scheduled areas in a State including the State of Assam.
- Any order made by the Parliament regarding the grants-in-aid shall need a prior recommendation of the Finance Commission.

Further, it also lays down that the Finance Commission has the power to make recommendations other than those which are mentioned in provisions to clause (1).

Article 282- Discretionary Grants

Article 282 empowers both the Centre and the States to make any grants for any public purpose, even if it is not within their respective legislative competence. Under this provision, the Centre makes grants to the States. These grants are also known as discretionary grants, the reason being that the Centre is under no obligation to give these grants and the matter lies within its discretion. These grants have a two-fold purpose: to help the State financially to fulfil plan targets; and to give some leverage to the Centre to influence and coordinate State action to effectuate the national plan.

Article 276- Taxes on professions, trades, callings and employments

Article 276, empowers a State or other local authority to impose taxes on professions and trades. But the total amount payable under any such tax shall not exceed two thousand and five hundred rupees per annum.

Article 277 – Saving of Pre-Constitutional laws

According to Article 277, if any taxes, duties, cesses or fees which were lawfully levied by the Government of any State, municipality, or local bodies before the commencement of the Constitution shall be continued even after the commencement. It will not be affected by the fact that the same subject is now a part of the Union list. Though however, it will be continued only till the Parliament does not make any law to the contrary.

Article 278 Repealed

Article 279- Calculation of net proceeds

Article 279 basically defines the net proceeds of a tax. As per this article, all the earnings from the taxes excluding the cost of the collection will constitute the net proceeds of India.

Further, it provides that the net proceeds of a tax or duty, in whole or in part or of any area will be certified by the Comptroller and the Auditor General of India and the decision of the CAG shall be final.

Article 279 A- GST Council

Article 279A empowers the President of India to constitute a Council named Goods and Services Tax Council (GST Council) within 60 days after the commencement of the 101st Constitution Amendment Act, 2016.

Objective

It shall seek to ensure a uniform system of GST to avoid any conflict or confusion, and the development of a harmonized national market for goods and services.

Quorum and powers

The council shall meet from which one half of its member will constitute a quorum, which will have the power to make decisions on the following listed matters:

- Threshold exemption limit i.e., the turnover below which goods and services will be exempted from GST.
- Rate of GST to be levied, and special provisions with respect to the States of Arunachal Pradesh, Jammu and Kashmir, Assam, Meghalaya, Manipur, Nagaland, Mizoram, Sikkim, Tripura, Himachal Pradesh and Uttarakhand, categorised as special-category States.
- Laws on the model of GST, rules for determining Inter-State supply transactions and determining the place of supply or any other matter.

Further, the GST Council is also empowered to establish a mechanism to adjudicate any dispute between the Centre and the States or between any States.

Finance Commission

For the purpose of allocation of certain sources of revenue, between the Union and the State Governments, the Constitution provides for the establishment of a Finance Commission under Article 280. According to the Constitution, the President of India is authorized to set up a Finance Commission every five years to make recommendation regarding distribution of financial resources between the Union and the States.

Functions

The Finance Commission recommends to the President as to: -

- The distribution between the Union and the States of the net proceeds of taxes to be divided between them and the allocation between the States of respective shares of such proceeds;
- The principles which should govern the grants-in-aid of the revenue of the States out of the Consolidated Fund of India;
- The measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats and Municipalities in the State;
- Any other matter referred to the Commission by the President in the interest of sound finance

Borrowing powers of Centre and State

Article 292 and Article 298 of the Constitution confer both the Centre and the States the power to borrow. However, there is a huge disparity between the scope of powers of the State and Centre. The borrowing powers in the Constitution are similar to what was defined in the Government of India Act,1919 and Government of India Act, 1935.

- The Central Government can borrow either within India or outside upon the security of the Consolidated Fund of India or can give guarantees, but both within the limits fixed by the Parliament. So far, no such law has been enacted by the Parliament.
- Similarly, a State Government can borrow within

India (and not abroad) upon the security of the Consolidated Fund of the State or can give guarantees, but both within the limits fixed by the legislature of that State.

- The Central Government can make loans to any State or give guarantees in respect of loans raised by any State. Any sums required for the purpose of making such loans are to be charged on the Consolidated Fund of India.
- A State cannot raise any loan without the consent of the Centre, if there is still outstanding any part of a loan made to the State by the Centre or in respect of which a guarantee has been given by the Centre.

Inter-Governmental Tax Immunities

Like any other federal Constitution, the Indian Constitution also contain the rule of 'immunity from mutual taxation' and makes the following provisions in this regard:

- Exemption of Central Property from State Taxation
  - The property of Centre is exempted from all taxes imposed by a State or any authority within a State like municipalities, district boards, panchayats and so on. But the Parliament is empowered to remove this ban.
  - The word 'property' includes lands, buildings, chattels, shares, debts, everything that has a money value, and every kind of property– movable or immovable and tangible or intangible.
  - Further, the property may be used for sovereign (like armed forces) or commercial purposes. The corporations or the companies created by the Central Government are not immune from State taxation or local taxation. The reason is that a corporation or a company is a separate legal entity.
- Exemption of State Property or Income from Central Taxation
  - The property and income of a State is exempted from Central taxation. Such income may be derived from sovereign functions or commercial functions. But the Centre can tax the commercial operations of a State if Parliament so provides.
  - However, the Parliament can declare any particular trade or business as incidental to the ordinary functions of the Government and it would then not be taxable. Notably, the property and income of local authorities situated within a State are not exempted from the Central taxation.
  - Similarly, the property or income of corporations and companies owned by a State can be taxed by the Centre. The Supreme Court, in an advisory opinion (1963), held that the immunity granted to a State in respect of Central taxation does not extend to the duties of customs or duties of excise.

In other words, the Centre can impose customs duty on goods imported or exported by a State, or an excise duty on goods produced or manufactured by a State.

Effect of Emergency on Centre-States Financial Relation

- ***During National Emergency:*** The President in situations of Emergency can order that all grant-in- aids received by the States by the Union shall remain suspended. However, such suspension is only temporary in nature and cannot go beyond the expiration of the financial year in which the Proclamation of Emergency ceases to operate.
- ***During Financial Emergency:*** The Centre-States financial relations changes considerably in case if Financial Emergency is imposed as per Article 360 of the Indian Constitution. In such cases, the Centre becomes so powerful and exercises immense control over the States compelling them to observe certain norms of financial propriety and other essential safeguards. The Union Government can give the following mentioned directions to the States-
  - It includes directions to State Governments regarding the reduction of the salary and allowances of all the employees engaged in service of the State which even includes judges of the High Courts.
  - In situations of Financial Emergency, the President has the power to make an alteration in the distribution and allocation of taxes from the Centre to the States and to direct the States to observe principles of financial propriety as laid down by the Parliament.
  - Further directions can also be issued compelling

the States to reserve the consideration of the President on all financial and money bills even after they have been passed by the State Legislature.

Shift in Centre-State Relations

Till 1967, the Centre-State relations by and large were smooth due to one-party rule at the Centre and in most of the States. In 1967 elections, the Congress party was defeated in nine States and its position at the Centre became weak. This changed political scenario heralded a new era in the Centre-State relations. The non-Congress Governments in the States opposed the increasing centralisation and intervention of the Central Government. They raised the issue of State autonomy and demanded more powers and financial resources to the States. This caused tensions and conflicts in Centre-State relations.

Tension areas in Centre-State Relations

The issues which created tensions and conflicts between the Centre and States are:

- Mode of appointment and dismissal of Governor;
- Discriminatory and partisan role of Governors;
- Imposition of President's Rule for partisan interests;
- Deployment of Central forces in the States to maintain law and order;
- Reservation of State bills for the consideration of the President;
- Discrimination in financial allocations to the States;
- Role of Planning Commission in approving State projects;
- Management of All-India Services (IAS, IPS, and IFS);
- Use of electronic media for political purposes;
- Appointment of enquiry commissions against the chief ministers;
- Sharing of finances (between Centre and States); and
- Encroachment by the Centre on the State List.

The issues in Centre-State relations have been under consideration since the mid-1960s. In this direction, the following developments have taken place:

Administrative Reforms Commission

Under the leadership of Morarji Desai, the Central Government established the Administrative Reforms Commission (ARC) in 1966. Examining ties between the Centre and the State was one of its terms of reference.

The ARC formed a study team under M.C. Setalvad to thoroughly analysed many challenges in Centre-State relations. The ARC completed its report and submitted it to the Central Government in 1969 based on the findings of this study team. Commission made 22 recommendations for improving the Centre-State relations. Some important recommendations are listed below:

- Establishment of an Inter-State Council under Article 263 of the Constitution.
- Appointment of persons having long experience in public life and administration and non-partisan attitude as Governors.
- Delegation of powers to the maximum extent to the States.
- Transferring of more financial resources to the States to reduce their dependency upon the Centre.
- Deployment of Central armed forces in the States either on their request or otherwise.

No action was taken by the Central Government on the recommendations of the ARC.

Rajmannar Committee (1969)

In 1969, the Tamil Nadu Government (DMK) appointed a three-member committee, chaired by Dr. P.V. Rajamannar, to investigate the entire issue of Centre-State relations. It wanted the committee to propose Constitutional amendments to ensure the States' maximum autonomy.

In 1971, the committee delivered its report to the Tamil Nadu Government. The committee's key recommendations are as follows:

- An Inter-State Council should be formed immediately.
- The Finance Commission should be made permanent.
- The Planning Commission should be disbanded and replaced by a statutory body.
- Articles 356, 357, and 365 (concerning President's Rule) should be deleted entirely.
- The provision stating that the State ministry holds office at the pleasure of the Governor should be removed.
- Certain subjects from the Union List and the

Concurrent List should be transferred to the State List.

- Residuary powers should be devolved to the States.
- All-India Services such as IAS, IPS, and IFS should be phased out.

The Central Government completely ignored the recommendations of the Rajamannar Committee.

Anandpur Sahib Resolution 1973

The working committee of the Shiromani Akali Dal constituted a 12-member sub-committee on December 11, 1972 to formulate comprehensive policies and programmes. The Anandpur Sahib Resolution, as it is commonly referred to, asked that the Centre's authority be limited to only defence, foreign affairs, communications, and money, and that all remaining powers be given to the States.

It also demanded residuary powers for the State. In the decade 1980, as the regional parties became very assertive, they put forth the demand for State autonomy in an organized manner.

Their 'conclaves' were held at Vijayawada, Delhi, and Srinagar which raised the demand for redefining the Centre-States relations. Here also, the Central Government did not accept these recommendations.

It also called for equal authority and representation of the States at the Centre. It was argued, that the Constitution should be made truly federal, and all States should have equal access to power and representation at the federal level.

West Bengal Memorandum

In December 1977, the Communist Government in West Bengal published a memorandum called the West Bengal memorandum, which made the following recommendations:

- The word 'Union' in the Constitution should be replaced by the word 'federal'
- The centre's jurisdiction to be restricted to only defence, foreign affairs, communications, and economic coordination
- Deletion of Articles 356, 357 and 360
- Rajya Sabha to have equal powers with that of the Lok Sabha
- Abolition of All-India Services
- State's consent should be made obligatory for formation of new States or reorganisation of existing States
- 75 percent of the revenue raised by the centre should be allocated to the States
- There should be only Central and State services and the All-India Services should be abolished.

The Central Government did not accept the demands made in the memorandum.

Sarkaria Commission (1983)

With a view to reviewing the working of the existing arrangements between the Union and the States in the changed socio-economic scenario, the Ministry of Home Affairs constituted a Commission in June 9, 1983 under the Chairmanship of Retd. Justice R.S. Sarkaria with Shri B. Sivaraman and Dr. S.R. Sen as its members.

The Commission examined and reviewed the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommended such changes or other measures as may be appropriate.

The commission keep in view the social and economic developments that have taken place over the years and have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people.

Sarkaria Commission Report- Recommendations

The Commission submitted its report in October 1987 with 247 recommendations.

It out-rightly rejected the demand for curtailing the power of Centre and stated that a strong Centre is essential to safeguard national unity and integrity. However, it observed the over-centralization as an avoidable phenomenon.

- A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263.
- Article 356 (President's Rule) should be used very sparingly, in extreme cases as a last resort when all the available alternatives fails.
- The institution of All-India Services should be further strengthened and some more such services should be created.

- The residuary powers of taxation should continue to remain with the Parliament, while the other residuary powers should be placed in the Concurrent List.
- When the President withholds his assent to the State bills, the reasons should be communicated to the State Government.
- The National Development Council (NDC) should be renamed and reconstituted as the National Economic and Development Council (NEDC).
- The zonal councils should be constituted afresh and reactivated to promote the spirit of federalism.
- 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.
- The Centre should consult the States before making a law on a subject of the Concurrent List.
- The procedure of consulting the Chief Minister in the appointment of the State Governor should be prescribed in the Constitution itself.
- The net proceeds of the corporation tax may be made permissibly shareable with the States.
- The Governor cannot dismiss the Council of Ministers so long as it commands a majority in the assembly.
- The Governor's term of five years in a State should not be disturbed except for some extremely compelling reasons.
- No commission of enquiry should be set up against a State minister unless a demand is made by the Parliament.
- The surcharge on income tax should not be levied by the Centre except for a specific purpose and for a strictly limited period.
- The present division of functions between the Finance Commission and the Planning Commission is reasonable and should continue.
- Steps should be taken to uniformly implement the three-language formula in its true spirit.
- No autonomy for radio and television but decentralisation in their operations.
- No change in the role of Rajya Sabha and Centre's power to reorganise the States.
- The commissioner for linguistic minorities should be activated.

The Central Government has implemented 180 (out of 247) recommendations of the Sarkaria Commission. Some of the proposals, such as having the Governor from outside the State, have been implemented. The Supreme Court has often highlighted the importance of putting the Sarkaria commission's recommendations on Governor selection and appointment into action. Government has accepted a few recommendations of the Sarkaria Commission of Articles 356 & legislative matter. However, the name of the Inter-State Council has not been changed to 'Inter Governmental Council' as recommended by the Commission.

It did not favour structural changes and regarded the existing Constitutional arrangement and principles relating to the institution as sound. But it emphasized the need for the change in functional or operational aspect.

National Commission to Review the Working of the Constitution (NCRWC) (2000)

The National Commission to Review the Working of the Constitution (NCRWC), also known as the Justice Manepalli Narayana Rao Venkata Chaliah Commission, was established on February 22, 2000, by a resolution of the NDA Government of India, led by Atal Bihari Vajpayee, for the purpose of suggesting possible Constitutional amendments. In 2002, it handed its report.

The National Commission to Review the Working of the Constitution (NCRWC) put forth its suggestions, many of which were a reiteration of Sarkaria Commission recommendations. The following are few of the novel recommendations to improve Centre-State relations:

- According to Article 307, a legislative organization named the Inter-State Trade and Commerce Commission should be constituted.
- A committee consisting of the Prime Minister, Home Minister, Speaker of the Lok Sabha, and the Chief Minister of the State in question shall nominate the Governor.
- The Concurrent List of the Seventh Schedule should cover disaster and emergency management.
- In the event of a political breakdown in a State, the State should be given an opportunity to explain its position and correct the situation before invoking Article 356, to the extent possible.

- The 1990 Inter-State Council directive should explicitly outline the topics that should be discussed during the discussions.

Consecutive Governments have refused to accept the proposals.

Punchhi Commission (2007)

The Central Government constituted the Punchhi Commission in 2007 to examine Centre-State relations, along with the possibility of giving sweeping powers to the centre for suo moto deployment of Central forces in States and investigation of crimes affecting national security. It was chaired by the former Chief Justice of India, M.M. Punchhi. It submitted its recommendation in 2009.

Main Purpose of the Commission

- To examine the possible role, responsibility, and jurisdiction of the Centre during major and extended eruptions of communal/caste or other social violence or conflicts.
- To review other areas of Centre-State relations including that of taxes and rivers' linking.
- To study if there is a need to set up a Central law enforcement agency to take up suo moto crimes investigation with Inter-State or international ramifications with grave implications on national security.
- To see the feasibility of suo moto deployment of central forces in the States if needed.
- To examine the role and responsibility of the centre with respect to the States in the effective devolution of autonomy and powers to the Panchayati Raj institutions and other local bodies.
- To support independent planning and budgeting at the district level and linking Central assistance of States to States' performance.
- To examine the relevance of separate taxes for freeing Inter-State trade to establish a unified domestic market.
- To examine the role and removal procedures of Governors.

Recommendations of Punchhi Commission

The Commission gave 312 recommendations in its report. Some of the major recommendations are given below:

- 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.
- The Union should be extremely restrained in asserting Parliamentary supremacy in matters assigned to the States. Greater flexibility to States in relation to subjects in the State List and "transferred items" in the Concurrent List is the key for better Centre-State relations.
- The Union should occupy only that many of subjects in concurrent or overlapping jurisdiction which are absolutely necessary to achieve uniformity of policy in demonstrable national interest.
- There should be a continuing auditing role for the Inter-State Council in the management of matters in concurrent or overlapping jurisdiction.
- 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.
- 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.
- Financial obligations and its implications on State finances arising out of treaties and agreements should be a permanent term of reference to the Finance Commissions constituted from time to time.
- 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:
  (i) He should be eminent in some walk of life.
  (ii) He should be a person from outside the State.
  (iii) He should be a detached figure and not too intimately connect with the local politics of the State.
  (iv) He should be a person who has not taken too

great at par 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.
- 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.
- 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.
- 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 commands the wide support in the Legislative Assembly should be called upon to from the Government.
  (ii) If there is a pre-poll alliance or coalition, it should be treated one political party and if such coalition obtains a majority, leader of such coalition shall be called by the Governor to f the Government.
  (iii) In case no party or pre-poll coalition has a clear majority, Governor should select the Chief Minister in the order preference indicated here.
    (a) The group of parties which had pre-poll 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.
- 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.
- The Governor should have the right to sanction for prosecution of a State Minister against the advice of the Council of Ministers, if the Cabinet decision appears to the Governor to be motivated by bias in the face of overwhelming material.
- The convention of Governors acting as Chancellors of Universities and holding other statutory positions should be done away with. His role should be confined to the Constitutional provisions only.
- 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".
- 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 landmark judgement of the Supreme Court in S.R. Bommai v/s Union of India (1994). This would remove possible misgivings in this regard on the part of States and help in smoothening Centre-State relations.
- 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 Assembly 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 1 of List II of the Seventh Schedule.

- 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.
- 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.
- The Empowered Committee of Finance Ministers of States proved to be a successful experiment in inter-State coordination 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.
- New All-India Services in sectors like health, education, engineering and judiciary should be created.
- Factors inhibiting the composition and functioning of the Second Chamber as a representative forum of States should be removed or modified even if it requires amendment of the Constitutional provisions. In fact, Rajya Sabha offers immense potential to negotiate acceptable solutions to the friction points which emerge between Centre and States in fiscal, legislative and administrative relations.
- 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.
- The scope of devolution of powers to local bodies to act as institutions of self-Government should be Constitutionally defined through appropriate amendments.
- 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.
- 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.
- The current ceiling on profession tax should be completely done away with by a Constitutional amendment.
- 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.
- 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.
- Considerations specified in the Terms of Reference (ToR) of the Finance Commission should be even handed as between the Centre and the States. There should be an effective mechanism to involve the States in the finalisation of the ToR of the Finance Commissions.
- The Central Government should review all the existing cesses and surcharges with a view to bringing down their share in the gross tax revenue.
- Because of the close linkages between the plan and non-plan expenditure, an expert committee may be appointed to look into the issue of distinction between the plan and non-plan expenditure.
- There should be much better coordination between the Finance Commission and the Planning Commission. The synchronisation of the periods covered by the Finance Commission and the Five-Year Plan will considerably improve such coordination.

- 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.
- The Planning Commission has a crucial role in the current situation. But its role should be that of coordination rather that of micro managing sectoral plans of the Central ministries and the States.
- 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-I. This Commission should be vested with both advisory and executive roles with decision making powers. As a Constitutional body, the decisions of the Commission should be final and binding on all States as well as the Union of India. Any party aggrieved with the decision of the Commission may prefer an appeal to the Supreme Court.

The Report of the Commission was circulated to all stakeholders including State Governments / UT Administrations and Union Ministries / Departments concerned for their considered views on the recommendations of the Commission. The comments received from the Union Ministries / Departments and the State Governments / UT Administrations are under the consideration of the Inter-State Council

Impact of COVID-19 on Centre-State Relations

The COVID-19 has severely strained federal relations in certain aspects.

- In the context of finance, PM-CARES Fund was brought under the ambit of CSR, however, the same was not done for State-based funds. As a result, companies were more inclined to make donations to the Centre than States which led to a financial crisis for many States. Moreover, the GST dues of States not being paid by the Centre added to the problem.
- In terms of administrative relations, many States felt that there has been discrimination by the Centre in terms of distributing medical equipment and vaccines, though the truth cannot be established.
- Further, as regards the legislative relations, States were not consulted in many matters which were stipulated in the statutes; they were bound to follow the orders of the Centre which strained the relations between the Centre and States.

In India, the Centre-States relations constitute the core elements of the federalism. The Central Government and State Government cooperate for the well-being and safety of the citizens of India. The work together in the field of environmental protection, terror control, family control and socio-economic planning.

The Indian Constitution aim at reconciling the national unity while giving the power to maintain State to the State Governments. It is true that the Union has been assigned larger powers than the State Governments, but this is a question of degree and not quality, since all the essential features of a federation are present in the Indian Constitution. It is often defined to be quasi-federal in nature. Thus, it can be safely said that Indian Constitution is primarily federal in nature even though it has unique features that enable it to assume unitary features upon the time of need. Federal but its spirit is unitary.

14 Inter-State Relations

Introduction

For the purpose of successful functioning of the federal system of the Indian Government, alongside the Centre-State relationship, there comes a need to maintain cooperation between the States inter se. The Parliament of India has established Zonal Councils with the objective of promoting Inter-State coordination such as the River Boards Act 1956, Inter-State Water Disputes Act, 1956, and several others. Further, the Constitution of India has also recognized the relevance of such relation which has been reflected by a list of provisions enshrined under the Indian Constitution as follows;

- Adjudication of Inter-State Water Disputes under Article 262.
- Coordination through Inter-State Councils under Article 263.

Inter-State water disputes

The Indian Constitution has laid down the provision for Inter-State Water Dispute under Article 262 which reads as,

Article 262 (1) Parliament may by law provide for the adjudication of 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.

Article 262 (2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Explanation:

Clause (2) ensures the functioning of Clause (1) which vests the power to make law, adjudicate disputes, control issues related to water between any Inter-State on the Parliament entirely restricting the judicial Interference in totality. Entry 56 of the Union List vests power on the Union Government for the regulation and up-gradation of Inter-State rivers and river valleys only till the extent that has been declared by Parliament taking into account public Interest.

Under the provisions of the act, the Central Government has enacted, River Boards Act (1956) and Inter-State Water Disputes Act (1956).

- The River Board Act provides for the establishment of river boards for the regulation and development of the Inter-State River and river valleys. Such a river board is established on the request of the State Governments concerned.
- The Inter-State Water Dispute Act empowers the Central Government to set up an ad-hoc tribunal for the adjudication of a dispute between the two or more States in relation to the water of an Inter-State River. The decision of the tribunal would be final and binding. Furthermore, the act bars the Supreme Court and any other court to have jurisdiction in this matter.

While the former statute calls for river boards to be established for the purpose of the regulation, and governance of Inter-State rivers, and river valleys, the latter empowers the Central Government to form an ad-hoc tribunal that will adjudicate on Inter-State disputes in relation to the river or river valleys.

The Inter-State Water Disputes Act 1956, restrains the Supreme Court from any other court to have jurisdiction over water-related Inter-State disputes as to the same completely vests on the tribunal whose decisions will be considered to be final and binding on the parties to such dispute. The Central Government at present has set up nine Inter-State Water Dispute Tribunals namely;

- ***Krishna Water Disputes Tribunal:*** Set-up in 1969 and covers the States of Maharashtra, Karnataka and Andhra Pradesh.
- ***Godavari Water Disputes Tribunal:*** This Tribunal was also set up in 1969 and has been covering the States of Maharashtra, Karnataka, Andhra Pradesh, Madhya Pradesh and Odisha.
- ***Narmada Water Dispute Tribunal:*** This Tribunal

was established in 1969 for the States of Rajasthan, Madhya Pradesh, Gujarat, and Maharashtra.

- ***Ravi and Beas Water Disputes Tribunal:*** Set-up in 1986, and covers the States of Punjab, Haryana and Rajasthan.
- ***Cauvery Water Disputes Tribunal:*** This Tribunal was set up in the year 1990 for the States of Karnataka, Kerala, Tamil Nadu and Puducherry.
- ***Second Krishna Water Disputes Tribunal:*** Set-up in the year 2004 for the States of Maharashtra, Karnataka and Andhra Pradesh.
- ***Vansadhara Water Disputes Tribunal:*** This Tribunal obtained its structure in the year 2010 for the States of Odisha and Andhra Pradesh.
- ***Mahadayi Water Disputes Tribunal:*** Also set up in 2010, this Tribunal covers the States of Goa, Karnataka and Maharashtra.
- ***Mahanadi Water Disputes Tribunal:*** Set up in 2018, for the States of Chhattisgarh and Odisha

Many times, the Central Government legislation failed to be implemented efficiently as has been reflected in the Godavari water dispute in 1962 followed by the Cauvery water dispute in 1970. Formation of a tribunal takes time which eventually defeats the purpose behind such formation and the concerned dispute which was in hand. Such delays and possible loopholes must be addressed and bill regarding amendment is proposed in the Parliament.

Inter-State River Water Disputes (Amendment) Bill, 2019

- The Inter-State River Water Disputes (Amendment) Bill, 2019 was introduced in Lok Sabha by the Minister of Jal Shakti. It amends the Inter-State River Water Disputes Act, 1956. The Act provides for the adjudication of disputes relating to waters of Inter-State rivers and river valleys.
- Under the Act, a State Government may request the Central Government to refer an Inter-State River dispute to a Tribunal for adjudication. If the Central Government is of the opinion that the dispute cannot be settled through negotiations, it is required to set up a Water Disputes Tribunal for adjudication of the dispute, within a year of receiving such a complaint. The Bill seeks to replace this mechanism.
- ***Disputes Resolution Committee:*** Under the Bill, when a State puts in a request regarding any water dispute, the Central Government will set up a Disputes Resolution Committee (DRC), to resolve the dispute amicably. The DRC will comprise of a Chairperson, and experts with at least 15 years of experience in relevant sectors, to be nominated by the Central Government. It will also comprise one member from each State (at Joint Secretary level), who are party to the dispute, to be nominated by the concerned State Government.
  - The DRC will seek to resolve the dispute through negotiations, within one year (extendable by six months), and submit its report to the Central Government. If a dispute cannot be settled by the DRC, the Central Government will refer it to the Inter-State River Water Disputes Tribunal. Such referral must be made within three months from the receipt of the report from the DRC.
- ***Tribunal:*** The Central Government will set up an Inter-State River Water Disputes Tribunal, for the adjudication of water disputes. This Tribunal can have multiple benches. All existing Tribunals will be dissolved, and the water disputes pending adjudication before such existing Tribunals will be transferred to the new Tribunal.
- ***Composition of the Tribunal:*** The Tribunal will consist of a Chairperson, Vice-Chairperson, three judicial members, and three expert members. They will be appointed by the Central Government on the recommendation of a Selection Committee. Each Tribunal Bench will consist of a Chair-person or Vice-Chairperson, a judicial member, and an expert member. The Central Government may also appoint two experts serving in the Central Water Engineering Service as assessors to advise the Bench in its proceedings. The assessor should not be from the State which is a party to the dispute.
- ***Time frames:*** Under the Act, the Tribunal must give its decision within three years, which may be extended by two years. Under the Bill, the proposed Tribunal must give its decision on the dispute within two years, which may be extended by another year.
  - Under the Act, if the matter is again referred to the Tribunal by a State for further consideration,

the Tribunal must submit its report to the Central Government within a period of one year. This period can be extended by the Central Government. The Bill amends this to specify that such extension may be up to a maximum of six months.

- ***Decision of the Tribunal:*** Under the Act, the decision of the Tribunal must be published by the Central Government in the official gazette. This decision has the same force as that of an order of the Supreme Court. The Bill removes the requirement of such publication. It adds that the decision of the Bench of the Tribunal will be final and binding on the parties involved in the dispute. The Act provided that the Central Government may make a scheme to give effect to the decision of the Tribunal. The Bill is making it mandatory for the Central Government to make such scheme.
- ***Data bank:*** Under the Act, the Central Government maintains a data bank and information system at the national level for each river basin. The Bill provides that the Central Government will appoint or authorise an agency to maintain such data bank.

Inter-State Councils

Article 263 of the Constitution of India provides for the establishment of an Inter-State Council. The text of the Article reads as under:

Article 263 Provisions with respect to an Inter-State Council – If at any time it appears to the President that the public Interests would be served by the establishment of a Council charged with the duty of –

- Article 263 (a) inquiring into and advising upon disputes which may have arisen between States;
- Article 263 (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common Interest; or
- Article 263 (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.

Explanation:

Under Article 263 of the Constitution of India, if the President believes that the establishment of an Inter-State Council would help in serving the public Interests, then it is lawful for the President to establish such Council by order. He shall also define the nature of duties to be performed by the Council, its organisation and the procedure to be followed.

The President can charge the Council with the following duties:

- To inquire into and advise upon disputes which may have arisen between States;
- To investigate and discuss subjects in which some or all of the States, or the Union and one or more of the States display a common interest;
- To make recommendations upon any subject and in particular, to make recommendations for enhanced coordination of policy and action pertaining to that subject.

The Inter-State Council was established based on the recommendations of the Sarkaria Commission, 1988. The Council was established in 1990 pursuant to a Presidential order. It functions as a permanent, independent, national forum for consultation. The Inter-State Council comprises of the following members:

- The Prime Minister of India as the Chairman of the Council;
- The Chief Ministers of every State as the members of the Council;
- Chief Ministers of Union Territories having a Legislative Assembly and Administrators of Union Territories not having a Legislative Assembly as members of the Council;
- Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister as members of the Council.
- Four Ministers of Cabinet rank as Permanent invitees Members

The Council was recently reconstituted in 2019, with the Prime Minister as its Chairperson.

The decisions of this Council are advisory in nature, and not binding like the tribunals constituted for resolving Inter-State water disputes, and therefore, can deal with both legal and non-legal disputes. The Council

has been assisted by a secretariat known as the Inter-State Council Secretariat which came into existence in 1991 and was headed by a secretary to the Government of India. The same has been functioning as the secretariat of the Zonal Councils since 2011.

The Councils which have been formed by the President for better policy coordination between various States or the Centre and the States under this constitutional provision are;

- Central Council of Health.
- Central Council of Local Government and Urban Development.
- Four Regional Councils for Sales Tax for the Northern, Eastern, Western and Southern Zones.

In the current crisis due to the enactment of the Citizenship Amendment Act, 2019, there is an increased distrust between the Centre and the States. In such times of constitutional crisis, it is essential that the Council meets to arrive at a harmonious solution.

Mutual recognition of Public Acts, Records, and Judicial Proceedings

Article 261 of the Indian Constitution lays down the provision for public acts, records, and judicial proceedings which reads as,

"Article 261 (1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State

Article 261 (2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament

Article 261 (3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law Disputes relating to Waters."

The purpose of this provision is to erase the difficulty of recognizing acts and records of one State by the others which results because the jurisdiction of a State is confined to its territory only. The full faith and credit clause enable providing public acts, records and judicial proceedings of the Centre and every State throughout the Indian territory thereby vesting the burden of providing a manner and regulating such providence on the Parliament by means of its legislation. Another feature of this provision is that it does not mandate courts of one State to enforce the penal laws belonging to another State thereby only being concerned with civil jurisdiction.

Freedom of Inter-State Trade, Commerce, and Intercourse

Article 301 specifically declares that, "Subject to the other provisions of this Part, trade, commerce and Intercourse throughout the territory of India shall be free."

It is important to note that the freedom guaranteed by Article 301 extends to intra-State trade, commerce, and Intercourse as well as Inter-State trade, commerce, and Intercourse. As a result, Article 301 supports the free movement of trade, business, and sexual activity throughout the country, and it will be violated if limitations are imposed on any State's border. However, when the limits indicated below are applied in accordance with Articles 302 to 305, Article 301 will not be violated;

- When public interest is getting affected in some way or the other, to reserve the same, reasonable restrictions on freedom of trade, commerce, and Intercourse can be imposed;
- On the grounds of public interest also, the Parliament can provide certain reasonable restrictions but a bill for such circumstances has to be introduced in the legislature with the President's sanction;
- Goods imported can be taxed by the legislature provided the same does not turn out to be discriminatory;
- The freedom provided under Article 301 of the Constitution is subjected to nationalisation laws.

In order to implement these restrictive provisions, the Parliament can appoint a competent authority but till now nothing of such sort has taken place.

Zonal Councils

The States Reorganisation Act of 1956 divides India into five zones namely Northern, Central, Eastern, Western and Southern thereby providing a zonal council for each zone. While forming these zones, several factors have been taken into account which include: the natural divisions of the country, the river systems and means of communication, the cultural and linguistic affinity and

the requirements of economic development, security and law and order.

Thus, these Zonal Councils are statutory bodies composed of:

- Home Minister of the Union Government as the common Chairman,
- Chief Ministers of all the States in that zone,
- Two ministers from each State in the zone,
- and an Administrator of each Union territory in that zone.

The subject matters that are majorly taken up by the Zonal Councils for discussions include economic and social planning, disputes associated with borders, Inter-State transportation, linguistic minorities, and so on. The objectives that are taken up by these Councils include:

- Promote emotional integration within the country by harmonizing one State with the other and between the Centre and the States;
- Increase cooperation between Centre and the States on social and economic concerns by means of exchanging views;
- Promotion of economic development in the States;
- Maintaining political equilibrium between different regions of the democratic nation.

Inter-State relations as having been discussed in this article holds immense relevance in today's time when diplomatic relations are increasing among different nations. In order to deal with the internal issues of a nation effectively, Inter-State relations need to be established effectively.

Though India being a vast nation spread over 28 States and 7 Union Territories are facing different problems associated with different regions, maintenance of unity among the States and between the Centre and the State has been the only way to bringing about logical solutions to such problems.

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15 Emergency Provisions

Introduction

India is a federal country of "its own kind". It acquires unitary features during an Emergency. Due to this reason, Dr B.R Ambedkar called the Indian Federal system as unique because it becomes entirely unitary during an Emergency. Part- XVIII of Indian Constitution deals with the Emergency provisions i.e., Articles 352 to 360. During an Emergency, as Constitutional machinery fails, the system converts itself into a unitary feature. The Emergency is a period of depression where all Fundamental Rights of a person is taken away except Article 20 and 21.

Types of Emergencies

There are three types of Emergencies mentioned in the Constitution. The power of imposing all three types of Emergencies is vested upon the President of India. The concept of Emergency was borrowed from the Weimar Constitution of Germany. The three types are as follows –

- Article 352 – National Emergency
- Article 356 – President's Rule
- Article 360 – Financial Emergency

Constitutional Provisions for Emergency

Article 352: Proclamation of Emergency.

Article 353: Effect of Proclamation of Emergency.

Article 354: Application of provisions relating to the distribution of revenues while a proclamation of emergency is in operation.

Article 355: Duty of the Union to protect States against external aggression and internal disturbance.

Article 356: Provisions in case of failure of constitutional machinery in State.

Article 357: Exercise of legislative powers under Proclamation issued under Article 356.

Article 358: Suspension of provisions of Article 19 during Emergencies.

Article 359: Suspension of the enforcement of the rights conferred by Part III during emergencies.

Article 360: Provisions as to Financial Emergency.

National Emergency

Article 352 of the Constitution provides for the provision of National Emergency which can be applied if any extraordinary situation arises that may threaten the security, peace, stability and governance of the country. Whenever any of the following grounds occur, an emergency can be imposed:

- War
- External aggression
- Internal rebellion.

Article 352 provides that if the President is 'satisfied' on the grounds that the security of India is threatened due to outside aggression or armed rebellion, he can issue a proclamation to that effect regarding the whole of India or a part thereof.

Parliamentary Approval and Duration

- Article 352(3) states that when a written advice is given by the Union Cabinet to the president then only the President can make such a proclamation.
- The proclamation of emergency must be placed before each House of the Parliament and approved within one month of the declaration of the proclamation otherwise it will expire.
- However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
- If approved by both the houses, the Emergency continues for 6 months and can be extended to an indefinite period with an approval of the Parliament for every six months.

- Until 44th Amendment 1978, if Parliament approves proclamation of National Emergency, then it remains in operation on pleasure or desire of cabinet or executive.
- Any of the above resolution related to proclamation or renewal of National Emergency must be passed by both houses of Parliament by a special majority (i.e., the majority of the total membership of that house or not less than 2/3rd of members presents and voting). This provision is added by 44th Amendment 1978 and before that such resolution can be passed by simple majority i.e., more than total members present and voting.

Furthermore, it is not necessary that for the proclamation of National emergency, external aggression or armed rebellion should actually happen. Even if there is a possibility that such a situation can arise, a National Emergency can be proclaimed.

In Minerva Mills vs Union of India, it has been held that there can be no bar to judicial review of determining the validity of the proclamation of emergency issued by the President under Article 352(1). The court's powers are limited only to examining whether the limitations conferred by the Constitution have been observed or not. It can check if the satisfaction of President is on valid grounds or not. If the President is satisfied that grounds for national emergency exist but the same is based on absurd, mala-fide or irrelevant grounds then it won't be considered that the President is 'satisfied'.

Procedure for revoking emergency

If the situation improves then the President can revoke the emergency through another proclamation. The 44th Amendment of the Constitution provides that a requisition for the meeting can be made by ten per cent or more members of the Lok Sabha and in that meeting; it can disapprove or revoke the emergency by a simple majority. The emergency will immediately become inoperative in such a case.

Territorial Extent of Proclamation

The President may make a Proclamation of Emergency in respect of the whole India or any part of India, as required.

44th Constitutional (Amendment) Act, 1978

The imposition of Emergency stressed the legislature to think again about the Constitutional provisions that provide power to the executive to supersede the judiciary hampering the basic structure of the Indian Constitution.

Under Article 352, the amendment had substituted the ground of 'Internal Disturbance' with 'Armed Rebellion'. The President is allowed to impose emergency only when the Union Cabinet communicates to him in writing about their decision.

The Proclamation is required to be approved by both the houses of Parliament by resolution within a month instead of two months by a total majority of the membership of each house of Parliament and by the ratification of not less than 2/3rd members present and voting in each house instead of a simple majority.

Under Article 356, the period for extension of a Proclamation from one month has been amended to six-months. Proclamation in the first instance can only be exceeded for six months.

Effects of Proclamation of Emergency

There are serious consequences, once emergency is proclaimed. It results in adverse effects on the enforcement of fundamental rights of people. Consequences of proclamation of emergency are explained below:

1) ***Executive:*** While a Proclamation of Emergency is in operation, Union can use its executive power to the extent of giving directions to the State relating to the manner in which the executive powers shall be exercised by the State. The Constitution (42nd Amendment) Act 1976 made a consequential change in Article 353.

   It states that the executive power of the Union to give directions and to make laws shall extend to other States too apart from the state where an emergency has been proclaimed and is in operation. The above-mentioned power shall be exercised if the security of India or any part of its territory is threatened by the activities in the part of the territory of India in which emergency has been proclaimed and is in operation.

   In normal times, the power of the executive does not extend to giving such directions subject to certain exceptions.

2) ***Legislative:*** When an emergency has been proclaimed, the Parliament shall have the power to

legislate as regards to State List (List II) as well. The emergency suspends the distribution of legislative powers between the Union and State and not the State Legislature.

3) ***Financial:*** The centre is empowered to alter the distribution of revenue between the Union and the State.

While a Proclamation of Emergency is in operation, the President may, by order define the financial arrangement between the State and the Union as provided by Articles 268 to 279. Such order shall be laid before each House of Parliament and when the Proclamation of Emergency ceases to operate, such order shall to come to an end.

4) ***Extension Life of Lok Sabha:*** The normal life of Lok Sabha can be extended while a proclamation of emergency is in operation. Such an extension can be done by the Parliament for a period not exceeding one year at a time and not beyond a period of six months in any case after the Proclamation has ceased to operate.

5) ***Suspension of Fundamental Rights guaranteed by Article 19:*** Articles 358 and 359 describes the effect of a National Emergency on the Fundamental Rights. These two provisions are explained below:

- Suspension of Fundamental rights under Article 19:
  - According to Article 358, when a proclamation of National Emergency is made, the six fundamental rights under Article 19 are automatically suspended. Article 19 is automatically revived after the expiry of the emergency.
  - The 44th Amendment Act laid out that Article 19 can only be suspended when the National Emergency is laid on the grounds of war or external aggression and not in the case of armed rebellion.
- Suspension of other Fundamental Rights:
  - Under Article 359, the President is authorised to suspend, by order, the right to move any court for the enforcement of Fundamental Rights during a National Emergency. Thus, remedial measures are suspended and not the Fundamental Rights.
  - The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order. The suspension could be for the period during the operation of emergency or for a shorter period. The Order should be laid before each House of Parliament for approval.
  - The 44th Amendment Act mandates that the President cannot suspend the right to move the court for the enforcement of Fundamental Rights guaranteed by Article 20 and 21.

State Emergency

As per Article 356, if the President after receiving a report from the Governor of a State or otherwise is satisfied that such a situation exists where the Government of a State cannot be carried in accordance with the provisions of the Constitution, he may issue a Proclamation.

Approval and Duration

When a Proclamation is issued under Article 356, it shall be first laid before each House of the Parliament. Such Proclamation shall remain in operation for 2 months unless before the expiry of the said period it has been approved by both Houses of the Parliament according to Article 356(3).

Suppose in a case where the Lok Sabha has been dissolved during the issuance of a proclamation of emergency or its dissolution takes place within the above said period of two months and the Rajya Sabha has approved the Proclamation but the Lok Sabha has not approved it.

In such a case, the said proclamation shall not operate unless before the expiry of 30 days it has also been passed by the Lok Sabha after its reconstruction. The Proclamation will remain in operation for 6 months after it has been approved by the Parliament. The duration of an emergency can be extended for 6 months at a time but it cannot remain in operation for more than 3 years.

Revocation

By a subsequent proclamation, State Emergency can be revoked.

Effects

State Emergency shall have the following effects:

- The President shall have all the powers that are exercisable by the Governor in the State.
- The President shall declare that the State shall exercise its Legislative powers by or under the authority of the Parliament.
- If the President deems fit those necessary provisions shall be made to serve the purpose of the Proclamation, then he may make such provisions.

President's rule: Political tool

The main intention of Constitution makers in view of Article 356 was that it must be used solely as an 'emergency power' and it must be invoked only in the event of "failure of constitutional machinery" in the state. Dr. Ambedkar wished that Article 356 would continue to be a "dead letter." However, the reality is entirely different. President's rule was imposed one hundred and seven times till date in various states. Well-functioning state governments were collapsed to pave the way for the Union government's party to acquire power in the state.

According to the nature and scope of Article 356, it has been observed that there are two essential components of Article 356.

- Firstly, the President can impose President rule in a state based on a report sent by the Governor of the concerned state or it can be also imposed in other circumstances that deem fit to the President on the aid and advice of the council of ministers to protect the state. The same can be reflected in the use of the word 'otherwise' in Article 356.
- Secondly, President rule can be applied in a state when there is a failure of Constitutional machinery. Failure of Constitutional machinery refers to a situation when the state government can't carry out its functions following provisions of the Constitution.

The courts can examine the subject matter of the Governor's report that has attracted 'President's satisfaction'. Governor acts under the pleasure of President and President acts on aid and advice of the council of ministers belonging to the ruling party at the centre. Therefore, there is a great probability of the Governor's report being influenced by the ruling party's interests and agendas at the centre and it has also been observed in various times.

For example, Indira Gandhi as Prime Minister has a record of imposing President rule the greatest number of times and in 90% circumstances, it was imposed in states that were ruled by opposition parties or in states that didn't run in accordance with her party interests.

S.R. Bommai was the Karnataka's Chief Minister between August 1988 and April 1989. He led a Janata Dal government, which was dismissed on 21st April 1989 when President's Rule (Article 356) was imposed in Karnataka. Until that time, imposing Article 356 on States ruled by the opposition parties (to the one at the Centre) was a common practice.

In this particular case, the Bommai-led government was dismissed on the grounds that he had lost his majority because of several defections. Even though Bommai presented the then Governor P Venkata Subbiah with a copy of the resolution passed by the Janata Dal Legislature Party, he was denied an opportunity to prove his majority in the house.

Bommai first went to the Karnataka High Court against the Governor's decision. However, his writ petition was dismissed by the High Court. Then, Bommai moved to the Supreme Court of India. In March 1994, a nine-judge constitutional bench of the Supreme Court gave the landmark judgement, which would go on to become one of the most widely cited one with respect to Article 356 and its arbitrary usage by the Central Government.

Disputes raised due to S.R. Bommai case

The SR Bommai case raised questions on the proclamation of President's rule in a state. The Supreme Court had to discuss the grounds and the extent of the imposition of President's rule in a State. Questions were also raised whether the imposition of President's rule is challengeable.

Bommai Case Judgement

This landmark verdict put restrictions on the centre for imposing the President's Rule on states.

- It said that the power of the President to dismiss a Government of a State is not absolute.
- It said that the President should use this power only after his proclamation (of imposing President's Rule) has been approved by both Houses of the Parliament.

- Until then, the President can only suspend the Legislative Assembly.
- In case the proclamation does not get the approval of both the Houses, it lapses at the end of a period of two months, and the dismissed Government is revived.
- The suspended Legislative Assembly also gets reactivated.
- The Supreme Court also stated that the proclamation of the imposition of Article 356 is subject to judicial review.
- The verdict also stated in no uncertain terms that the test of majority of the government should be done in the floor of the Assembly and is not subject to the Governor's opinion.
- The Supreme Court held that policies of a State Government directed against an element of the basic structure of the Constitution would be a valid ground for the exercise of the central power under Article 356.

Difference between Articles 352 and 356

National Emergency (Article 352)	President's Rule (Article 356)
National Emergency is proclaimed under Article 352 on the ground of war, external aggression and armed rebellion.	State Emergency is proclaimed under Article 356 when the State Government cannot be carried out according to the Constitutional provisions.
State Executive and legislature perform their power as mentioned in List II of Schedule VII. Concurrent List power vests in the Central Government.	State Executive powers get vested in the Central. Governor works in the state on the advice of the President. State Legislative Assembly is dissolved or suspended.
The Proclamation may be continued for an indefinite time as no maximum period is prescribed but it is subject to renew every six months.	The maximum period up to which State Emergency may continue is three years after which it will cease but it may be further continued after the Constitutional Amendment.
Fundamental Rights are suspended during National Emergency except Article 20 & 21.	There was no effect on the Fundamental Rights of the people of the State.
Resolution for the continuation of the proclamation of emergency must be passed with a special majority.	Resolution can be passed with a simple majority in the Parliament.
The resolution for the revocation of the proclamation can be passed by Lok Sabha.	Resolution for revocation of the proclamation can be passed by President in his discretion.
During this emergency, the Centre's relation undergoes a modification with all the States.	Centre's relation undergoes a modification only with the State under the President's Rule.
There is no delegation of law-making power of Parliament under the State list.	President may make laws for the state after consulting with the Members of Parliament from that State.

Financial Emergency

As per Article 360, a proclamation of Financial Emergency may be issued, if the President is of the opinion that such a situation exists where the financial stability of India or any part of the territory is threatened.

Duration

The proclamation of Financial Emergency shall cease to operate after 2 months unless it has been approved by both the Houses of Parliament. In a case where during the issuance of proclamation the Lok Sabha has been dissolved or its dissolution takes place within the said period of 2 months and the Rajya Sabha has approved the proclamation but the Lok Sabha has not approved it. Then, such a proclamation shall not operate unless before the expiry of 30 days Lok Sabha has passed a resolution approving proclamation.

Revocation

By a subsequent proclamation, Financial Emergency can be revoked.

Effects

Financial Emergency has the following effects:

- The executive authority of the Union shall give directions to the State regarding the maintenance of financial stability.
- It may include provisions for reduction of salaries and allowances of all or any class of persons serving in the State. This includes Judges of the High Court and the Supreme Court.
- The Money Bills shall be reserved for the approval of the President.

List of National Emergencies

National Emergency was invoked three times from 1962 to 1977.

- First National Emergency was invoked in October 1962 during Indo-China war. This Emergency remained in force till January 1968. It was imposed by the then President of India Shri. Sarvepalli Radhakrishnan. The reason for imposing this

emergency was the Chinese attack in Arunachal Pradesh (North-East Frontier Agency). External Aggression was ground for invoking the Emergency.

- The second Emergency was invoked in December 1971 during the Indo-Pak war. This Emergency remained in force till March 1977. This Emergency was imposed by the then President of India Mr. V.V. Giri. The reason for imposing Emergency was war in Bangladesh. Ground for imposing this Emergency was External Aggression, the Indian military was clashing with the military of Pakistan to provide independence to East Pakistan.
- The period of the war was 11 days and considered as the shortest war in the World. But, in the meantime, the third emergency was imposed in India. The third emergency continued the second emergency until 1977.
- The third Emergency was invoked in June 1975 due to an internal disturbance in the Central Government. It remained in force till March 1977. This Emergency was imposed by the then President of India Fakhruddin Ali Ahmed. It was imposed when the second Emergency was already in existence. The real cause behind this Emergency was to secure the seat of the then Prime Minister of India Mrs. Indira Gandhi who was found guilty in corrupt practices during her constituency campaign by the Allahabad High Court.

Criticism of Emergency Provisions

- It destroys the federal character of the Constitution.
- Union executive can become all-powerful vis-à-vis state.
- It could lead to President becoming a dictator.
- Financial autonomy of the states could be threatened.
- It seriously imperils the observance of Fundamental Rights in the country.
- No modern democratic country has these provisions included in their Constitution.

Having dealt with all emergency provisions, it is easy to understand the purpose behind the enforcement of such provisions. But it is important to note that even when these provisions are provided for the nation's security and protection of the people, the provisions in themselves give drastic discretionary powers in the hands of the Executive. This affects the federal structure of the nation and essentially turns it into a unitary one.

Therefore, the courts should be given the power to expand the powers of the Centre, as the same will act as a built-in mechanism to check if the discretionary powers are being used arbitrarily by the Parliament and the Executive.

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16 President

Introduction

In India, the Constitution of India establishes a Parliamentary form of government, which means Head of the State is the Constitutional head and real executive powers are vested in the Council of Ministers. Articles 52 to 78 in Part V of the Constitution deals with Union Executive. Union Executive consists of President, Vice-President, Prime Minister and Council of Minister.

Art 52 of the Constitution says that there shall be the President of India. He is the Head of the State. Art 53 of the Constitution says that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officer's subordinate to him in accordance with this Constitution. Art 73 the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws; and includes the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty on agreement. Thus, the Executive power of President is co-existent with the legislation.

Election of President:

Article 54: The President shall be elected by the members of an electoral college consisting of the elected members of both Houses of Parliament; and the elected members of the Legislative Assemblies of the States.

Explanation:

The election of President is done by indirect election. Article 54 provides the manner of election of the President. This article provides that there should be an Electoral college

Electoral college for President's election includes:—

- The Elected Members of the Houses of Parliament
- The Elected Members of the State Legislative Assemblies
- The Elected Members of the Union Territories of Delhi and Puducherry having Legislative Assemblies (this part was added later by the 70th amendment Act; for inclusion of Jammu and Kashmir Union Territory similar amendment will be needed).

Thus, in the Electoral College, the **nominated members of the legislature are not allowed** to vote for President. The following group of people is not involved in electing the President of India:

- Nominated Members of Rajya Sabha (12)
- Nominated Members of State Legislative Assemblies
- Members of Legislative Councils (Both elected and nominated) in bicameral legislatures
- Nominated Members of union territories of Delhi and Puducherry

Article 55: Manner of election of President

Article 55(1) As far as practicable, there shall be uniformity in the scale of representation of the d different States at the election of the President

Article 55(2) For the purpose of securing such uniformity among the States inter se as well as parity b between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:

- ***Article 55(2)(a)*** every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
- ***Article 55(2)(b)*** if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub clause (a) shall be further increased by one;
- ***Article 55(2)(c)*** each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub clause (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one half being counted as one and other fractions being disregarded

Article 55(3) The election of the President shall be held in accordance with the system of proportional

representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation:

The system of proportional voting is adopted for this election, in which the number of votes is provided in proportion to the population of the state in case of State Legislature. Members and the Members of Parliament get their number of votes by dividing the total votes of the State Legislature with the total number of elected members of Parliament.

Calculation of votes:

The Presidential election uses a special voting to tally the votes. A different voting weightage is assigned to an MP and an MLA. The value of each MLA's vote is determined based on the population of their state and the number of MLAs. For instance, an MLA from UP has a value of 208 while an MLA from Sikkim has 7. Due to a Constitutional Amendment passed in 2002, the population of the state as per the 1971 census is taken for the calculation.

The value of an MP's vote is the sum of all votes of MLAs across the country divided by the number of elected MPs

For e.g., to find the number of votes for the members of Legislature of a State, the total population of the State will be divided by the number of elected members. The quotient which will be obtained will be divided by 1000 to find out the multiples of 1000. If the quotient is 10,55,000 then after dividing it by 1000, we get 1055. So, each member of the Legislature will get 1055 votes. Similarly, to get the votes for Members of Parliament, the total votes of all the State legislature will be divided by the total number of members of Parliament who have been elected.

The value of an MP's vote will change from 708 in 2017 to 700 in 2022. As Jammu and Kashmir is not a state now, Jammu and Kashmir's MLAs cannot participate in the voting process hence the value will drop from 708 to 700.

$$\text{Value of one MP's vote} = \frac{\text{Total value of all votes of MLAs}}{\text{Total number of elected MPs}}$$

$$= \frac{543231}{776} = 700$$

Note that the value of an MP's vote is rounded off to the closest whole number. This brings the combined value of the votes of all MPs to 543,200 (700 x 776).

What is the number of votes required to win?

The voting for the Presidential elections is done through the system of single transferable vote. In this system, electors rank the candidates in the order of their preference. The winning candidate must secure more than half of the total value of valid votes to win the election. This is known as the quota.

Assuming that each elector casts his vote and that each vote is valid:

$$\text{Quota} = \frac{\text{Total value of MP's votes + Total value of MLA's votes}}{2} + 1$$

$$= \frac{543200 + 543231}{2} + 1 = \frac{1086431+1}{2} = 543{,}216$$

There is a single transferable vote which is cast by every elected member of the legislature through a secret ballot. The counting of votes takes place in rounds. In Round 1, only the first preference marked on each ballot is counted. If any of the candidates secures the quota at this stage, he or she is declared the winner.

If no candidate secures the quota in the first round, then another round of counting takes place. In this round, the votes cast to the candidate who secures the least number of votes in Round 1 are transferred. This means that these votes are now added to the second preference candidate marked on each ballot. This process is repeated till only one candidate remains.

The anti-defection law which disallows MPs from crossing the party line does not apply to the Presidential election. This means that the MPs and MLAs can keep their ballot secret.

Note that it is not compulsory for an elector to mark his preference for all candidates. If no second preference is marked, then the ballots are treated as exhausted ballots in Round 2 and are not counted further.

Article 71: Disputes regarding the election of the President

Article 71 deals matters relating to the election of the President. It states that any dispute arising with respect to the election of the President will be adjudicated by the Supreme court and its decision will be considered final.

If the election of a person as President is declared void, acts done by him in the exercise of the powers of the office of President will not be considered invalid by reason of the order of the Supreme Court.

Parliament can formulate any law regarding the election of a President in consonance with the provisions of the Constitution.

The election of a person as President or Vice President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

Term of Office of President:

Article 56(1) The President shall hold office for a term of five years from the date on which he enters upon his office: Provided that

- ***Article 56(1)(a)*** the President may, by writing under his hand addressed to the Vice President, resign his office;
- ***Article 56(1)(b)*** the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in Article 61
- ***Article 56(1)(c)*** the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office

Article 56(2) Any resignation addressed to the Vice President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

Explanation:

Article 56 defines the term of the office of the President to be of five years unless:

- A new President enters the office, the incumbent President shall hold it;
- President resigns before the expiry of the term by writing it to the Vice President;
- The President is removed from his office, for violation of the Constitution, by the process of impeachment provided under article 61.

The article also states that any resignation made by the President to the Vice President must be communicated to the Speaker of the Lok Sabha by the Vice President himself.

Article 57: Eligibility for re-election: A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

Explanation: In India, there is no restrictions on number of terms the person can become President. In USA a person can be President for a maximum of two terms.

Qualifications:

Article 58 talks about the eligibility of a person to become President of India. It says that a person is eligible for election as President if he:

- is a citizen of India;
- has completed the age of thirty-five years;
- is qualified for election as a member of the House of the People.
- A person can be disqualified for election as President if he holds any office of profit under
  - the Union of India or;
  - the Government of any State or;
  - under any local or other authority subject to the control of any Government of India.

Office Of Profit: The law does not clearly define what constitutes an office of profit but the definition has evolved over the years with interpretations made in various court judgments. An office of profit has been interpreted to be a position that brings to the office-holder some financial gain, or advantage, or benefit. The amount of such profit is immaterial.

In 1964, the Supreme Court ruled that the test for determining whether a person holds an office of profit is the test of appointment. Several factors are considered in this determination including factors such as:

i. whether the government is the appointing authority,
ii. whether the government has the power to terminate the appointment,
iii. whether the government determines the remuneration,
iv. what is the source of remuneration, and;
v. the power that comes with the position.

Conditions of President's Office:

Article 59 talks about the condition of the President's Office:

Article 59 (1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

Article 59 (2) The President shall not hold any other office of profit.

Article 59 (3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

Article 59 (4) The emoluments and allowances of the President shall not be diminished during his term.

Explanation:

The Constitution lays down the following condition for President's office:

- The President cannot be a member of either House of Parliament or of any other House of the Legislature of any State.
- If he is a member of either House of Parliament or a member of a House of the Legislature of any State, he will need to vacate his seat in that House on the date of entering into his office as President.
- The President shall not hold any other office of profit.
- The President shall be authorized to the use of his official residences without rent.
- He shall be also authorized to emoluments, allowances, and privileges determined by Parliament.
- The emoluments and allowances of the President cannot be diminished or reduced during his term of office.

Official residence, emoluments, and allowances of President

The President of India is also entitled to certain allowances and privileges, as he is the first citizen of the country. The President of India is entitled to rent-free accommodation, allowances, and privileges by law. He is also entitled to:

- Free medical facilities;
- Free accommodation;
- Free treatment for life;
- The official state car of the President.
- The salary of the President has undergone several changes since independence-in 2016, the salary was increased to Rs. 5,00,000.
- Rashtrapati Bhavan is the President's official residence.

Oath by the President:

Article 60: Any person holding the office of the President or delivering the functions of the President must, before entering into the office of the President, be made to subscribe in the presence of the Chief Justice of the country or any other senior-most judge of the Supreme Court, to an oath or affirmation in the name of God to faithfully execute the office of President of India and to preserve, protect and defend the Constitution and the law to the best of his abilities and that he would devote himself to serve the people of India and ensure their well-being.

Impeachment of the President

In India, the impeachment is used in two contexts.

- Impeachment of President of India
- Impeachment of the Supreme Court Judge

Article 61: Procedure for impeachment of the President

Article 61(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

Article 61(2) No such charge shall be preferred unless

- ***Article 61(2)(a)*** the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one fourth of the total number of members of the House has been given of their intention to move the resolution, and
- ***Article 61(2)(b)*** such resolution has been passed by a majority of not less than two thirds of the total membership of the House.

Article 61(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented as such investigation.

Article 61(4) If as a result of the investigation a resolution is passed by a majority of not less than two thirds of the total membership of the House by which the charge was investigated or cause to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

Explanation:

- No President has so far faced impeachment proceedings. However, the procedure has been laid down by the law of the land. The President may be removed before his tenure through impeachment for violating the Constitution of India by the Parliament of India. The process may begin in either of the two Houses of the Parliament.
- A House starts by levelling charges against the President. The charges are present in a notice which must be signed by at least a quarter of the total members of that House. The notice is then sent up to the President and taken up for consideration after 14 days.
- An impeachment resolution on the President must be made by a two-thirds majority (special majority)

of the total members of the originating House, to be later sent to the other House. The other House conducts an investigation of the charges made.

- Meanwhile, the President can defend himself through an authorised counsel. But if the second House also approves the charges levelled by a special majority, the President stands impeached. Consequently, he is deemed to have vacated his office from the date of passing the resolution.
- In another instance, the Supreme Court inquires and decides disputes or ambiguities about the election of a President as per Article 71(1) of the Indian Constitution. The Supreme Court can remove the President for the electoral misconducts or upon becoming ineligible for Lok Sabha member as laid under the Representation of the People Act, 1951.

Time of holding the election on expiry of the term and filling casual vacancies

Article 62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy

Article 62 (1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term

Article 62 (2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of Article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office

Explanation:

Art 62 provides for the filling up of the vacancy to the office of the President. It defines the terms of office of the person filling the casual vacancy as well as the time of holding elections to fill the vacancy.

It states that an election to fill the vacancies must be fulfilled before the expiration of the term of the office of the President.

A vacancy at the President's office can occur in any of the following ways:

- Expiry of his tenure of five years
- Resignation
- Removal by the impeachment process.
- Death
- Becomes disqualified to hold office or when his election is declared void.

An election to fill the vacancies must be done as soon as possible. The elections, in any case, must be conducted within a time period of six months from the date of occurrence of the vacancy. The new person elected to the office of the President will be subject to all the provisions of Article 56 and will hold his office for a five-year term from the date of entering into the office

When vacancy occurs in the office of President, Vice President discharges his functions until the President resumes his office. In case the office of Vice President is vacant, the Chief justice of India (if his office is also vacant, then the senior most judge of Supreme Court available) acts as a President and discharges the functions of the President.

When any person is acting as a President, he enjoys all the powers and immunities of the President and is entitled to get the emoluments, privileges and allowances as the President.

Powers and Duties of President

Legislative powers of the President of India

- According to Article 85 of the Indian Constitution, the President of India can summon, prorogue and dissolve the house-either before its complete term or after the completion of the term, in either case fresh general elections will have to take place to appoint new members to the house.
- The President can adjourn a house sine dine which means it is adjourned for an indefinite period and the next date to assemble or appear hasn't been announced.
- According to Article 108, The President of India can call both Houses for a joint meeting in the presence of the speaker of Lok Sabha. Such meetings are conducted to clear the conflict between both the Houses which arises over passing of a bill.
- According to Article 87, the President gives a special opening address to both the Houses of the Parliament assembled during, the first session after each general election to both the House of the people, after all the members have taken their oath and the Speaker has been elected. And also, at the beginning of the first session every year where both the Houses are present together. In this session, the President talks about the various policies and programmes of the ruling government and also highlights the important works that were done by them in the previous year.
- According to Article 86(1), the President is bestowed

with the right to summon both the Houses of the Parliament separately or for a joint meeting at any time. This meeting is different from the special opening address that he makes at the first session of each year and at the first session after every general election. This right is termed as the 'Right to address' which can be exercised by him at any time of the year.

- He also has the right to nominate 12 members in the Council of States from the field of Arts, Literature, Science, Social Science etc.
- The President of India while holding the office has to present several reports in front of the Parliament from time to time, those reports are-
  - ***Under Article 112(1)–*** The President has to present reports in front of both the Houses that includes a statement of receipts and expenditure of Government of India for that year.
  - ***According to Article 112(2)***, President shows separate reports of the sum of total expenditure that was said to be charged from Consolidated fund of India and the actual expenditure spent.
  - ***Under Article 151(1)–*** The Annual Audit of expenditures of the funds of the Indian Government, these reports are prepared by the Auditor-General of India.
  - ***Under Article 323(1)–*** Annual report of the Union Public Service Commission, these reports contain the details about the work done by UPSC in that year and also some interesting facts about the civil examinations that are held every year, like for example, the total number of candidates belonging to different fields of subject who appeared in the examination.
  - ***Under Article 281–*** Reports of Finance Commission explaining the details in written form about the actions taken by the commission.
  - Reports of Special officers of Scheduled Castes (SC) and Scheduled Tribes (ST).
  - Reports of Special officers of Linguistic Minorities and Backward Classes.
- Under Article 239, The President has the power to formulate special rules for the Union Territories.
- In certain circumstances, the President can make rules for the peace, progress, and good governance of the Union Territories of Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Puducherry.
- In the case of Puducherry, the President can only make rules when the assembly is dissolved and suspended.
- He appoints Speaker, Deputy Speaker of Lok Sabha, Chairman and Deputy chairman of Rajya Sabha
- He consults the Election Commission of India on questions of disqualifications of MPs.

Executive Powers of the President

As the Executive Head of the State, the President enjoys many executive powers.

- All the actions and decisions of the Government are taken in the name of the President.
- He may/may not make rules to simplify the transaction of business of the Central government.
- He seeks administrative information from the Union government
- He requires Prime Minister to submit, for 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.
- He can declare any area as a scheduled area and has powers with respect to the administration of scheduled areas and tribal areas

Power of the President to make appointments

The President has the power to appoint many Constitutional officers and the members of the Union Government. They include:

- The Prime Minister
- Chief Justice of India and other judges of Supreme Court and High Courts.
- Attorney General of India and determines his remuneration.
- Comptroller and Auditor General of India
- Governors of State
- Chairman and members of UPSC
- Chairman and members of Finance Commission
- Chairman of National Human Rights Commission
- Chief Election Commissioners and other Election Commissioners
- Administrators of Union Territories.
- He appoints National Commissioners of:
  - Scheduled Castes
  - Scheduled Tribes
  - Other Backward Classes
- He appoints Inter-State Council

Military powers of the President

- He is the commander in chief of all the Indian armed

forces.

- He has the power to declare war or maintain peace with any nation on the advice of the ministers and the Prime Minister.
- All kinds of treaties with other nations are signed in the name of the President of the nation.

Financial powers of the President

- The Contingency Funds of India are at the disposal of the President to meet any unforeseen expenses.
- He also causes the presentation of audits in the Parliament.
- No demand of grant can be made without President's recommendation.
- Money bills can be introduced in the Parliament only with his prior recommendation.
- Lays before the Parliament the annual Financial Statement.
- Constitutes Finance Commission to recommend the distribution of revenues between Centre and States.

Diplomatic powers

The President forms the face of Indian diplomacy and helps the nation to maintain cordial relationships with countries across the globe.

- All the Ambassadors and high commissioners in foreign nations are his representatives;
- He receives the credentials of the Diplomatic representatives of other nations;
- Prior to ratification by Parliament, the treaties and agreements with other nations, are negotiated by the President.

Emergency related powers of the President

The President can exercise emergency powers in following cases –

- National Emergency (Article 352(1))- On the request made by the cabinet of ministers, the President can declare national emergency if he gets convinced that the national security or any part of the country is threatened by war or external aggression, or armed rebellion.
- State Emergency (Article 356 and Article 365)- It is also known as President's Rule. If the state administrative body collapses due to any reason or if it is found that the State government cannot govern the state according to the provisions of the Constitution, then the President can declare an emergency.
- Financial Emergency (Article 360)- It is imposed by the President if he reckons financial stability of the country is in danger. A proclamation declaring financial emergency must be approved by both the Houses within 2 months from the date of its issue.

Judicial powers of President

The President enjoys the following privileges as his judicial powers:

- He can rectify the judicial errors;
- He exercises the power of grant of pardons and reprieves of punishments;
- President can seek the advice of Supreme Courts on:
  - Legal matters,
  - Constitutional matter,
  - Matters of national importance. However, the advice tendered by the Supreme Court is not binding on the President.

Article 72: Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases

Article 72 (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence

Article 72 (1) (a) in all cases where the punishment or sentence is by a court Martial;

Article 72 (1) (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

Article 72 (1) (c) in all cases where the sentence is a sentence of death

Article 72(2) Noting in sub clause (a) of Clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

When can the President use his Pardoning Powers?

The President shall have the power to grant pardon to any person convicted of any offence in all cases:

- Where the punishment was given by a Court Martial
- Where the sentence is a death sentence
- Where the punishment is for an offence which is related to a matter which can be decided by the executive power of the Union
- The President cannot act as per his wishes while granting a pardon. He must be guided by the Home Minister and the Council of Ministers before taking any decision. The President must act on the advice

provided by the ministers under Article 74 of the Constitution.

Five types of pardons can be granted under Article 72 of the Indian Constitution, as stated below:

Pardon

When the person is granted a pardon by the President, the conviction, sentence, and all the restrictions on him are removed. After being granted pardon, it appears that there was no criminal record on the person, and he is free to live in society.

Commute

When the President uses this power, one form of punishment is substituted with another. For example, rigorous imprisonment can be commuted to simple imprisonment. The conviction will stay on the record of the accused.

Respite

Respite which means reducing the quantum or degree of punishment of the convicted person considering to some special circumstances of the convict, such as physical disability or pregnancy of the offender.

Reprieve

When the President uses this power, the punishment or the sentence is delayed for a temporary period. It is done so that the President can have time to decide about pardoning the sentence.

Remission

When the President uses this power, the type of punishment remains the same, but the period of punishment is reduced. Rigorous imprisonment of ten years can be reduced to five years under this power. It states that the appropriate government with or without conditions may at any time accept, suspend or remit the punishment for an offence wholly or any part of the punishment.

Pardoning Power of President and Governor:

Article 161 grants the power to the Governor of the state to suspend, remit or commute sentences of the offenders in certain cases relating to a violation of provisions or laws to which the executive power of the state extends.

Article 72	Article 161
Grants power to the President of India.	Grants powers to the Governor of state.
The power is wider in scope.	The scope of powers is narrower.
The powers of pardon extend to cases of Court Martial as well.	Power cannot interfere with cases of Court Martial.
Allows President to grant pardon in cases of death sentence.	Governor cannot grant pardon in cases of death sentence.

Ordinance making powers of the President

Article 123 deals with the ordinance making power of the President. President has many legislative powers and this power is one of them.

Article 123: Power of President to promulgate Ordinances during recess of Parliament

Article 123 (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require;

Article 123 (2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance;

- ***Article 123 (2) (a)*** shall be laid before both House of Parliament and shall cease to operate at the expiration of six weeks from the reassemble of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and
- ***Article 123 (2) (b)*** may be withdrawn at any time by the President;

Explanation Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause

Article 123 (3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

Explanation:

Ordinance is a type of law that is promulgated by the President when both of the Houses are not in session or when either of them is not in session. The recommendation of the Union Cabinet is a must for the promulgation of the Ordinance. Ordinance can only be issued on the matters on which Parliament can legislate.

The President with the issuance of the Ordinance can amend or repeal an act of the Parliament, but this will be prevalent only for a short duration of time, because Ordinances are issued for a shorter term itself.

The President though has the power of promulgating

the ordinances but it cannot be done unless he is satisfied that there are circumstances that require him to take immediate action.

Once the ordinance has been passed it requires to be approved by the Parliament within six weeks of reassembling. The same will cease to operate if disapproved by either House. Hence President lays before the Parliament the ordinance issued by him during the recess of the Parliament. If Parliament does not take any action, then ordinance ceases to operate on the expiry of six weeks from the reassembly of Parliament.

The President may withdraw an ordinance at any time. However, he exercises his power with the consent of the Council of Ministers headed by the Prime Minister.

Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be counted from the later of those dates.

The maximum life of an ordinance can be six months and six weeks, in case of non-approval by the government (six months being the maximum gap between the two sessions of the Parliament).

The Ordinances may have retrospective effect and may modify or repeal any act of Parliament or other ordinances. It may be used to amend a tax law but it can never amend the Constitution.

Legislative Development	Argument
R.C. Cooper vs. Union of India (1970)	The Supreme Court, while examining the Constitutionality of the Banking Companies (Acquisition of Undertakings) Ordinance, 1969 which sought to nationalise 14 of India's largest commercial banks, held that the President's decision could be challenged on the grounds that 'immediate action' was not required; and the Ordinance had been passed primarily to by-pass debate and discussion in the legislature.
38th Constitutional Amendment Act, 1975	Inserted a new clause (4) in Article 123 stating that the President's satisfaction while promulgating an Ordinance was final and could not be questioned in any court on any ground.
44th Constitutional Amendment Act,1978	Deleted clause (4) inserted by the 38th CAA and therefore reopened the possibility for the judicial review of the President's decision to promulgate an Ordinance.
A.K. Roy vs. Union of India (1982)	In A.K. Roy vs. Union of India (1982) while examining the Constitutionality of the National Security Ordinance, 1980, which sought to provide for preventive detention in certain cases, the Court argued that the President's Ordinance making power is not beyond the scope of judicial review.
	However, it did not explore the issue further as there was insufficient evidence before it and the Ordinance was replaced by an Act. It also pointed out the need to exercise judicial review over the President's decision only when there were substantial grounds to challenge the decision, and not at "every casual and passing challenge".
T. Venkata Reddy vs. State of Andhra Pradesh (1985)	In T Venkata Reddy vs. State of Andhra Pradesh (1985), while deliberating on the promulgation of the Andhra Pradesh Abolition of Posts of Part-time Village Officers Ordinance, 1984 which abolished certain village level posts. The Court reiterated that the Ordinance making power of the President and the Governor was a legislative power, comparable to the legislative power of the Parliament and state legislatures respectively. This implies that the motives behind the exercise of this power cannot be questioned, just as is the case with legislation by the Parliament and state legislatures.
D.C. Wadhwa vs. State of Bihar (1987)	It was argued in D.C. Wadhwa vs. State of Bihar (1987) the legislative power of the executive to promulgate Ordinances is to be used in exceptional circumstances and not as a substitute for the law-making power of the legislature. Here, the court was examining a case where a state government (under the authority of the Governor) continued to re-promulgate ordinances, that is, it repeatedly issued new Ordinances to replace the old ones, instead of laying them before the state legislature. A total of 259 Ordinances were re-promulgated, some of them for as long as 14 years. The Supreme Court argued that if Ordinance making was made a usual practice, creating an 'Ordinance raj' the courts could strike down re-promulgated Ordinances.
S.R. Bommai v. Union of India	In this case the scope of Judicial Review was expanded as to where the court told that where the action by the President is taken without the relevant materials, the same would be falling under the category of "obviously perverse" and the action would be considered to be in bad faith. The Supreme Court held that the exercise of power by the President under the Article 356(1) to issue proclamation is Justiciable and subject to Judicial Review to challenge on the ground of mala-fide.

An ordinance would be made open to challenge on the following grounds:

- It constitutes colourable Legislation.
- It violates any of the Fundamental Rights as mentioned in our Constitution.
- It is violative of substantive provisions of our Constitution such as an article 301.
- Its retrospectively enforcement is unconstitutional.

Veto Power of President

Constitutional Provision: Article 111 of the Constitution provides guidelines for the use of the Presidential veto in different situations.

Article 111 says that "When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall-

- Give his assent to the Bill or
- Withholds his assent or
- Returns the Bill (except Money Bill) to the Parliament with a message for reconsideration of the Bill

Types of Veto Powers available to the President

The power of Veto is basically the power of the executive (through President) to override any act of the legislature. The veto powers can be classified into four categories-

- Absolute Veto
- Suspensive Veto
- Pocket Veto
- Qualified Veto

Veto powers available to President of India: The President of India has Suspensive Veto, Pocket Veto and Absolute Veto but does not have Qualified Veto (unlike USA President).

Absolute Veto:

- It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and does not become an act.
- Used in following two cases:
  - When the bill passed by the Parliament is a Private Member Bill.
  - When the cabinet resigns before the President could give his assent to the bill. The new cabinet may advise the President to not give his assent to the bill passed by the old cabinet.

Note: President does not use Absolute veto power on his discretion. The President shall act on the advice of the Council of the Minister.

Example- In 1954, an Absolute veto was exercised by Dr. Rajendra Prasad as a President when he withheld the assent for the PEPSU Appropriation bill.

The reason was that the Bill was passed by the Parliament during the President's rule in the state of PEPSU. However, by the time of Presidential assent, it was revoked.

Suspensive Veto:

- President uses a suspensive veto when he returns the bill to the Indian Parliament for its reconsideration.
- If the Parliament resends the bill with or without amendment to the President, he has to approve the bill without using any of his veto powers.
- Exception: The President cannot exercise his suspensive veto in relation to Money Bill.

Pocket Veto:

- The bill is kept pending by the President for an indefinite period when he exercises his pocket veto.
- He neither rejects the bill nor returns the bill for reconsideration.
- Unlike, the American President who has to resend the bill within 10 days, the Indian President has no such time-rule.

Example- The Indian President Giani Zail Singh had exercised a pocket veto for the Indian Post Office (Amendment) Bill. The reason was that the Bill was facing criticism for violating the right to freedom of speech of the press. In the end, the Bill became dead when Parliament decided not to move forward with it.

Qualified Veto:

- President can withhold the assent but it can be overridden by the legislature with a higher majority.

Veto over State Bills:

- The Governor is empowered to reserve certain types of bills passed by the State Legislature for the consideration of the President.
- The President can withhold his assent to such bills not only in the first instance but also in the second instance.
- Thus, the President enjoys absolute veto (and not suspensive veto) over state bills.
- Further, the President can exercise pocket veto in respect of state legislation also.

Few important points:

- Veto powers of the President are **not available against the money bill and the Constitutional amendment bill** of the Parliament.

- Pocket veto of the President is his/her situational discretionary power and has not been mentioned on the Constitution.

Privileges of the President:

Article 361: Protection of President and Governors and Rajpramukhs

Article 361 (1) The President, or the Governor or Rajpramukhs of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties: Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61: Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Governor of India or the Government of a State.

Article 361 (2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

Article 361 (3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

Article 361 (4) any civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

Explanation:

Under Article 361, the President is protected from being answerable to any court for:

- For exercise and performance of his powers and duties of his office;
- For doing any act or claimed of doing any act in the exercise of those powers and duties;

The conduct of the President can be reviewed only if either House of Parliament designates or appoints any court tribunal or any other body to investigate the charges under Article 61.

But it does not prevent any person from bringing any valid proceeding against the Governor or President

The Article immunes the President against all types of criminal proceedings during the term of his office. No issuance of any order relating to the arrest and imprisonment of the President can be made by any court during his term of office.

A civil proceeding can be constituted against the President during his term of office if:

- The act is done or alleged to have been done, whether before or entering the office of the President, by him was in his personal capacity;
- Two months prior notice is provided, to the President or was sent to his office, stating:
- The nature of the proceeding;
- The cause of action;
- The details of the other party including name, description, and place of residence;
- The relief claimed by the other party

Position of the President

The position of the President has changed, with respect to his discretion to use his power, has changed since the inception of the Constitution. The two major changes came through the 42nd and 44th Amendment Act of the Constitution.

Prior to the 42nd Amendment Act of 1976

Prior to the 42nd amendment to the Constitution, the President was free to make decisions based on his wisdom. He may also consider the Council of Ministers for their advice on the action. As the Constitution at that time talks about constituting a Council of Ministers with a Prime Minister, as its head, to aid and advise the President in carrying out his duties.

After the 42nd Amendment Act, 1976

Later, the Constitution was amended to add the phrase that the President shall act on the aid and advice of the council of ministers. But the provision was still ambiguous whether the advice given by the Council of Ministers is binding on the President or not.

44th Amendment Act, 1978

This amendment was brought it to swipe off the ambiguity created by the 42nd amendment. This provision said that:

- President can send back the advice to the Council of Ministers for reconsideration once;
- If the same advice is sent again without modifications by the Council, then President is bound to accept it.

Is the President a Titular head?

From the various positions, it can be seen that the President has been vested with many powers under the Constitution and all the decisions and actions of the Government are taken in his name. But while there are many powers which are enjoyed by the President, many of them are in actual practice, residing with the Council of Ministers which is headed by the Prime Minister.

This position of the President is the same as the King of England and thus the Statement that the President is the Nominal or Titular Head of the State is true and the Prime Minister is the actual head.

Conclusion

In India, the President is called the Executive head but he is only a titular head. Even though the President is given many powers, many of them are not very effective for e.g., even if the President sends a bill back to the Houses of Parliament for some modifications, the Parliament can resend it without any modifications and the President is bound to give his assent.

Also, the President does not play an active role in the affairs of the State and the real Executive power is vested in the Council of Ministers headed by the Prime Minister. So, the Prime Minister is the real head of the state and the President is the head only in name.

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17 Vice President

Introduction

Art 63 mentions about the office of Vice President of India. Office of Indian Vice President is modelled on the lines of American Vice -President. The second-highest constitutional office in India, rank only next to the office of President of India in order of precedence. Vice President is a member of neither Lok Sabha nor Rajya Sabha.

VP is also ex-officio chairperson of Rajya Sabha (Art.64). The original Constitution provided that the Vice- President would be elected by the two Houses of Parliament assembled at a joint meeting. This cumbersome procedure was done away by the 11th Constitutional Amendment Act of 1961.

First Vice President of India – Dr. S. Radhakrishnan (1952)

Present Vice President of India – Venkaiah Naidu (Since 2017)

Article 64: The Vice President to be ex officio Chairman of the Council of States. The Vice President shall be ex officio chairman of the counsel of States and shall not hold any other office of profit: Provided that during any period when the Vice President acts as President or discharges the functions of the President under Article 65, he shall not perform the duties of the office of chairman of the council of States and shall not be entitled to any salary or allowance payable to the chairman of the council of States under Article 97

Duties of Vice President

Article 65: The Vice President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President.

Article 65 (1): In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

Article 65 (2): When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice President shall discharge his functions until the date on which the President resumes his duties.

Article 65 (3): The Vice President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President, have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

Power And Functions of The Vice-President

- The Vice-President acts as the ex-officio Chairman of the Rajya Sabha and his powers and functions are similar to those of the Speaker of the Lok Sabha.
- In the event of the President's inability to work due to any reason or a vacancy in the office of the President due to any reason, he can act as the President. The office was created to maintain continuity in the Indian state; however, this is only for 6 months till the next President is elected.
- While the Vice-President is acting and discharging his functions as a President, he shall have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges.
- The Vice President while discharging duty as President, should not preside over Rajya Sabha. During this period the duties are performed by the Deputy Speaker.

Vice President – Election

Article 66: Election of Vice President

Article 66 (1) The Vice President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Article 66 (2) The Vice President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of

any State be elected Vice President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice President.

Article 66 (3) No person shall be eligible for election as Vice President unless he

- is a citizen of India;
- has completed the age of thirty-five years;
- is qualified for election as a member of the Council of States

Article 66 (4) A person shall not be eligible for election as Vice President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments. Explanation For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

Explanation:

The Vice-President is indirectly elected. He is elected by the members of an electoral college consisting of the members of both the Lok Sabha and Rajya Sabha. It does not include the members of the state legislative assemblies.

For the election of Vice President system of proportional representation by means of the single transferable vote and the voting done by secret ballot. Election to the office of the Vice-President is conducted by the Election Commission of India.

All doubts and disputes in connection with the election of the Vice- President are inquired into and decided by the Supreme Court whose decision is final. The election of a person as Vice-President cannot be challenged on the ground that the electoral college was incomplete (i.e., the existence of any vacancy among the members of the electoral college).

If the election of a person as Vice-President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated (i.e., they continue to remain in force).

The Vice President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice President.

The election of the next Vice-President is to be held within 60 days of the expiry of the term of office of the outgoing Vice-President.

Art 66(3) Minimum Qualification

Minimum Qualification for the election of the Vice-President

- He should be a citizen of India.
- He should be minimum 35 years of age.
- He should have qualified for the election as a member of the Rajya Sabha.
- He should not hold any office of profit under the Union government or any State Government or any local authority or any other public authority.

For the nomination for election to the office of Vice-President, a candidate must be subscribed by at least 20 electors from Members of Parliament as proposers and 20 electors as seconders.

Article 67: Terms of Office

- The Vice President holds office for five years from the date of his inauguration.
- The Vice President can resign at any time by sending a letter of resignation to the President.
- He can hold office beyond his terms of five years until his successor takes office.
- He also has the right to be re-elected to this position for any number of terms.

Article 68: Time of holding election to fill vacancy in the office of Vice President and the term of office of person elected to fill casual vacancy

- An election to fill a vacancy caused by the expiration of the term of office of Vice President shall be completed before the expiration of the term
- An election to fill a vacancy in the office of Vice President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

Article 69: Oath or Affirmation

Before entering his office, the Vice-President has to make and subscribe to an oath or affirmation. In his oath Vice-President swears:

- To bear true faith and allegiance to the Constitution of India;
- To faithfully discharge the duties of his office.

The President of India or any person appointed on behalf of him administers the oath of office to the Vice-President.

Conditions of Office

- He should not be a member of either House of Parliament or a House of the state legislature.
- In the event that any such individual is chosen Vice-President, he is considered to have vacate his seat in that House on the date on which he enters upon his office as Vice-President.
- He shouldn't hold any other office of profit.

Vacancy

A vacancy in the Vice-President's office can occur in any of the following ways:

- When he completed the tenure of five years.
- When he resigned.
- When he was removed by parliament resolution.
- When he died while serving the office.
- When his election is declared void and become disqualified to hold office.

Removal Of Vice-President

- He can also be removed from the office before the completion of his term.
- No ground has been mentioned in the Constitution for the removal of Vice President.
- A formal impeachment is not required for the removal of Vice President.
- Resolution for removal can be introduced only in the Rajya Sabha and not in the Lok Sabha, with at least 14 days' advance notice has been given.
- Resolution for removal should be passed in the Rajya Sabha by an effective majority (the majority of all the then members of the Rajya Sabha) and in the Lok Sabha by a simple majority.
- In such cases, when a temporary vacancy in the office of the Vice President is created, the Deputy Chairman of the Rajya Sabha takes over the role of the Chairman of the Rajya Sabha.
- In other words, the role of the Vice President is to assist the President in being the nominal head of the Republic of India.
- However, one must remember that the office of the President and the Vice President cannot be combined in one person, as per the Constitution of India.

Comparison between Indian and American Vice-President

Indian Vice-President	American Vice-President
Indian Vice-President does not assume the office of the President when it falls vacant for the unexpired term. He merely serves as an acting President until the new President assumes charge.	American Vice-President succeeds to the presidency when it falls vacant, and remains President for the unexpired term of his predecessor.
Indian Vice-President can become President for a maximum of six months.	American Vice-President becomes President for the remaining term.
The office of Indian Vice-President was created to maintain political continuity.	American Vice-President endowed with significant power and functions.

Comparison between President and Vice President

President	Vice President
Elected by an Electoral College consisting of elected members of both the Houses of the Parliament-the Lok Sabha and the Rajya Sabha and of the Legislative Assemblies of the States.	Elected by an Electoral College consisting of the members of both the Houses of the Parliament i.e., the Rajya Sabha and the Lok Sabha (elected & nominated both).
The election is held in accordance with the system of proportional representation by means of a single transferable vote	The election is held in accordance with the system of proportional representation by means of a single transferable vote
No person shall be eligible for election as the President unless he is a citizen of India and has completed the age of thirty-five years.	No person shall be eligible for election as the Vice-President unless he is a citizen of India and has completed the age of thirty-five years.
To become the President, a person should also be qualified to become a member of the House of the People	To become the Vice-President, a person should be qualified to become a member of the Council of States.
A person shall not be eligible for the election as the President if he holds any office of profit under the Government of India or the Government of any State. However, the office of the President, the Vice-President or the Governor or the Minister of the Union or of any State shall not be considered as office of profit.	A person shall not be eligible for election as the Vice-President if he holds any office of profit under the Government of India or the Government of any State. However, the office of the President, the Vice-President or the Governor or the Minister of the Union or of any State shall not be considered as office of profit.

The term of the office is for five years from the date of entering upon the office	The term of the office is for five years from the date of entering upon the office
The President may resign his office by writing his resignation to the Vice-President	The Vice-President may resign his office by writing his resignation to the President
The President may be removed from his office by a resolution of impeachment passed by a majority of not less than two-thirds of the total members in both the Houses of the Parliament, separately	The Vice-President may be removed from his office by a resolution passed by the Council of States by a simple majority and agreed to by the House of the People
The President exercises the executive powers of the Union on the advice of the Council of Ministers.	The Vice-President is the ex-officio Chairman of the Council of States and acts as the President in his absence

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18 Prime Minister

Introduction

In the scheme of the Parliamentary system of government provided by the Constitution, the President is the nominal executive authority (de jure executive) and Prime Minister is the real executive authority (de facto executive). Prime Minister is the leader of the executive system of Government of India and also the head of the Council of Ministers. Prime Minister is the real custodian of all the executive authority

Article 75: Appointment

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. Article 75 says only that the Prime Minister shall be appointed by the President.

The salary and allowances of the Prime Minister are determined by the Parliament from time to time. He/she gets the salary and allowances that are payable to a member of Parliament.

Article 84: Eligibility

- Must be a citizen of India.
- Must be the member of either of the Houses of the Parliament i.e The Lok Sabha and The Rajya Sabha.
- Should complete 25 years of age if he is a member of the Lok Sabha and 30 years of age if he is a member of the Rajya Sabha.

Disqualifications

Following are the disqualifications of Prime Minister:

- ***Office of Profit***
  - Article 102(1)(a) of The Indian Constitution which bars the Prime Minister to hold the office of profit. Office of profit is defined as the financial amount which is given to the occupant to gain a financial advantage in the form of salaries, perks and other benefits. The office of profit has not been defined in the Constitution of India or under the Representation of People's Act, 1951.
  - ***In Jaya Bachchan v. Union of India***
    - The Office of Profit is defined as follows:
    - Office of Profit is an office which is capable of yielding a profit or pecuniary gain.
    - Holding an office under the Central or State Government to which the salaries, remuneration, allowances are paid amounts to hold the office of profit.
- ***Unsound Mind***
  - The Prime Minister and other members disqualify if he/she is of unsound mind and stands so declared by the competent Court.
- ***Not a citizen of India***
  - The Prime Minister disqualifies if he/she is not a citizen of India or has voluntarily acquired the citizenship of the foreign state.
- ***Other Disqualification***
  - If he is an undischarged insolvent.
  - Disqualified under any law made by Parliament.
  - Disqualified for being a member of either House of Parliament.

Tenure

- The full term of the office of Prime Minister is five years but they can hold their office only if they enjoy the majority in the Parliament and the term can end sooner if loses the vote of confidence in the Lok Sabha. Once they lose their majority, the period of holding their office also comes to an end.
- The Indian Parliamentary system does not follow the democratic system of US where if the President holds his office twice and has completed his office, he/she cannot again hold their position. In India this system is not followed, here the President, Prime Minister can hold their office many times till they attain their discharge period.
  - Atal Bihari Vajpayee, The 13th Prime Minister of India. His first tenure as a Prime Minister was from 16th May 1996-1st June 1996, he held the office for 13 days but due to loss of support from the other parties to obtain the majority, he resigned. Then again, he was chosen as a Prime Minister with a full majority from 19th March 1998- 22nd May 2004.

- Pandit Jawaharlal Nehru held the office in a row as a Prime Minister for 4 times from 15th August 1947-27th May 1964.

- Thus, in India, the Ministers can hold their office for many times till they enjoy their vote of confidence in the Lok Sabha

Deputy Prime Minister of India

- The post of Deputy Prime Minister of India is not technically a constitutional post, nor is there any mention of it in an Act of Parliament. But historically, on various occasions, different governments have assigned one of their senior ministers as the deputy prime minister.
- There is neither constitutional requirement for filling the post of deputy Prime Minister, nor does the post provide any kind of special powers. Typically, senior cabinet ministers like the finance minister or the Home Minister are appointed as Deputy Prime Minister. The post is considered to be the senior most in the cabinet after the prime minister and represents the government in his/her absence.
- Generally, Deputy Prime Ministers have been appointed to strengthen the coalition governments. The first holder of this post was Vallabhbhai Patel, who was also the Home Minister in Jawaharlal Nehru's cabinet.

Powers and Functions of the Prime Minister

Power to appoint the Authorities

- Prime Minister has the right to give advice to the President in relation to the appointment of the Government Authorities.
- Such authorities include the Comptroller and Auditor General of India, Attorney General of India, Solicitor General of India, Election Commissioners, Chairman and Members of the Finance Commission.
- Prime Minister also has the right to give advice to the President on the appointment of the Council of Ministers and the Cabinet Ministers.

Power as the Leader of the House of Parliament

- Prime Minister is the Leader of the Lower House of Parliament i.e the Lok Sabha.
- He advises President with regard to the summoning of the sessions of the Parliament.
- The Prime Minister can recommend the President for the dissolution of the Lok Sabha.
- Prime Minister in consultation with the Speaker of the lower house decides the agenda of the House.

Aid and Advice the President

- Prime Minister is the Chief Advisor of the President.
- The Prime Minister advises the President in all the matters of the state.
- Prime Minister informs the President regarding all the decisions taken in the Cabinet Meeting.
- The Prime Minister advises and gives all the information to the President regarding the emergency situation or any changes in the foreign policy.
- Prime Minister advises the President to take necessary steps in the economic, financial, political and developmental situations of the country.

Power as the Chairman of the Cabinet

- The Prime Minister is the Leader of the Cabinet.
- The Prime Minister presides over the meetings and decides the agenda of the meetings.
- All the decisions of the Cabinet meetings are decided by the approval and consent of the Prime Minister.
- The reject or accept of the proposal of the Cabinet discussions is in the hand of the Prime Minister.
- The Prime Minister guides, directs, controls and coordinates all the activities of the Minister.
- The Prime Minister allocates various portfolios and ministries among the Ministers.
- In case of any wrongdoing and difference in the opinion, the Prime Minister can ask a Minister to resign or advise the President to dismiss the Power of the Minister.
- Chairman of the NITI Aayog National Development Council, National Integration Council, Inter-State Council, National Water Resources Council.

Power to Remove the Minister

- The Minister remains in the office according to the pleasure of the Prime Minister.
- The Prime Minister can demand resignation from any Ministers at any time and the Minister is duty bound to accept it.
- In April 2010 when Manmohan Singh was the Prime Minister, Shashi Tharoor, the Minister of State for External Affairs had to resign from his office under the allegation of the corruption in the IPL case.

Emergency Powers

- The President declares the emergency only under the advice of the Prime Minister.
- Under Article 352 of the Indian Constitution, the

President can declare an emergency on the basis of the written request by the Prime Minister.

- In the year 1975-1977, the then President Fakhruddin Ali Ahmed with the written request and consent from the then Prime Minister Indira Gandhi imposed emergency. The reason behind this was threat to National Security and bad economic conditions.
- Thus, the Prime Minister has the power to impose an emergency when the situation is as such.

Coordinating Power

- The Prime Minister is the chief coordinator between the President and the Cabinet.
- The Prime Minister communicates the President all the decisions of the Cabinet and puts before the Cabinet the decisions of the President, thus acting as the medium of the communication.
- It is the responsibility of the Prime Minister to coordinate the activities of all the department and to secure the cooperation among the ministers.

Other Powers

- Prime Minister is the Leader of the Nation. The general elections of the country are fought in his name.
- Plays a key role in determining Indian Foreign Policy and relations with other countries.
- Power to allocate and change the department of the Ministers.

Limitations To the Power of Prime Minister

- ***Vote of no confidence:*** Under the Parliamentary system of government, the Prime Minister is not performing to the satisfaction of the Members of Parliament and not meeting the aspirations for which he was put there, they could pass a vote of no confidence in him. Under such a situation, the Prime Minister must resign. The fear of being pushed out of power serves as a limitation to his powers.
- ***Toeing the party line:*** The party, to which the Prime Minister belongs, has an ideology and policies manifesto they would like to implement. The Prime Minister can, therefore, not act outside the policies that the party professes.
- ***Advice from the head of State:*** From time to time, the Head of State may advise the Prime Minister on one issue or the other. He or she may draw the attention of the Prime Minister to certain pertinent issues confronting the country. In that sense, the Head of State serves as a limitation to the Prime Minister.
- ***Public opinion:*** The Prime Minister could be influenced by the public. This may happen when he leads the introduction of a policy that the public thinks are inimical to their interest. Also, the Prime Minister counselling may not want to be in the news for the wrong reasons. In that sense, he is limited by the opinions of the public.

Misuse of Power by Prime Minister

- ***Shah Commission Report:*** It was a commission of inquiry appointed by the Government of India in 1977 to inquire into all the excesses committed in the Indian Emergency (1975 - 77).
- The commission stated that the decision to impose Emergency was made by Prime Minister Indira Gandhi alone, without consulting her cabinet colleagues, and was not justified.
- To check the misuse of power by Prime Ministers, the Lokpal has been provided the jurisdiction to inquire into allegations of corruption against anyone who is or has been Prime Minister. But there is a problem that it cannot inquire into any corruption charge against the Prime Minister if the allegations are related to international relations, external and internal security, and public order, unless a full Bench of the Lokpal, consisting of its chair and all members, considers the initiation of a probe, and at least two-thirds of the members approve it.

Conclusion:

India follows the Quasi Federal democracy where the Prime Ministers are elected for the people, of the people and by the people. The Prime Minister plays a very significant and highly crucial role in the politico-administrative system of the country. As 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'.

19 Council of Ministers (Union)

Introduction

India has been ornamented with the Parliamentary system of government which includes the Prime Minister, and his Council of Ministers being vested with the responsibility of the executive of the nation to govern India's administrative structure. The Central Council of Ministers plays a key role in helping the ruling government to function in a better way taking into account the increasing complexities of democracy.

With a country of 2nd largest population in the world, India is governed by its supreme law, the Constitution of India, 1950 which expressly lays down provisions for the Council of Ministers under Articles 74, and Article 75 providing with the status of the Council of Ministers, and their appointment, tenure, responsibility, qualification, oath and salaries and allowances respectively.

Article 74 of the Indian Constitution

Article 74 of the Constitution of India deals with the function of the Council of Ministers which is to aid and advise the President of the nation. The provision reads as:

- The Prime Minister along with the Council of Ministers will provide aid and advise to the President will act in accordance with such advice in order to execute his/her functions. Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.
- Any confusion concerning the first point will not be a subject-matter of the courts.
- It is to be noted that although the Council of Ministers can assist the President in executing his functions, such advice or assistance is subject to reconsideration if asked by the President.

Article 75 of the Indian Constitution

Article 75 of the Indian Constitution concerns other provisions associated with the Council of Ministers consisting of six clauses namely:

- While the President appoints the Prime Minister, the Council of Ministers is to be appointed by the President in alignment with the Prime Minister's advice.
- A Minister is supposed to hold his office the way the President wants.
- The Central Council of Ministers is collectively responsible to the House of People, or the Lok Sabha.
- The responsibility of administering oaths of office, and of secrecy of the Ministers according to the procedure provided in the Third Schedule vests of the President.
- For a Minister to be part of the Central Council of Ministers, has to be a member of either of the Houses of Parliament for a minimum period of six consecutive months. Absence of which will cease the individual to be a Minister.

The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

The 91st Amendment Act, 2003 brought in two additions to Article 75 namely:

- The Prime Minister, and the Council of Ministers, constituting the total number of Ministers shall not exceed 15% of the total strength of the Lower House of the Parliament.
- Members of a political party who have been disqualified on grounds of defection will be disqualified to be designated as a Minister, irrespective of whichever House of the Parliament the member belongs to.

Article 77 of the Indian Constitution

- The provision for the conduct of the business of the Government of India has been incorporated under Article 77 of the Indian Constitution that provides primary focus on the President of India who has the power to have his name on every executive action taken by the Indian government.
- Clause 3 of Article 77, states that it is the President who will be responsible for preparing governing rules for business transactions and allocating such business transactions among the Ministers as, and however the President feels.

Article 78 of the Indian Constitution

The duties of the Prime Minister have been envisaged in Article 78 of the Constitution of India. The duties of the Prime Minister have been listed hereunder:

- It is the responsibility of the Prime Minister to keep the President well informed about the decisions undertaken by the Council of Ministers in association with administrative matters with legislation proposals.
- The Prime Minister shall furnish certain administrative information concerning Union affairs to the President as and when he demands.
- 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.

Article 88 of the Constitution of India

Article 88, of the Indian Constitution talks about the rights of the Ministers with respect to the Houses of Parliament. Every Minister and Attorney General of India shall have the right to speak in, and otherwise participate in, the proceedings of either House, any joint sitting of the Houses, and any committee of Parliament to which he may be named a member, but shall not be entitled to vote for Officers of Parliament by virtue of this article.

Nature of advice by Ministers

It is by the nature of the advice provided by the Council of Ministers that the relationship between the President and the former can be determined. Article 74 of the Indian Constitution lays down that the Prime Minister with his Council of Ministers is to aid and advise the President to execute his functions.

Further, by the 42nd and the 44th Constitutional Amendment Act, this advice was made binding on the President. The nature of advice has been excluded from judicial review as well. All of these reflect on the fact that the relationship between the President and the Council of Ministers is confidential by nature. The language of Article 74 is mandatory by nature, and therefore the President has to follow the advice given by the Prime Minister, and the Council of Ministers, in order to function.

Appointment And Composition of Ministers

Prime Minister and the Council of Ministers are done by the President of India. It is only in the latter's case that the President has to consult the Prime Minister. Therefore, in the case of the appointment of the Council of Ministers, the Prime Minister's recommendation holds greater value. Ministers are appointed on two grounds:

- They are members of either of the Houses of the Parliament;
- If they are not members of the Parliament Houses, then within a span of six months he/she must become a member by means of nomination, or election.

Oath and Salary of Ministers

It is the President who administers oaths of office, and secrecy for the Council of Ministers where the latter swears before the former:

- To bear true faith and allegiance to the Constitution of India,
- To uphold the sovereignty and integrity of India,
- To faithfully and conscientiously discharge the duties of his office, and
- To do right to all manner of people in accordance with the Constitution, and the law, without fear or favour, affection or ill will.

The Indian Parliament determines the salaries and allowances of the Council of Ministers which varies from time to time. The salary of a Minister is the same as a member of the Parliament which is accompanied by free accommodation, travel allowance, medical facilities in accordance with the rank he holds.

Removal

- Upon death.
- Upon self-resignation, or resignation or death of Prime Minister.
- Upon dismissal by the President for Minister's unconstitutional acts per Article 75(2).
- Upon direction from the Judiciary for committing violation of law.
- Upon ceasing eligibility to be a member of Parliament.

Under the provision of "Collective Responsibility" under Article 75, the Prime Minister and the entire Council of Ministers resign if a Vote of No Confidence is passed in the Lower House (Lok Sabha) of the Indian Parliament.

The Council of Ministers comprises of three categories of Ministers namely:

- ***The Cabinet Ministers:*** Responsible for important ministries of the government such as defence, education, health, textile, etc, and deciding on policies thereby assisting the Prime Minister.
- ***Ministers of State:*** This class of Ministers is further

divided into two classes namely independent, and attached to the Cabinet Ministers. In both the cases, the State Ministers work' in accordance to the guidance, and advice by the Cabinet Ministers. These Ministers are restricted from attending Cabinet meetings unless specially invited.

- ***Deputy Ministers:*** This rank of Ministers is attached to either the Cabinet Ministers, or the Ministers of State, and is responsible for assisting them with duties ranging from administrative to political.

Along with these three classes of Ministers, the parliamentary secretaries are considered to be another group of Ministers who are attached to the senior group of Ministers and function as an assistant to them to discharge parliamentary duties.

Responsibility of Ministers

The responsibilities of the Council of Ministers can be categorized into three categories namely:

- ***Collective Responsibility:*** Collective responsibility is considered to be the underlying principle on the basis of which the parliamentary system as a whole function. Put simply, collective responsibility refers to Ministers owning joint responsibility for their actions to the House of People, the Lok Sabha. Another interpretation of the principle of collective responsibility is that the Cabinet Ministers are bound by the Cabinet's decision irrespective of whether the former accept it or not.
- ***Individual Responsibility:*** Article 75 of the Constitution lays down both the concept of collective responsibility and individual responsibility. While the former has been discussed previously, the latter signifies as the Ministers holding office on the wish of the President, they can be removed by the President whenever he feels the need.
- ***No legal responsibility:*** The Ministers are not vested with any kind of legal responsibility which is reflected in the absence of provisions ensuring the same in the Indian Constitution. Followed by this, the Indian courts are also barred from reviewing the advice given by the Council of Ministers to the President.

The Council of Ministers vis a vis a Cabinet

One often gets confused by the fact as to whether the Council of Ministers and the Cabinet is the same thing or different. The major differences between the two have been listed below:

- The Council of Ministers is a much wider body in comparison to the Cabinet. While the former might consist of 70 to 80 members, the latter is concise with not beyond 20 Ministers.
- The Cabinet is a part of the Council of Ministers which includes two other categories of Ministers namely the Ministers of State, and the Deputy Ministers.
- While the Cabinet is vested with collective functions, no such things exist with respect to the Council of Ministers.
- While the Cabinet makes decisions, the Council of Ministers is responsible for implementing the same. The Cabinet also looks after the application of its decision by the Council.

While the Council of Ministers is collectively responsible towards the Lok Sabha, the Cabinet is responsible for enforcing such responsibility on the Council.

Powers of Cabinet Ministers

Power to formulate the policies

- The Cabinet Ministers formulates both external and domestic policies and are considered as the policy-making organ of the government.
- The Cabinet takes decisions on the various matters such as defence, economic policy, industrial policy, formulation of new states and the President's rule in the state.
- The decisions made by the Cabinet are communicated to the Deputy Minister and Minister of the state which helps the cabinet ministers in managing the business of the government jointly.
- The members of the Planning Commission are appointed by the Cabinet.

Power over the Executive

- The Cabinet Ministers have the supreme control over the Executives.
- The real functionaries in the executive authority are the Cabinet Ministers.
- The Cabinet Ministers presides over the Ministries of the Government and carries out the policies and gets approved by the Parliament.

Power as the Coordinator

- The Cabinet Ministers act as the coordinator of the various department of the government.
- Various Ministries of the government are coordinated by the cabinet ministers.

Financial Powers

- It is the responsibility of the Cabinet Ministers to look after the expenditure of the Government.
- The Finance Minister of the Cabinet prepares the annual budget which contains the estimated incomes for the ensuing year and also has the power to introduce the money bill with the consent of the President.
- It is the responsibility of each cabinet ministers to see that the proposals of his ministry are approved in the house.
- The Cabinet and the administrative departments take the initiative of preparing, defending and presenting the bill in the Parliament.

Power of Making Appointments

- The President appoints the high-power authorities on the recommendation of the Cabinet Ministers.
- Such important authorities include Ambassadors, High Commissioners, Attorney General of India, Governors of the States, Supreme Court and High Court Judges and the members of the Union Public Service Commission.

Other Powers

- Cabinet Ministers provide information to the public by answering questions put to them by the members of the Lok Sabha.
- The special address of the President to the Parliament is prepared by the Cabinet.
- The Cabinet Ministers is responsible for planning and implementing of Amendments to the Constitution.

Differences between Cabinet and Council of Ministers

Cabinet	*Council of Ministers*
The cabinet consists of many senior ministers who hold important portfolios such as defence, home affairs, education etc. The size of the cabinet is about 15-20 Ministers.	They consist of Cabinet Ministers, Deputy Ministers and Ministers of State. The Council of Ministers usually consists of about 60 to 70 ministers of the Government.
It was conferred the status of a constitutional body after the passing of the 44thConstitutional Amendment Act of 1978.	It is a Constitutional body.
The Cabinet consists of some of the most experienced ministers. Thus, the Prime Minister seeks their advice on important matters. The decisions of the Cabinet are binding to all ministers.	It is up to the Prime Minister to consult with the Council of Ministers or not when it comes to making important decisions.
It meets, as a body, frequently and usually once in a week to deliberate and take decisions regarding the transaction of government business. Thus, it has collective functions.	It does not meet, as a body, to transact government business. It has no collective functions.
It exercises, in practice, the powers of the council of ministers and thus, acts for the latter.	It is vested with all powers but in theory.
It enforces the collective responsibility of the Council of Ministers to the Lower House of Parliament.	It is collectively responsible to the Lower House of the Parliament.
It supervises the implementation of its decisions by the Council of Ministers.	It implements the decisions taken by the Cabinet.

Kitchen Cabinet

It is an informal body made up of the Prime Minister and two to four influential colleagues in whom he has faith and with whom he can discuss any issue.

Every Indian Prime Minister has had an 'Inner Cabinet'–a circle within a circle. The 'Inner Cabinet,' also known as the 'Kitchen Cabinet,' was particularly powerful during Indira Gandhi's tenure.

Role And Significance

- It is a much more efficient decision-making body than a large cabinet because it is a smaller unit.
- It can meet more frequently and conduct business much more quickly than the large cabinet.
- It aids the Prime Minister in maintaining secrecy when making important political decisions.
- It advises the Prime Minister on key political and administrative issues and assists him in making critical decisions.
- It is made up of cabinet Ministers as well as outsiders such as the Prime Minister's friends and family members.

Constitutional Status

- The Kitchen Cabinet does not have constitutional status.
- It acts as an extra-constitutional body to take decisions and improve the overall efficiency of the Council of Ministers.

Cabinet committees

Features

- They are extra-constitutional in emergence. That is, they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.
- They are of two types – Standing and Ad hoc. The former is permanent while the latter is temporary.
- The ad hoc committees are constituted from time to time to deal with special problems.
- They are set up by the Prime Minister according to the exigencies of the time and requirements of the situation are disbanded after their task is completed. Hence, their number, nomenclature, and composition vary from time to time.
- The membership of cabinet committees varies from three to eight and usually include only Cabinet Ministers. However, the non-cabinet Ministers are not debarred from their membership.
- They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers.
- They are mostly headed by the Prime Minister. Sometimes other Cabinet Ministers also act as their chairman. But, in case the Prime Minister is a member of a committee, he invariably presides over it.
- They not only sort out issues and formulate proposals for the consideration of the Cabinet but also take decisions. However, the Cabinet can review their decisions.

List of Cabinet Committees

At present there are 8 Cabinet Committees:

- Cabinet Committee on Political Affairs.
- Cabinet Committee on Economic Affairs.
- Appointments Committee of the Cabinet.
- Cabinet Committee on Security.
- Cabinet Committee on Parliamentary Affairs.
- Cabinet Committee on Accommodation.
- Cabinet Committee on Investment and Growth.
- Cabinet Committee on Employment and Skill Development.

Cabinet Committees - Functions

Cabinet Committee on Political Affairs:

- It addresses problems related to Centre-state relations.
- It also examines economic and political issues that require a wider perspective but have no internal or external security implications.
- Cabinet Committee on Economic Affairs.
- It is supposed to review economic trends, problems and prospects for evolving a consistent and integrated economic policy, coordinate all activities requiring policy decisions at the highest level, deal with fixation of prices of agricultural produce and prices of essential commodities.
- It considers proposals for investment of more than Rs 1,000 crore, deals with industrial licensing policies and reviews rural development and the Public Distribution System.

Appointments Committee of the Cabinet:

- It makes appointments to posts of the three service chiefs, Director General of Military Operations, chiefs of all Air and Army Commands, Director General of Defence Intelligence Agency, etc.
- It decides on all important empanelment's and shifts of officers serving on Central deputation.

Cabinet Committee on Security:

- It deals with issues relating to law and order, internal security and policy matters concerning foreign affairs with internal or external security implications and also goes into economic and political issues related to national security.
- It considers all cases involving capital defence expenditure more than Rs 1,000 crore and also issues related to the Department of Defence Production and the Department of Defence Research and Development, Services Capital Acquisition plans and schemes for procurement of security-related equipment.

Cabinet Committee on Parliamentary Affairs.

- It draws the schedule for Parliament sessions and monitors the progress of government business in Parliament.
- It scrutinises non-government business and decides which official Bills and resolutions are to be presented.

Cabinet Committee on Accommodation:

- It determines the guidelines or rules with regard to the allotment of government accommodation.
- It also takes a call on the allotment of government accommodation to non-eligible persons and organizations as also the rent to be charged from them.

- It can consider the allotment of accommodation from the General Pool to Members of Parliament.
- It can consider proposals for shifting existing Central Government Offices to locations outside the capital.

Cabinet Committee on Investment and Growth:

- It will identify key projects required to be implemented on a time-bound basis, involving investments of Rs 1,000 crore or more, or any other critical projects, as may be specified by it, with regard to infrastructure and manufacturing.
- It will prescribe time limits for giving requisite approvals and clearances by the ministries concerned in identified sectors and will also monitor the progress of such projects.

Cabinet Committee on Employment and Skill Development:

- It is supposed to provide direction to all policies, programs, schemes and initiatives for skill development aimed at increasing the employability of the workforce for effectively meeting the emerging requirements of the rapidly growing economy and mapping the benefits of demographic dividend.
- It is required to enhance workforce participation, foster employment growth and identification, and work towards the removal of gaps between requirements and availability of skills in various sectors.
- It will set targets for expeditious implementation of all skill development initiatives by the ministries and periodically review the progress in this regard.

The Cabinet Committees except for Cabinet Committee on Accommodation and Cabinet Committee on Parliamentary Affairs is headed by Prime Minister.

Currently, the Cabinet Committee on Accommodation is headed by the Home Minister and the Cabinet Committee on Parliamentary Affairs is the Defence Minister.

Of all the Cabinet Committees, the most powerful is the Political Affairs Committee, often described as a Super-Cabinet.

Criticism

- Sometimes, they are established on very trivial issues.
- Non-cabinet ministers are rarely appointed and memberships depend more on political considerations.

Conclusion

The relevance of the Central Council of Ministers cannot be ground on the grounds that it is only with the help of this set of Ministers that the actual head of the democratic nation, the Prime Minister can function, and fulfil his roles, and duties for the country and its people effectively. This article, therefore, aimed towards throwing light towards this set of Ministers whose contribution often goes neglected under the greater designation of the Prime Minister.

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20 Parliament

Introduction

Article 79 to 122 in part V deals with the organisation, composition, duration, officers, procedures, privileges and powers of Union Parliament at the centre level. It is the highest law-making body in the country. It is said to be a place where elected representatives from different regions sit together and make laws for the country with proper debates and discussions.

Composition of Parliament

Union Parliament is made up of:

- Council of States which is also known as Rajya Sabha.
- House of the People which is also called Lok Sabha.
- The President of the country.

Rajya Sabha

Strength of the House

- The Constitution provides that the Rajya Sabha shall consist of 250 members, of which 12 members shall be nominated by the President from amongst persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service; and not more than 238 representatives of the States and of the Union Territories.
- Rajya Sabha, at present, has 245 seats. Of these, 233 members represent the States and the Union Territories, and 12 members are nominated by the President.

How members are elected and their tenure

- Elections to the Rajya Sabha are indirect; members representing States are elected by elected members of legislative assemblies of the States in accordance with the system of proportional representation by means of the single transferable vote, and those representing Union Territories are chosen in such manner as Parliament may by law prescribe.
- Apart from the elected members, the President appoints 12 members from the fields of literature, science, art, and social service.
- Members of the Rajya Sabha are elected for a term of six years and then they can be re-elected.

Permanent House and Representation of States

- The Rajya Sabha is not subject to dissolution. Members of Rajya Sabha are elected in such a manner that they do not complete their tenure altogether; rather after every two years, one-third member complete their term and elections are held for those one-third seats only. Rajya Sabha never gets fully dissolved and hence, it is known as the permanent House of the Parliament.
- In the U.S.A, every state has equal representation in the Senate irrespective of size and population of the states, but in India, it is not the same. In India, states with larger size of population get more representatives than states with smaller population. For example, Uttar Pradesh (the most populated state) sends 31 members to Rajya Sabha; on the other hand, Sikkim (the least populated state) sends only one member to Rajya Sabha.
- The number of members to be elected from each State has been fixed by the fourth schedule of the Constitution.

Representation of Union Territories

- Representative of each Union territory in the Rajya Sabha are indirectly elected by the members of the electoral college specially constituted for this purpose. This election is also held in accordance with the system of proportional representation by means of single transferable vote.
- Out of the eight union territories, only three (Delhi, Puducherry and Jammu & Kashmir) have representation in Rajya Sabha. The population of other five Union territories are too small to have any representation in the Rajya Sabha.

Representation of Nominated Members

- President nominates 12 members to the Rajya Sabha from people who have special knowledge in the field of Arts, Literature, Science and Social Service.

Lok Sabha

Strength of the House

- The maximum strength of the House envisaged by the Constitution is now 552 of which, 530 members to

represent States, 20 to represent Union Territories, and not more than two members of the Anglo-Indian community to be nominated by the President, if, in his opinion, that community is not adequately represented in the House.

- The total elective membership of the Lok Sabha is distributed among States in such a way that the ratio between the number of seats allotted to each State and population of the State is, as far as practicable, the same for all States.
- The Lok Sabha at present consists of 545 members. Of these, 530 members are directly elected from the States and 13 from Union Territories, while two are nominated by the President to represent the Anglo-Indian community.
- After coming into effect of the Constitution (One Hundred and Fourth Amendment) Act, 2019, the provision of special representation of the Anglo-Indian community in the House of the People by nomination has not been extended further.
- Following the Constitution 84th Amendment Act, the total number of existing seats as allocated to various States in the Lok Sabha on the basis of the 1971 census, shall remain unaltered till the first census to be taken after the year 2026.

Election of members and tenure

- The Lok Sabha is composed of representatives of people chosen by the people from the territorial constituencies through direct election on the basis of adult suffrage. The members of Lok Sabha and the State Legislative Assemblies are directly elected by the people for the period of five years.
- However, before the completion of tenure, if the Lok Sabha is dissolved (no party forms government with majority), a fresh election will be conducted again.

Dissolution of House

- The term of the Lok Sabha, unless dissolved earlier, is five years from the date appointed for its first meeting. However, while a proclamation of emergency is in operation, this period may 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. Seventeen Lok Sabha's have been constituted so far.

System of elections to Lok Sabha

Territorial constituency

- The Constitution ensures uniformity of representation in:
  (a) between the different states, and
  (b) between the different constituencies in the same state.

  "Population" is ascertained at the preceding census of which the relevant figures have been published.
- The ratio between no. of seats in Lok Sabha and the population of each state, is the same for all states (it does not apply to a state having a population of less than 6mn).
- Each state is divided into territorial constituencies in a manner that the ratio between the population of each constituency and the no. of seats allotted to it is the same throughout the state.

Readjustment after each Census

- After every census, a readjustment is to be made in (a) division of each state into territorial constituencies, and (b) allocation of seats in the Lok Sabha to the states.
- The Delimitation Commission Acts were enacted by the Parliament, in 1952, 1962, 1972 and 2002 for this purpose.
- The 42nd Amendment Act of 1976 froze the allocation of seats in the Lok Sabha to the states and the division of each state into territorial constituencies till the year 2000 at the 1971 level.
- The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.

Delimitation

- Under Article 82 of the Constitution, the Parliament by law enacts a Delimitation Act after every census.
- The ban on readjustment was extended for another 25 years (i.e., up to year 2026) by the 84th Amendment Act of 2001, with the same objective of encouraging population limiting measures. It also empowered the govt to undertake readjustment and rationalisation of territorial constituencies in the states on the basis of the population figures of 1991 census.
- Later, the 87th Amendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this can be done without altering the number of seats allotted to each state in the Lok Sabha.
- Delimitation of boundaries has been done 4 times till now i.e. in 1952, 1963, 1973 and 2002

  Reservation of Seats for SCs and STs
- The reservation for SCs & STs in the Lok Sabha, is on the basis of population ratios.

- Originally, this reservation was to operate for 10 years (ie, up to 1960), but it has been extended continuously since then by 10 years each time.
- Under the 95th Amendment Act of 2009, this reservation is to last until 2020.
- SCs & STs, are elected by all the voters in a constituency, without any separate electorate. A member of SC & ST is not debarred from contesting a general seat.
- The 84th Amendment Act of 2001 provided for refixing of the reserved seats on the basis of the population figures of 1991 census.
- Later, the 87th Amendment Act of 2003 provided for the refixing of the reserved seats on the basis of 2001 census and not 1991 census.

Qualification for Membership of Parliament

Article 84, prescribes qualification to be chosen as a member of Parliament,

- a person must be a citizen of India
- not less than 30 years of age in the case of Rajya Sabha
- not less than 25 years of age in the case of Lok Sabha.
- he/she need to comply with other such qualifications as prescribed in any law by the Indian Parliament.

The Parliament has laid down the following additional qualifications in the Representation of People Act (1951).

1. He must be registered as an elector for a parliamentary constituency. This is same in the case of both, the Rajya Sabha and the Lok Sabha. In 2003, the requirement that a candidate running for the Rajya Sabha from a specific state must also be an elector in that state was dropped. In 2006, the Supreme Court upheld the constitutional validity of this change.
2. If he wishes to contest for a seat designated for someone from a Scheduled Caste or Scheduled Tribe in any State or Union Territory, he must belong to one of those groups. A member of a Scheduled Caste or Scheduled Tribe, however, may also contest for a seat that is not assigned to them.

Disqualification

Article 102, lays the grounds on which a legislator can be disqualified as a member of the Parliament.

Those grounds are:

- If he/she holds any office of profit under the Government of India or any of the states;
- If he/she is declared of unsound mind by a Court;
- If he/she is an undischarged insolvent;
- If he/she is not a citizen of India anymore;
- If he/she is disqualified by virtue of any law passed by the Parliament of India.

Disqualifications under the Representation of Peoples Act

- A member of Parliament can also be disqualified under the Representation of Peoples Act, 1956. This act was passed by the Parliament under Article 327 of the Indian Constitution, which provides for the procedure and the conduct to be followed during the election to Parliament and state legislatures.

Following are the grounds:

- If he/she is convicted for indulging in corrupt practices during the election or any other election-related offenses.
- If he/she is convicted under certain acts of Indian Penal Code, Unlawful Activities Prevention Act, Prevention of Terrorism Act 2002, etc.
- If he/she is convicted under any law that results for at least two years of imprisonment and will remain disqualified for a further 6 years after his release.
- He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
- If he/she is convicted under any law relating to drugs or dowry prevention.
- Dismissal from the government due to disloyalty or involvement in corrupt practices.
- If he/she fails to lodge their election expenses.

On the question whether a member is subject to any of the above disqualifications, the President's decision is final. However, he should obtain the opinion of the election commission and act accordingly.

Disqualification on Ground of Defection

The Constitution also lays down that a person shall be disqualified from being a member of Parliament if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule. A member incurs disqualification under the defection law:

- if he voluntary gives up the membership of the political party on whose ticket he is elected to the House;
- if he votes or abstains from voting in the House contrary to any direction given by his political party;
- if any independently elected member joins any political party; and

- if any nominated member joins any political party after the expiry of six months.

The question of disqualification under the Tenth Schedule is decided by the Chairman in the case of Rajya Sabha and Speaker in the case of Lok Sabha (and not by the president of India). In 1992, the Supreme Court ruled that the decision of the Chairman/ Speaker in this regard is subject to judicial review.

Vacating of the Seats

Article 101 deals with a member of Parliament vacating his seat, in the following cases:

1. Double Membership

- A person cannot be a member of both Houses of Parliament at the same time. Thus, the Representation of People Act (1951) provides for the following:
  a. If a person is elected to both the Houses of Parliament, he must intimate within 10 days in which House he desires to serve. In default of such intimation, his seat in the Rajya Sabha becomes vacant.
  b. If a sitting member of one House is also elected to the other House, his seat in the first House becomes vacant.
  c. If a person is elected to two seats in a House, he should exercise his option for one. Otherwise, both seats become vacant.
- Similarly, a person cannot be a member of both the Parliament and the state legislature at the same time. If a person is so elected, his seat in Parliament becomes vacant if he does not resign his seat in the state legislature within 14 days.

2. Disqualification

- If a member of Parliament becomes subject to any of the disqualifications specified in the Constitution, his seat becomes vacant.
- Here, the list of disqualifications also includes the disqualification on the grounds of defection under the provisions of the Tenth Schedule of the Constitution.

3. Resignation

- A member may resign his seat by writing to the Chairman of Rajya Sabha or Speaker of Lok Sabha, as the case may be.
- The seat falls vacant when the resignation is accepted. However, the Chairman/ Speaker may not accept the resignation if he is satisfied that it is not voluntary or genuine.

4. Absence

- A House can declare the seat of a member vacant if he is absent from all its meetings for a period of sixty days without its permission.
- In calculating the period of sixty days, no account shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days.

5. Other cases

- A member has to vacate his seat in the Parliament:
  - if his election is declared void by the court;
  - if he is expelled by the House;
  - if he is elected to the office of President or Vice-President; and
  - if he is appointed to the office of governor of a state.
- If a disqualified person is elected to the Parliament, the Constitution lays down no procedure to declare the election void.
- This matter is dealt by the Representation of the People Act (1951), which enables the high court to declare an election void if a disqualified candidate is elected. The aggrieved party can appeal to the Supreme Court against the order of the high court in this regard.

Presiding officers of the Parliament

Each House of Parliament has its own presiding officer. There is a Speaker and a Deputy Speaker for the Lok Sabha and a Chairman and a Deputy Chairman for the Rajya Sabha.

Speaker

Historical Background

- The institutions of Speaker originated in India in 1921 under the provisions of the Government of India Act of 1919 (Montague-Chelmsford Reforms) and at that time, the Speaker was called the President.
- The Government of India Act of 1935 changed the nomenclatures of the President of the Central Legislative Assembly to the Speaker. However, the old nomenclature continued till 1947 as the federal part of the 1935 Act was not implemented.
- G.V. Mavalankar had the distinction of being the first Speaker.

Election and Tenure

- Article 93 of the Indian Constitution provides for the election of both the Speaker and the Deputy Speaker.

- The Speaker is elected by the Lok Sabha from amongst its members and whenever the office falls vacant, the Lok Sabha elects another member to fill the vacancy.
- The date of election of the Speaker is fixed by the President.
- Usually, the Speaker remains in office during the life of the Lok Sabha. However, he has to vacate his office earlier in any of the following three cases:
  - If he ceases to be a member of the Lok Sabha.
  - If he resigns by writing to the Deputy Speaker.
  - If he is removed by a resolution passed by a majority of all the members of the Lok Sabha.
- Such a resolution can be moved only after giving 14 days' advance notice and when such a resolution for the removal of the Speaker is under consideration of the House, he cannot preside at the sitting of the House, though he may be present.
- However, he can speak and take part in the proceedings of the House at such a time and vote in the first instance, though not in the case of an equality of votes.
- Whenever the Lok Sabha is dissolved, the Speaker does not vacate his office and continues till the newly-elected Lok Sabha meets.

Role of Speaker

- The Speaker is the head of the Lok Sabha, and its representative and is the guardian of powers and privileges of the members, the House as a whole, and its committees.
- He/she is the principal spokesman of the House, and his/her decision in all Parliamentary matters is final.
- The Speaker of the Lok Sabha derives the powers and duties from three sources, that is, the Constitution of India, the Rules of Procedure and Conduct of Business of Lok Sabha, and Parliamentary Conventions (residuary powers that are unwritten or unspecified in the Rules).

Power and Duties

- He/she maintains order and decorum in the House for conducting its business and regulating its proceedings, which is the primary responsibility and has final power in this regard.
- He/she is the final interpreter of the provisions of the Constitution of India, the Rules of Procedure and Conduct of Business of Lok Sabha, and the Parliamentary precedents, within the House.
- He/she adjourns the House or suspends the meeting in absence of a quorum. The quorum to constitute a meeting of the House is one-tenth of the total strength of the House.
- He/she does not vote in the first instance but can exercise a casting vote in the case of a tie.
- He/she presides over a joint sitting of the two Houses of Parliament and can allow a secret sitting of the House at the request of the Leader of the House.
- He/she decides whether a bill is a money bill or not and his decision on this question is final. When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the President for assent, the Speaker endorses on the bill his certificate that it is a money bill.
- He/she decides the questions of disqualification of a member of the Lok Sabha, arising on the ground of defection under the provisions of the Tenth Schedule.
- He/she acts as the ex-officio chairman of the Indian Parliamentary Group which is a link between the Parliament of India and the various Parliaments of the world.
- He/she appoints the chairman of all the Parliamentary committees of the Lok Sabha and supervises their functioning and also is the chairman of the Business Advisory Committee, the Rules Committee, and the General-Purpose Committee.

Independence and Impartiality

- He/she is provided with security of tenure and can be removed only by a resolution passed by the Lok Sabha by a special majority.
- The salaries and allowances of the Speaker are fixed by Parliament and are charged on the Consolidated Fund of India and thus are not subject to the annual vote of Parliament.
- The Speaker's work and conduct cannot be discussed and criticized in the Lok Sabha except on a substantive motion.
- The Speaker's powers of regulating procedure or conducting business or maintaining order in the House are not subject to the jurisdiction of any Court.
- Casting Vote makes the position of Speaker impartial.
- He/she is given a very high position in the order of precedence (placed at seventh rank, along with the Chief Justice of India).

Recent Controversies

- Recently, the Supreme Court has ruled that the wisdom of the legislature in entrusting Speakers (of the state assembly or Parliament) with the responsibility of ruling on the disqualification of lawmakers who defect (shift parties) needs to be revisited. A panel has been constituted by the Lok Sabha Speaker on the issue.

Pro tem Speaker

- The Speaker of the legislative assembly vacates the office immediately before the first meeting of the newly elected house. Hence, President appoints the pro-tem Speaker to preside over the sittings of the house.
- Usually, the senior most member is elected as the pro-tem Speaker
- The President will administer the oath of the office for the pro-tem Speaker
- The main duty of the pro-tem Speaker is to administer the oath to the newly elected members. Pro-tem also enables the house to elect the new Speaker.
- When the house elects the new Speaker the office of the pro-tem Speaker ceases to exist.
- Hence the office of the pro-tem Speaker is a temporary one which will be in existence for few days.

Deputy Speaker

- Article 93 of the Constitution provides for the election of both the Speaker and the Deputy Speaker.
- The constitutional office of the Deputy Speaker of the Lok Sabha is more symbolic of Parliamentary democracy than some real authority.
- There is no need to resign from their original party though as a Deputy Speaker, they have to remain impartial.
- Both the Speaker and the deputy Speaker don't take any oath for office.
- Ananthasayanam Ayyangar was the first Deputy Speaker of the Lok Sabha.

Roles and functions:

- They act as the presiding officer in case of leave of absence caused by death or illness of the Speaker of the Lok Sabha.
- When he is the presiding officer of the house in absence of Speaker, he has same powers as the Speaker. He isn't subordinate to the Speaker but directly responsible to the house.
- However, if he is a member of a Parliamentary committee then he automatically becomes the chairman of the committee.

Election:

- Usually, the Deputy Speaker is elected in the first meeting of the Lok Sabha after the General elections from amongst the members of the Lok Sabha.
- It is by convention that position of Deputy Speaker is offered to opposition party in India.

Tenure and removal:

- They hold office until either they cease to be a member of the Lok Sabha or they resign.
- They can be removed from office by a resolution passed in the Lok Sabha by an effective majority of its members.
- He resigns by writing to the Speaker.

Panel of Chairpersons of Lok Sabha

- There is a constitution-mandated panel of 10 members to preside over the proceedings of the Lok Sabha in the absence of Speaker.
- Under the Rules of Lok Sabha, the Speaker nominates from amongst the members a panel of not more than ten chairpersons.
- Any of them can preside over the House in the absence of the Speaker or the Deputy Speaker and has the same powers as the Speaker when so presiding. He/she holds office until a new panel of chairpersons is nominated.
- When a member of the panel of chairpersons is also not present, any other person as determined by the House acts as the Speaker.
- But a member of the panel of chairpersons cannot preside over the House, when the office of the Speaker or the Deputy Speaker is vacant.
- During such time, the Speaker's duties are to be performed by such members of the House as the President may appoint for the purpose.

Chairman of Rajya Sabha

Article 89 of the Constitution of India provides provision for the Chairman and the Deputy Chairman of the Rajya Sabha. It states that the Vice- President of India shall be ex officio Chairman of the Council of States.

Power & function

- The Chairman of the Rajya Sabha is empowered to adjourn the House or to suspend its sitting in the event of the absence of quorum.

- The Tenth Schedule of the Constitution empowers the Chairman to determines the question as to disqualification of a member of the Rajya Sabha on the ground of defection;
- He does not take part in the deliberations of the House except in the discharge of his duties as the Presiding Officer.
- The Chairman may likewise, in the event that he thinks fit, call a sitting of the House before the date or hour to which it has been suspended, or whenever after the House has been adjourned sine die, however not prorogued by the President.
- The Chairman's consent is needed to raise a question of breach of privilege in the House.
- Parliamentary Committees, regardless of whether set up by the Chairman or by the House, work under the direction of the Chairman.
- He nominates members to different Standing Committees and the Department-related Parliamentary Committees. He is the Chairman of the Business Advisory Committee, the Rules Committee and the General Purposes Committee.
- It is the duty of the Chairman to interpret the Constitution and rules so far as matters in or relating to the House are concerned, and no one can enter into any argument or controversy with the Chairman over such interpretation.
- The maintenance of order in the House is the primary responsibility of the Chairman and, in accordance with the rules, he has been given all the necessary disciplinary powers for this purpose.
- When a Bill is passed by the Houses and is in control of the Rajya Sabha, the Chairman confirms the Bill with his signature prior to introducing it to the President for consent.
- Under the Press Council Act, 1978, the Chairman is one of the individuals from the Committee which chooses the Chairman of the Press Council.
- The Chairman may also, if there is a general consensus in the House, make an inquiry into a matter which was raised on the floor of the House or appoint a Committee of the House in respect thereof.

Deputy Chairman

- It is a constitutional position created under Article 89 of the Constitution, which specifies that Rajya Sabha shall choose one of its Member of Parliament's to be the Deputy Chairman as often as the position becomes vacant.

Who can be a deputy chairman?

- The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members.
- Whenever the office of the Deputy Chairman falls vacant, the Rajya Sabha elects another member to fill the vacancy.
- The Deputy Chairman vacates his office in any of the following three cases:
  - if he ceases to be a member of the Rajya Sabha;
  - if he resigns by writing to the Chairman;
  - if he is removed by a resolution passed by a majority of all the members of the Rajya Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

Functions:

- The Deputy Chairman performs the duties of the Chairman's office when it is vacant or when the Vice-President acts as President or discharges the functions of the President.
- He also acts as the Chairman when the latter is absent from the sitting of the House. In both the cases, he has all the powers of the Chairman.
- The Deputy Chairman also plays a critical role in ensuring the smooth running of the House.

Powers:

- The Deputy Chairman is not subordinate to the Chairman. He is directly responsible to the Rajya Sabha.
- The Deputy Chairman is entitled to a regular salary and allowance which are fixed by Parliament and are charged on the Consolidated Fund of India.

Election Procedure:

- For electing the Deputy Chair any Rajya Sabha MP can submit a motion proposing the name of a colleague for this constitutional position. The motion has to be seconded by another MP.
- Additionally, the member moving the motion has to submit a declaration signed by the MP whose name s/he is proposing stating that the MP is willing to serve as the Deputy Chairperson if elected. Each MP is allowed to move or second only one motion.
- Then the majority of the House decides who gets elected as the Deputy Chairperson.
- However, if the political parties arrive at a consensus candidate, then that MP will be unanimously elected as the Deputy Chair.

Panel of Vice-Chairmen:

- The Chairman shall, from time to time, nominate

from amongst the members of the Council a panel of not more than six Vice-Chairmen, any one of whom may preside over the Council in the absence of the Chairman and the Deputy Chairman when so requested by the Chairman, or in his absence, by the Deputy Chairman.

- A Vice-Chairman nominated under sub-rule (1) shall hold office until a new panel of Vice-Chairmen is nominated.

Leaders in Parliament

Leader of the House

The term "Leader of the House" is defined in the Lok Sabha and Rajya Sabha Rules of Procedure. The Leader of the House is usually a Minister nominated by the Government to oversee the administration of government business in the Legislative Assembly. The Leader of the House in the Rajya Sabha is the majority party's leader and parliamentary chairperson and is usually a cabinet minister or another nominated minister.

- The Leader of the House is in charge of scheduling government meetings and conducting business in the House.
- The Rajya Sabha Rules do not allow for this office, which is not enshrined in the constitution.
- Leader of the House in Lok Sabha is the Prime Minister by default if she/he is a member of the Lok Sabha.
- The Leader of the House also acts as the majority party's parliamentary chairperson.
- If the Prime Minister is not a member of Parliament's Lower House, she or he might appoint another minister to serve as Leader of the House.

Leaders of Opposition

- The Leaders of Opposition is leader of the largest party that has not less than one-tenth of the total strength of the house.
- It is a statutory post defined in the Salaries and Allowances of Leaders of Opposition in Parliament Act, 1977.

Significance of the office:

- Leaders of Opposition is referred to as the 'shadow Prime Minister'.
- She/he is expected to be ready to take over if the government falls.
- The Leaders of Opposition also plays an important role in bringing cohesiveness and effectiveness to the opposition's functioning in policy and legislative work.
- Leaders of Opposition plays a crucial role in bringing bipartisanship and neutrality to the appointments in institutions of accountability and transparency – CVC, CBI, CIC, Lokpal etc.

Reforms that are needed

- There arises a problem when no party in opposition secures 55 or more seats. In such situations, the numerically largest party in the opposition should have the right to have a leader recognised as leader of the opposition by the speaker.
- Besides, the 10% formulation is inconsistent with the law 'Salaries and Allowances of Leaders of Opposition in Parliament Act, 1977' which only says that the largest opposition party should get the post.

Whip

- The concept of the whip was inherited from colonial British rule. It is used in parliamentary parlance often for floor management by political parties in the legislature.
- A whip is a written order that political party issue to its members for being present for an important vote, or that they vote only in a particular way.
- They are crucial in maintaining the links between the internal organisation of the party inside the Parliament. A whip is also an important office-bearer of the party in the Parliament.
- In India, all parties can issue a whip to their members. Parties appoint a senior member from among their House contingents to issue whips. This member is called a Chief Whip, and he/she is assisted by additional Whips.

Constitutional status: The office of 'whip', is mentioned neither in the Constitution of India nor in the Rules of the House nor in a Parliamentary Statute. It is based on the conventions of the parliamentary government.

Non-applicability of Whip: There are some cases such as Presidential elections where whips cannot direct a Member of Parliament (MP) or Member of Legislative Assembly (MLA) on whom to vote.

Types of Whips

- The One-line whip to inform the members about a vote. It allows a member to abstain in case they decide not to follow the party line.
- The Two-line whip is issued to direct the members to be present in the House at the time of voting. No special instructions are given on the pattern of voting.
- The Three-line whip is issued to members directing

them to vote as per the party line. It is the strictest of all the whip.

Functions of Whip

- The whip plays a crucial role in ensuring the smooth and efficient conduct of business on the floor of the House.
- He is charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against a particular issue.
- He ensures discipline among party members in the House.
- He identifies the signs of discontent among MPs and informs the respective leaders of their party.
- He or she acts as a binding force in the party and responsible for maintaining the internal party organisation in the Parliament.

Violation of whip: If an MP violates his party's whip, he faces expulsion from the House under the Anti Defection Act. The only exception is when more than a third of legislators vote against a directive, effectively splitting the party.

Sessions of the Parliament

- A Session is the period of time between the meeting of a Parliament and its prorogation. During the course of a Session, either House may adjourn to such date as it pleases.
- In general, the sessions are as follows:
  - Budget session (February to May)
  - Monsoon session (July to September)
  - Winter session (November to December)
- ***Budget Session***
  - The budget session was usually held from February to May every year.
  - It is considered to be a highly crucial session of the Parliament.
  - The Budget is usually presented on the last working day of the month of February.
  - Here, the members discuss the various provisions of the budget and matters concerning taxation, after the finance minister presents the budget.
  - The budget session is generally split into two periods with a gap of one month between them.
  - This session every year starts with the President's Address to both Houses.
- ***Monsoon Session***
  - The monsoon session is held in July to September every year.
  - This is after a break of two months after the budget session.
  - In this session, matters of public interest are discussed.
- ***Winter Session***
  - The winter session of Parliament is held in mid-November to mid-December every year.
  - It is the shortest session of all.
  - It takes up the matters that could not be considered upon earlier and makes up for the absence of legislative business during the second session of the Parliament.

How is a Parliament Session convened?

- The Constitution provides that the President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit. There should not be a gap of more than six months between two Sessions of the Parliament.
- The fixation of dates of summoning and prorogation of the two Houses of Parliament is one of the functions assigned to the ministry of parliamentary affairs under the Government of India (Allocation of Business) Rules made by the President.
- After assessing the time likely to be required for transaction of government business and for discussion on topics of public interest as may be demanded from time to time by members of Parliament, the ministry of parliamentary affairs places a note before the Cabinet Committee on Parliamentary Affairs for making a recommendation as to the date of the commencement of a Session of Parliament and its likely duration.
- The recommendation, if approved by the Prime Minister, is submitted by the ministry to the President for approval of the commencement of a Session.
- The President summons the House exercising the powers conferred upon him by clause (1) of Article 85 of the Constitution. It states that: "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 first sitting in the next session."
- Following this, the Secretary-General issues a summons to each member of the House.

Terminologies Used in Parliamentary Sessions

Summoning of Parliament:

- Summoning is the process of calling all members of the Parliament to meet. The President summons each House of the Parliament from time to time. The gap between two sessions of the Parliament cannot exceed 6 months, which means the Parliament meets at least two times in one year.

Adjournment:

- Adjournment terminates the sitting of the House which meets again at the time appointed for the next sitting. The postponement may be for a specified time such as hours, days or weeks.
- If the meeting is terminated without any definite time/date fixed for the next meeting, it is called Adjournment sine die.
- The power of adjournment as well as adjournment sine die lies with the presiding officer (speaker or Chairman) of the House.

Prorogation:

- Prorogation is the end of session and not the dissolution of the house (in case of Lok Sabha, as Rajya Sabha does not dissolve). It is done by the President of India.

Recess:

- The period between the prorogation of Parliament and its reassembly in a new Session is termed as a recess.

Quorum:

- Quorum refers to the minimum number of the members required to be present for conducting a meeting of the house.
- The Constitution has fixed one-tenth strength as quorum for both Lok Sabha and Rajya Sabha.
- Thus, to conduct a sitting of Lok Sabha, there should be at least 55 members present while to conduct a sitting of Rajya Sabha, there should be at least 25 members present.

Dissolution

- A dissolution ends the very life of the existing House, and a new House is constituted after general elections are held.
- Rajya Sabha, being a permanent House, is not subject to dissolution. Only the Lok Sabha is subject to dissolution.
- The dissolution of the Lok Sabha may take place in either of two ways:
  - ***Automatic dissolution:*** On the expiry of its tenure of five years or the terms as extended during a national emergency.
  - ***Order of President:*** If President is authorized by Council of Ministers, he can dissolve Lok Sabha, even before the end of the term. He may also dissolve Lok Sabha if Council of Ministers 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.

Note: When the Lok Sabha is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committee's lapse.

The position with respect to lapsing of the Bill are as follows:

When does a Bill lapse?

- A Bill that originates in the Lok Sabha and remains pending in the Lower House itself is considered lapsed with the dissolution of the House.
- A Bill that originates and is passed by the Rajya Sabha, but is pending in the Lok Sabha also lapses with the dissolution of the Lower House.
- Bills that originate and are passed in the Lok Sabha but are pending in the Rajya Sabha are also considered lapsed.
- Bill that originates and is passed in the Rajya Sabha but is returned with amendments to the Upper House by the Lok Sabha and then does not get the clearance of the Rajya Sabha is considered to have lapsed on the date of dissolution of the Lower House.

When does a Bill not lapse?

There are instances when certain Bills, despite the dissolution of the Lower House, are not considered to have lapsed.

- A Bill that is pending in the Rajya Sabha but is not passed by the Lok Sabha.
- Bills that have cleared both the Houses but are pending assent from the President.
- If the president has notified the holding of a joint sitting before the dissolution of Lok Sabha.
- A bill passed by both Houses but returned by the president for reconsideration of Rajya Sabha.
- Pending bills and all pending assurances that are to be examined by the Committee on Government Assurances.

Joint Session of Parliament (Article 108):

- The Constitution of India provides for the joint sitting of the Parliament's two Houses, the Lok Sabha and the Rajya Sabha, in order to break any deadlock between the two.
- The joint sitting is called by the President. Such a session is presided over by the Speaker, and in his/her absence, by the Deputy Speaker of the Lok Sabha.
- In the absence of both, it is presided over by the Deputy Chairman of the Rajya Sabha.
- If any of the above are not present, any other member of the Parliament can preside by consensus of both the Houses.

Voting in the House

All decisions in Parliament are taken by voting by MPs, whether it relates to extending working hours or passing a Bill.

- Voice voting is the preferred method of decision making by Indian Parliament. MPs in favour of a decision call out "Ayes" and those opposed say "Noes".
- The Speaker then takes a call on which voices were louder and conveys the decision of the House.
- The rules of procedure of Lok Sabha do not mandate recording of votes of MPs for every decision taken. Voice voting does not reveal the individual positions taken by MPs.

Language in Parliament (Article 120)

- Constitution of India has declared that business in Parliament shall be transacted in Hindi or in English.
- Presiding officers may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother-tongue.

Rights of Ministers and Attorney General

Article 88 states that: Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

Every Minister and Attorney General of India shall have the right to speak in and otherwise participate in:

- the proceedings of either House
- any joint sitting of the Houses
- any committee of Parliament to which he may be named a member
- But by virtue of this article, he/she shall not be entitled to vote in the discussions.
- For Instance, Ministers who are elected to the Lok Sabha participate in the discussion in Rajya Sabha and certain Parliamentary committees. However, they are not entitled to vote where they are not authorized to.

Lame-Duck Session

In Parliament a lame duck session is conducted after election of new members but before they are installed. This refers to a session in which the members participate for last time because of failure to re-election. Members of existing Lok Sabha who could not get re-elected to the new Lok Sabha are called Lame Ducks. The word is widely used in USA.

Devices of Parliamentary Proceedings

Parliament is divided into two major bodies, they are Rajya Sabha and Lok Sabha. Apart from these two houses we also have President as the head assisted by the Prime Minister and his council of ministers. The functioning of the Rajya Sabha is divided into majorly pre-lunch and post-lunch sessions which again have two parts each. The pre-lunch session includes the Zero Hour and the question hour while the post-lunch session includes the Debates and the Legislative business meetings which includes all kinds of discussions relating to the national and the state needs.

The Zero Hour

- Zero hour is the hour in which the most important and urgent matters are raised and addressed. The MPs have to give notice before 10 am to the chairman on the day of the sitting about such a question that needs to be raised. The notice that is given by the MP should also state the subject and the urgency to be raised in the zero hours. After this, the Chairman decides whether to allow the matter to be raised or not.
- Zero Hour is an Indian parliamentary innovation. The phrase does not find mention in the rules of procedure. The concept of Zero Hour started organically in the first decade of Indian Parliament, when MPs felt the need for raising important constituency and national issues.
- Although Zero Hour is not specified in any Rule Book, presiding officers of both houses have worked to control it and make it more effective throughout the years.
- The Presiding officers in the Parliament regulate the zero by setting rules to streamline the process.
- In the Lok Sabha, Question Hour comes first, followed by Zero Hour, however in the Rajya Sabha, it is the other way around.

- The Difference between Zero Hour and Question Hour is the Ministers are not bound to reply in the Zero Hour.

The Question Hour

- The question hour is the transparency technique of the parliamentarians. This question hour is from 12 pm to 1 and it is used to hold the government accountable for their actions. Everything relating to the policies, and the other details have to be put up in this hour so that there remains the essence of democracy while the policies are framed and also remains the accountability and the transparency and accountability among the members of the parliament.
- During question hour, Members of Parliament ask questions from ministers and hold them accountable for the functioning of their ministries.
- The questions that MPs ask are designed to elicit information and trigger suitable action by ministries.
- The first hour of every parliamentary sitting is termed as Question hour.
- It is mentioned in the Rules of Procedure of the House.
- During this time, the members ask questions and the ministers usually give answers.
- The questions can also be asked to the private members (MPs who are not ministers).
- Question Hour in both Houses is held on all days of the session. But there are two days when an exception is made:
  - There is no Question Hour on the day the President addresses MPs from both Houses in the Central Hall.
  - Question Hour is not scheduled on the day the finance minister presents the Budget.

Members have a right to ask questions to elicit information on matters of public importance within the special cognizance of the Ministers concerned. The questions are of four types: —

(i) ***Starred Questions-*** A Starred Question is one to which a member desires an oral answer from the Minister in the House and is required to be distinguished by him/her with an asterisk. Answer to such a question may be followed by supplementary questions by members. The list of these questions is printed in green colour.

(ii) ***Unstarred Questions-*** An Unstarred Question is one to which written answer is desired by the member and is deemed to be laid on the Table of the House by Minister. Thus, it is not called for oral answer in the House and no supplementary question can be asked thereon. The list of these questions is printed in white colour.

(iii) ***Short Notice Questions-*** A member may give a notice of question on a matter of public importance and of urgent character for oral answer at a notice less than 10 days prescribed as the minimum period of notice for asking a question in ordinary course. Such a question is known as 'Short Notice Question'. The list of these questions is printed in light pink colour.

(iv) ***Questions to Private Members-*** A Question may also be addressed to a Private Member (Under Rule 40 of the Rules of Procedure and Conduct of Business in Lok Sabha), provided that the subject matter of the question relates to some Bill, Resolution or other matter connected with the business of the House for which that Member is responsible. The procedure in regard to such questions is same as that followed in the case of questions addressed to a Minister with such variations as the Speaker may consider necessary.

Debates

- This part of the procedure and the functioning of the parliament is the essence of the parliament functioning. The intellectual phase of the parliamentarians begins here at this stage. The parliamentarian's debate regarding the policies to be made for the future prospects and the ongoing policies.

Types of Debates-

- In the post-lunch session, there are types of debates that take place such as the short-term discussions, half an hour discussions and the special mention discussions and the motions afterwards are the key to the Indian Parliament.

Legislation and the Law-Making Process

- Legislation is an important part of the Parliamentarians and Legislations are the reason for the law being in force. This is also an important part of the parliamentary function.
- The Law-Making Process- all the bills and the ordinances will be formed and discussed in the house of the parliament and once the bills are approved by both the houses, the act is formed and then the law comes into being.

Motions in Parliament

- The term 'motion' in its wide sense means any proposal made for the purpose of eliciting a decision of the House. In order to ascertain the will of the House in regard to a matter before it, every question

to be decided by the House must be proposed by a member in the form of a motion.

- Motions are, in fact, the basis of all Parliamentary proceedings. Any matter of importance/public interest can be the subject-matter of a motion.

All motions moved in the House are classified into three broad categories:

(1) Substantive Motion — It is a self-contained independent proposal submitted for the approval of the House and drafted in such a way as to be capable of expressing a decision of the House. For example, all Resolutions are substantive motions. The conduct of persons in high authority can only be discussed on a substantive motion drawn in proper terms. Motions for the election of the Deputy Chairman in Rajya Sabha, Motion of Thanks on the President's Address are examples of substantive motions.

(2) Substitute Motion — Motions moved in substitution of the original motion for taking into consideration a policy or situation or statement or any other matter. Amendments to substitute motions are not permissible.

(3) Subsidiary Motion — It is a motion which depends upon or relates to another motion or follows upon some proceedings in the House. By itself it has no meaning and is not capable of stating the decision of the House without reference to the original motion or proceedings of the House. Subsidiary Motions are further divided into three:

(a) Ancillary Motion: A motion which is recognised by the practice of the House as the regular way of proceeding with various kinds of business. The following are examples of ancillary motions:

(i) That the Bill be taken into consideration.

(ii) That the Bill be passed.

(b) Superseding Motion: A motion which, though independent in form, is moved in the course of debate on another question and seeks to supersede that question. In that class fall all the dilatory motions. The following motions are superseding motions in relation to the motion for taking into consideration a Bill:

(i) That the Bill be recommitted to a Select Committee.

(ii) That the Bill be recommitted to a Joint Committee of the Houses.

(iii) That the Bill be re-circulated for eliciting further opinion thereon.

(iv) That the consideration of the Bill or the debate on the Bill be adjourned sine die or to some future date.

(c) Amendment: A subsidiary motion which interposes a new process of question and decision between the main question and its decision. Amendments may be to the clause of a Bill, to a Resolution or to a Motion. The objective of an amendment is either to modify a question before the House with a view to increasing its acceptability, or to present to the House a different proposition as an alternative to the original question.

General Rules for Parliamentary Motions

As per Rules of Procedure and Conduct of Business of the Houses: -

- No discussion on a matter of general public importance can take place except on a motion made with the consent of the Speaker/Chairman as the case may be.
- Notice of motion must be given in writing addressed to the Secretary-General.
- There are certain parameters for the admissibility of the motion.
- The Chairman/Speaker decides the admissibility of the motions as per the parameters.
- Motions on matters pending before tribunals or commissions are not admitted.
- The Chairman/Speaker allots time for discussion on the matter raised in the motion.
- On the allotted day the Chairman/Speaker may put every question necessary to determine the decision of the House on the original question.
- The Speaker/Chairman may prescribe a time limit for speeches on the motion.

Types of motions in Indian Parliament

There are various types of motions which are as under: -

- Censure Motion
- No Confidence Motion
- Confidence Motion
- Call-Attention Motion
- Adjournment Motion
- Cut Motions
- Privilege Motion
- Motion of Thanks
- Dilatory Motion
- No-Day-Yet-Named Motion

Censure motion

- Censure motion is moved by the opposition against a

specific policy of the government or against a minister or against the whole council of ministers. It can be moved only in the lower house of the parliament. The motion should be specific and self-explanatory so as to record the reasons of the censure precisely and briefly.

- No leave of the House is required to move a censure motion. If it is passed, the Council of Minister is bound to seek the confidence of the Lok Sabha as early as possible.

No Confidence motions

- This motion is introduced in the Lok Sabha by the opposition. It is a motion expressing want of confidence in the Council of Ministers. No-confidence motions are subject to following restrictions, namely:—
  - leave to make the motion shall be asked for by the member when called by the Speaker;
  - the member asking for leave shall, that day give to the Secretary-General a written notice of the motion which such member proposes to move.
- If the Speaker is of opinion that the motion is in order, he shall read the motion to the House and request those members who are in favour of leave being granted to rise in their places. At least fifty members are required to rise if the leave is to be granted. The motion has to be taken up within 10 days from the date on which leave is asked for. After the discussion, the Speaker puts every question necessary to determine the decision of the House on the motion. A Government can be dismissed by passing a direct vote on a no-confidence motion.

Confidence motion

- It is also called "trust vote". Confidence motions have evolved as a counter by the government when it wants to demonstrate its majority. There is no special provision in the rules for a confidence motion — such a motion is moved as an ordinary motion. In recent times, when no party has had a clear majority, the President has appointed a prime minister who he believed had the majority support. This person is expected to prove his majority through a confidence motion.
- If both, the motion for no-confidence and a motion for confidence are tabled, the speaker is to give precedence to government business and take the motion of confidence.
- If the prime minister loses a motion of confidence, he is obliged to resign, and the President should try to identify another person who enjoys the confidence of the Lok Sabha.

Call attention motion

- A member may, with the previous permission of the Speaker, call the attention of a Minister to any matter of urgent public importance by moving a motion. The Minister may make a brief statement or ask for time to make a statement at a later hour or date. The number of call-attention motion is restricted to two motions by one member in a single sitting.

Adjournment motion

- A motion for an adjournment of the business of the House for the purpose of discussing a definite matter of urgent public importance may be made with the consent of the Speaker.
- The Adjournment motion if admitted leads to setting aside the normal business of the House for discussing the matter mentioned in the motion. The motion shall be restricted to a specific matter of recent occurrence involving the responsibility of the Government of India.

Cut motions

- A cut motion is a special power vested in members of the Lok Sabha to oppose a demand being discussed for specific allocation by the government in the Finance Bill as part of the Demand for Grants.
- If the motion is adopted, it amounts to a no-confidence vote, and if the government fails to jot up numbers in the lower House, it is obliged to resign according to the norms of the House.
- A motion may be moved to reduce the amount of a demand in any of the following ways:
  - ***Policy Cut Motion:*** It is moved so that the amount of the demand be reduced to Re.1 representing disapproval of the policy underlying the demand. The discussion shall be confined to the specific point or points mentioned in the notice and it shall be open to members to advocate an alternative policy.
  - ***Economy Cut Motions:*** It is moved so that the amount of the demand will be reduced by a specified amount representing the economy that can be affected. Such specified amount may be either a lump sum reduction in the demand or omission or reduction of an item in the demand.
  - ***Token Cut Motions:*** It is moved so that the amount of the demand is reduced by Rs.100 expresses a specific grievance which is within the sphere of the responsibility of the Government of India.

The discussion on this motion is confined to the particular grievance specified in the motion.

- It can be moved only in Lok Sabha.

Privilege motion

- The Constitution grants certain powers, privileges and immunities to the Parliament, its members and committees. Such powers and privileges are regulated as per laws made by the House.
- A privilege motion is introduced by the opposition against a minister in case the minister has misled the House by providing false information. Its purpose is to censure the concerned minister.
- A privilege motion can be moved against a non-member as well as a member.

Motion of Thanks

- A formal motion moved in the House expressing its gratitude for the Address delivered by the President under Article 87(1) of the Constitution to both Houses of Parliament assembled together.
- It provides an opportunity for the discussion of the matters referred to in the Address. Members can move amendments to the Motion of Thanks.
- The discussion on the Motion of Thanks is concluded by the reply of the Prime Minister or any other Minister.

Dilatory Motion

- A motion for the adjournment of the debate or a motion to retard or delay the progress of the business under consideration of the House. The debate on a dilatory motion must be restricted to the matter of such motion.
- If the Chairman is of opinion that such a motion is an abuse of the Rules of the House, he may either forthwith put the question thereon from the Chair or decline to propose the question.

No Day Yet Named motion

- If the Speaker admits notice of a motion and no date is fixed for the discussion of such motion, it is called No-Day-Yet-Named motion.
- The Speaker may, after considering the state of business in the House and in consultation with the Leader of the House or on the recommendation of the Business Advisory Committee allot a day or days or part of a day for the discussion of any such motion.

Point of Order

A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure. A point of order should relate to the interpretation or enforcement of the Rules of the House or such articles of the Constitution that regulate the business of the House and should raise a question that is within the cognizance of the Speaker. It is usually raised by an opposition member in order to control the government. It is an extraordinary device as it suspends the proceedings before the House. No debate is allowed on a point of order.

> ***Note:*** Motions such as No Confidence Motion, Adjournment Motion and Censure Motion are admissible only in Lok Sabha.

Legislative Process in Parliament

The basic function of Parliament is to make laws. All legislative proposals have to be brought in the form of Bills before Parliament. A Bill is a statute in draft and cannot become law unless it has received the approval of both the Houses of Parliament and the assent of the President of India.

The process of law making begins with the introduction of a Bill in either House of Parliament. A Bill can be introduced either by a Minister or a member other than a Minister. In the former case, it is called a Government Bill and in the latter case, it is known as a Private Member's Bill.

A Bill undergoes three readings in each House, i.e., the Lok Sabha and the Rajya Sabha, before it is submitted to the President for assent.

Parliament makes laws in skeletal form and the executive has to make detailed rules and regulations within framework of the law. This is called delegated legislation; executive legislation or subordinate legislation

Types of Bills

There are four different kinds of Bills that are passed in the Parliament of India. They can be classified as:

- Ordinary Bills
- Money Bills
- Finance Bill
- Constitutional Amendment Bills

Ordinary Bills

These are the bills that are concerned with any matters related to the law, which does not include matters related to finance. There are five stages through which an ordinary bill becomes a law.

First reading: Member asks for the leave of the house to introduce the bill. If the leave is granted, he introduces title and objectives, the bill is published in the

gazette of India. If bill is published before its introduction leave of the house isn't needed. No debates or voting takes place.

Second reading: The Second Reading involves detailed scrutiny of bill which consists of following steps:

(A) Stage of General Discussion: Here printed copies of the bill are given to all house members. The house can take the bill for immediate consideration or at a fixed date. It can be referred to a select committee or a joint committee of both houses. It can be circulated for public opinion.

(B) Committee Stage: A committee scrutinizes the bill and amends it if needed. A detailed clause by clause review is done. Committee submits report to the house.

(C) Consideration Stage: The house examines the bill in detail. Each clause is examined and voted upon. Amendment if succeeded is added to the bill.

Third reading: The entire bill is discussed and voted; no amendments are allowed at this stage. If the bill is passed by a simple majority, then it's authenticated by the presiding officer and goes to the second house.

Bill in the Second House: In the second house also, the bill passes through all the three stages. Second house has following alternatives:

- Pass as sent by first House (the bill can be either passed without amendment);
- pass with amendments to the first house for reconsideration;
- rejects the bill altogether;
- no action is taken.

If the first house rejects the amendments or second house rejects bills or no action is taken for six months then a deadlock is deemed to have taken place and a joint sitting is called by the president. A bill needs to be passed by a simple majority.

Assent of the President: After being passed by both the house the bill is sent to the President for his assent. Here the president has following alternatives:

- Give his assent
- Withhold his assent
- Send bill for reconsideration.

If the President gives assent, then bill becomes an Act. If president withhold his assent, the bill ends. If the president returns the bill for reconsideration, if both houses pass it again with or without amendments then this time the president must have to give his assent.

Joint Sitting

Joint sitting is an extraordinary machinery provided by the Constitution aimed to maintain a much-needed synergy between the two houses of the Parliament. President of India may after consultation with the chair of the Rajya Sabha and the Speaker of Lok Sabha may make rules for procedure of joint session of parliament.

Occasions when Joint Session of Parliament is summoned:

As per Article 108 of Constitution, a Joint session of Parliament can be summoned in the following situation:

- To resolve deadlock when any house of the Parliament passes a bill and when the other House rejects this bill, or
- The houses do not agree on the amendments made to the bill, or
- More than six months elapsed with the bill being received by the other House without it being passed. However, in calculating the period of six months, those days are not considered when house is prorogued or adjourned for more than 4 consecutive days.

Reason for holding joint session:

The makers of the Constitution of India anticipated situations of deadlock between the Rajya Sabha and the Lok Sabha. Therefore, the Constitution of India provides for Joint sitting of both Houses to resolve this deadlock. Further, joint session reflects the importance of Rajya Sabha as a check on hasty legislations by the government. Since 1950, the provision regarding the joint sitting of the two Houses has been invoked only thrice. The bills that have been passed at joint sittings are:

- Dowry Prohibition Bill, 1960.
- Banking Service Commission (Repeal) Bill, 1977.
- Prevention of Terrorism Bill, 2002.

Joint sitting is notified by the president after which no house can proceed on the bill. Speaker or in his absence deputy speaker or in his absence deputy chairman of RS presides over the joint sitting. If he is also absent the any member in the joint sitting can preside as chosen by the members present. Joint sitting can't be done for money bills or constitution amendments.

In a joint sitting no new amendments can be made except

i. if these amendments have caused disagreement between the two houses OR

ii. have been made necessary due to the delay in passing the bill.

A bill needs to be passed by a simple majority.

Exceptions to Joint Session: According to the Indian

Constitution, there are two exceptions when a joint sitting cannot be summoned. They are for the following bills:

- ***Money Bill:*** Under the Constitution of India, money bills require approval of the Lok Sabha only. Rajya Sabha can give suggestions to Lok Sabha, which it is not required to accept. Even if Rajya Sabha doesn't pass a money bill within 14 days, it is deemed to have been passed by both the Houses of Parliament after expiry of the above period. Therefore, there is no need of summoning a joint session in the case of money bills.
- ***Constitution Amendment Bill:*** As per Article 368, the Indian Constitution can be amended by both houses of parliament by 2/3rd majority. In case of disagreement between both houses, there is no provision to summon joint session of parliament.

Financial Bills

They are of three types:

- Money bills (Article 110)
- financial bills – I (Article 117(1))
- Financial bills – II(Article 117(2))

Money Bills

These are the bills that deal with the matter related to the money under Art 110 of the Constitution of India. This Article states that any provision that deals with

- Provisions of taxation;
- Borrowing by the union government;
- appropriation of funds from the consolidated fund of India;
- Payment into or withdrawal from consolidated fund or contingency fund of India;
- Declaration of amount charged on consolidated fund or increasing this amount;
- Audit of accounts of union or states;
- receipts of money on account of consolidated fund or public account of India or custody or issue of such money; is deemed to be a money bill.

Money bills can be introduced only in Lok Sabha and only after the president's recommendation. It is a government bill and can be introduced only by a minister.

When it is passed by the Lok Sabha and transmitted to the Rajya Sabha. The Rajya Sabha has to pass the Money Bill to the Lok Sabha in a period of 14 days from its receipt date. It may return it with or without recommendations. The Lok Sabha can accept or reject the recommendations. If the Rajya Sabha fails to return the Bill after the completion of 14 days, the Bill will be deemed to have been passed by both the Houses of the Parliament at the expiry of the 14 days in the same form it was passed by the Lok Sabha. And then it goes to the president for his assent. The Speaker of the House, certifies a bill as a Money Bill, and the decision of the speaker becomes the final verdict and cannot be changed or challenged in the court.

Finance Bill I

Finance Bill- I under Article 117 (1) can contain matters of money bills [all or some] but have to also contain provisions of general legislation.

A financial bill (I) is similar to a money bill as

- both of them can be introduced only in the Lok Sabha and not in the Rajya Sabha and
- both of them can be introduced only on the recommendation of the president.

In all other respects, a financial bill (I) is governed by the same legislative procedure applicable to an ordinary bill. Hence, it can be either rejected or amended by the Rajya Sabha except that an amendment other than for reduction or abolition of a tax cannot be moved in either House without the recommendation of the president.

In case of a disagreement between the two Houses over such a bill, the president can summon a joint sitting of the two Houses to resolve the deadlock.

Finance Bill II

Finance Bill II under Article 117(2) contains provisions involving expenditure from the Consolidated Fund of India, but does not include any of the matters mentioned in Article 110.

It is treated as an ordinary bill and in all respects; it is governed by the same legislative procedure which is applicable to an ordinary bill. Hence, financial bill II can be introduced in either House of Parliament and recommendation of the President is not necessary for its introduction.

The only special feature of this bill is that it cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the bill.

Constitutional Amendment Bills

The power vested by the Constitution to the Parliament to amend the Bills gives the right to make amendments in the Constitution. These can be introduced in both the houses of the Parliament. The power vests in the parliament for its introduction, but not in the legislatures of the States. These Bills can be introduced by a Minister or a Private Member and do not require the recommendation of the President. There are three kinds of constitutional amendment bills:

- Bills that the Parliament needs to pass by a simple majority.
- Bills that the Parliament needs to pass by a special majority.
- Bills that the Parliament needs to pass by a special majority but also needs to be ratified by the State Legislatures by not less than one half of them.

Annual Financial Statement or Budget

The term 'Budget' is not mentioned in Indian Constitution; the corresponding term used is 'Annual Financial Statement'. According to Article 112 of the Indian Constitution, the Union Budget of a year is referred to as the Annual Financial Statement (AFS).

It is a statement of the estimated receipts and expenditure of the Government in a financial year (which begins on 01 April of the current year and ends on 31 March of the following year).

The Railway budget was separated form the general budget in1924 on the recommendations of Acworth Committee Report (1921), but in 2017 the central government merged the railway budget into the general budget. Hence there is now only one budget for the Government of India.

What are the constitutional requirements which make Budget necessary?

Article 265: provides that 'no tax shall be levied or collected except by authority of law'. [ie. Taxation needs the approval of Parliament.]

Article 266: provides that 'no expenditure can be incurred except with the authorisation of the Legislature' [ie. Expenditure needs the approval of Parliament.]

Article 112: President shall, in respect of every financial year, cause to be laid before parliament, an Annual Financial Statement.

The Budget Contains:

- Estimates of revenue and capital receipts,
- Ways and means to raise the revenue,
- Estimates of expenditure,
- Details of the actual receipts and expenditure of the closing financial year and the reasons for any deficit or surplus in that year, and
- The economic and financial policy of the coming year, i.e., taxation proposals, prospects of revenue, spending program, and introduction of new schemes/projects.

In Parliament, the Budget is enacted through six stages:

The Budget Division of the Department of Economic Affairs in the Finance Ministry is the nodal body responsible for preparing the Budget.

- Presentation of Budget
- General discussion
- Scrutiny by Departmental Committees
- Voting on Demands for Grants
- Passing of Appropriation Bill and Finance Bill.

A. Presentation of budget: Conventionally the budget is presented by the finance minister in the Lok Sabha on last working day of February. Since 2017 the presentation of budget has advanced to 1st of February. The budget can be presented in parts, and each part shall be dealt with as if it were a budget. Finance minister gives a budget speech and at the end of it; the budget is laid before both houses. Rajya Sabha can only discuss it and has no power to vote on the demands for grants. Economic survey is presented one day or few days before the presentation of the budget.

B. General discussions: Only the general principles of budget or the budget as a whole can be discussed. No motions of reduction of grants or votes can be made. Finance minister has the right of reply at end of discussion. This happens in both houses.

C. Scrutiny by dept committees: An in-depth scrutiny of demand for grants by department is made by each departmental standing committee of parliament. Three to four weeks are given for this and the house remains in recess. The standing committees make a report to the house at the end.

D. Voting on the demand for grants: The Member of Parliament of Lok Sabha study and vote on each demand for grant. The Lok Sabha only can vote on demand for grants and no voting is allowed on the expenditure charged on the consolidated fund of India. Member of Parliament can move motion for reduction of a grant called CUT Motions

Cut Motion

- ***Policy cut:*** Reduces allocation of grant to Re. 1 to indicate disapproval to a policy.
- ***Token cut:*** Reduce amount by Rs.100 to ventilate specific grievance
- ***Economy cut:*** Reduction by specific amount to suggest economic use of funds.

26 days are allotted for discussions and voting of the demand for grants at the last day all remaining demands are put to vote and disposed. This is

referred to as "Guillotine".

E. ***Appropriation bill and Finance bills:*** The appropriation bill contains voted demand for grants and also expense charged on the consolidated fund of India. No amendments can be made on these in any house. After the bill receives assent of the president it becomes appropriation act. This allows expense from the consolidated fund.

Finance bill is also presented containing provisions for taxation. It is like a money bill however amendment can be moved seeking to reduce or remove a tax. This allows taxes to be levied. The Finance Act legalises the income side of the budget and completes the process of the enactment of the budget.

Other Grants:

1. ***Supplementary grant:*** It is granted if the amount authorized by the parliament through the appropriation act to be expended for a particular service for the current financial year is found to be insufficient for the purpose of that year.
2. ***Additional Grant:*** It is granted when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the Budget for that year. In additional grant, extra amount is needed that wasn't dealt with earlier.
3. ***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 year. The demands for excess grants are made after the expenditure has actually been incurred and after the financial year to which it relates, has expired. All cases involving such excesses are brought to the notice of parliament by the Comptroller and Auditor General through his report on the appropriation accounts. The excesses are then examined by the Public Accounts Committee which makes recommendations regarding their regularisation in its report to the House.
4. ***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 stand with the details ordinarily given in an annual financial statement.
5. ***Exceptional Grants:*** It is granted for an exceptional purpose which forms no part of the current service of any financial year.
6. ***Token Grant:*** It is granted when funds to meet proposed expenditure on a new service can be made available by re-appropriation, a demand for the grant of a token sum may be submitted to the vote of the House and, if the House assents to the demand, funds may be so made available.

Supplementary, additional, excess and exceptional grants and vote of credit follows the same procedure as the enactment of the budget.

Demand for grants can be made only on recommendation of the president.

Funds

The constitution provides for three types of funds for the central government. These are:

1. ***Consolidated Fund of India (Article 266):*** It is a fund of the government of India, in which all receipts are credited and all payments are debited. It includes
   (i) All revenues received by the Government of India
   (ii) All loans raised by the government by the issue of treasury bills, loans or ways and means advances
   (iii) Money received by the Government in repayment of loans

   No money out of the Consolidated Fund of India shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution. That means, the payment can be made out of the Consolidated Fund of India only with approval of the parliament.
2. ***Public Account of India (Article 266):*** All other public money received by or on behalf of the Government of India shall be entitled to the public account of India. The payment out of this account can be made without parliament appropriation as it is operated by executive action. Public account includes provident fund deposits, saving bank deposits, judicial deposits etc.
3. ***Contingency Fund of India (Article 267):*** The constitution provides the parliament to establish a Contingency Fund of India. The parliament established Contingency Fund of India in 1950. This fund is placed at the disposal of the president to enable advances to be made by him out of such fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the parliament. This fund is operated by executive action.

Changes Introduced Recently

- Advancement of Budget presentation to February 1 (earlier presented on the last working day of February)

- Merger of Railway Budget with the General Budget
- Doing away with plan and non-plan expenditure.
  - ***Plan Expenditure:*** All expenditures done in the name of planning (i.e., Five Year Plans) were called plan expenditures. For example, expenditure on electricity generation, irrigation, and rural developments, construction of roads, bridges, canals, etc.
  - ***Non-plan Expenditure:*** All expenditures other than plan expenditure were known as non-plan expenditure. For example, interest payments, pensions, statutory transfers to States and Union Territories governments, etc.

Expenses

- Expenditure on revenue account should be separated from other expenditure. Also, expenditure charged on the consolidated fund should be separated from the expense made from the fund.
- Parliament can reduce or abolish a tax but can't increase it.
- Demand for grants can be made only on recommendation of the president.
- Expenditures are of two types
  - charged upon the Consolidated Fund of India (non-votable, only discussed)
  - made from the Consolidated Fund of India(votable)

Charged expense is non votable but can only be discussed by parliament.

Expense charged upon the Consolidated Fund of India:

It includes salaries, pensions or expenses of President, UPSC, CAG, Supreme Court judge, Pensions of High Court judges, Presiding or deputy presiding officer of Lok Sabha and Rajya Sabha, debt of the Govt of India, amounts to satisfy any judgments, expense declared by parliament to be charged on the fund.

Multifunctional Role of Parliament

In the 'Indian politico-administrative system', the Parliament occupies a central position and has a multifunctional role. It enjoys extensive powers and performs a variety of functions towards the fulfilment of its constitutionally expected role. Its powers and functions can be classified under the following heads:

- Legislative Powers and Functions
- Financial Powers and Functions
- Executive Powers and Functions
- Judicial Powers and Functions
- Amending Powers
- Electoral Powers and Functions
- Other powers and functions.

Legislative Powers and Functions

- The Parliament legislates on all matters mentioned in the Union List and the Concurrent List.
- In the case of the Concurrent List, where the state legislatures and the Parliament have joint jurisdiction, the union law will prevail over the states unless the state law had received the earlier presidential assent. However, the Parliament can any time, enact a law adding to, amending, varying or repealing a law made by a state legislature.
- The Parliament can also pass laws on items in the State List under the following circumstances:
- If Emergency is in operation, or any state is placed under President's Rule (Article 356), the Parliament can enact laws on items in the State List as well.
- As per Article 249, the Parliament can make laws on items in the State List if the Rajya Sabha passes a resolution by ⅔ majority of its members present and voting, that it is necessary for the Parliament to make laws on any item enumerated in the State List, in the national interest.
- As per Article 253, it can pass laws on the State List items if it is required for the implementation of international agreements or treaties with foreign powers.
- According to Article 252, if the legislatures of two or more states pass a resolution to the effect that it is desirable to have a parliamentary law on any item listed in the State List, the Parliament can make laws for those states.

Financial Powers and Functions

- No tax can be levied or collected and no expenditure can be incurred by the Executive except under the authority and with the approval of Parliament. Hence, the budget is placed before the Parliament for its approval. The enactment of the budget by the Parliament legalises the receipts and expenditure of the government for the ensuing financial year.
- The Parliament also scrutinises government spending and financial performance with the help of its financial committees.
- These include public accounts committee, estimates committee and committee on public undertakings. They bring out the cases of illegal, irregular, unauthorised, improper usage and wastage and extravagance in public expenditure.

- Therefore, the parliamentary control over the Executive in financial matters operates in two stages:
- Budgetary control, that is, control before the appropriation of grants through the enactment of the budget; and
- Post-budgetary control, that is, control after the appropriation of grants through the three financial committees.
- The budget is based on the principle of annuity, that is, the Parliament grants money to the government for one financial year.
- If the granted money is not spent by the end of the financial year, then the balance expires and returns to the Consolidated Fund of India. This practice is known as the 'rule of lapse'. It facilitates effective financial control by the Parliament as no reserve funds can be built without its authorisation. However, the observance of this rule leads to heavy rush of expenditure towards the close of the financial year. This is popularly called as 'March Rush'.

Executive Functions (Control over the Executive)

In the parliamentary form of government, the executive is responsible to the legislature. Hence, the Parliament exercises control over the executive by several measures.

- By a vote of no-confidence, the Parliament can remove the Cabinet (executive) out of power. It can reject a budget proposal or any other bill brought by the Cabinet. A motion of no-confidence is passed to remove a government from office.
- The MPs (Members of Parliament) can ask questions to the ministers on their ommissions and commissions. Any lapses on the part of the government can be exposed in the Parliament.
- The Parliament appoints a Committee on Ministerial Assurances that sees whether the promises made by the ministers to the Parliament are fulfilled or not.
- Other devices that are used to have a control over the executive are as follows:
- Adjournment motions
- Censure Motions
- Cut motions

Judicial Powers and Functions

The judicial powers and functions of the Parliament include the following:

- It can impeach the President for the violation of the Constitution.
- It can remove the Vice-President from his office.
- It can recommend the removal of judges (including chief justice) of the Supreme Court and the high courts, chief election commissioner, comptroller and auditor general to the president.
- It can punish its members or outsiders for the breach of its privileges or its contempt.
- The Parliament has the power to amend the Constitution of India. Both Houses of the Parliament have equal powers as far as amending the Constitution is concerned. Amendments will have to be passed in both the Lok Sabha and the Rajya Sabha for **them to be effective**.

Electoral Functions

- The Parliament takes part in the election of the President and the Vice President.
- The electoral college that elects the President comprises of, among others, the elected members of both Houses.
- The President can be removed by a resolution passed by the Rajya Sabha agreed to by the Lok Sabha.

Other Powers

- Issues of national and international importance are discussed in the Parliament. The opposition plays an important role in this regard and ensures that the country is aware of alternate viewpoints.
- A Parliament is sometimes talked of as a 'nation in miniature'.
- In a democracy, the Parliament plays the vital function of deliberating matters of importance before laws or resolutions are passed.
- The Parliament has the power to alter, decrease or increase the boundaries of states/UTs.
- The Parliament also functions as an organ of information. The ministers are bound to provide information in the Houses when demanded by the members.

Ineffectiveness of Parliamentary Control

The parliamentary control over government and administration in India is more theoretical than practical. In reality, the control is not as effective as it ought to be. The following factors are responsible for this:

- The Parliament has neither time nor expertise to control the administration which has grown in volume as well as complexity.
- Parliament's financial control is hindered by the technical nature of the demands for grants. The parliamentarians being laymen cannot understand them properly and fully.
- The legislative leadership lies with the Executive and it plays a significant role in formulating policies.

- The very size of the Parliament is too large and unmanageable to be effective.
- The majority support enjoyed by the Executive in the Parliament reduces the possibility of effective criticism.
- The financial committees like Public Accounts Committee examines the public expenditure after it has been incurred by the Executive. Thus, they do post mortem work.
- The increased recourse to 'guillotine' reduced the scope of financial control.
- The growth of 'delegated legislation' has reduced the role of Parliament in making detailed laws and has increased the powers of bureaucracy.
- The frequent promulgation of ordinances by the president dilutes the Parliament's power of legislation.
- The Parliament's control is sporadic, general and mostly political in nature.
- Lack of strong and steady opposition in the Parliament, and a setback in the parliamentary behaviour and ethics, have also contributed to the ineffectiveness of legislative control over administration in India.

Position of Rajya Sabha

The Constitutional position of the Rajya Sabha (as compared with the Lok Sabha) can be studied from three:

- Where Rajya Sabha is equal to Lok Sabha.
- Special Powers of the Lok Sabha-
- Special Powers of the Rajya Sabha-

Equal Status with Lok Sabha

In the following matters, the powers and status of the Rajya Sabha are equal to that of the Lok Sabha:

- Introduction and passage of financial bills involving expenditure from the Consolidated Fund of India.
- Introduction and passage of ordinary bills.
- Introduction and passage of Constitutional amendment bills.
- Election and removal of the Vice-President. However, Rajya Sabha alone can initiate the removal of the vice-president. He is removed by a resolution passed by the Rajya Sabha by an effective majority (which is a type of special majority) and agreed to by the Lok Sabha by a simple majority.
- Election and impeachment of the president.
- Making recommendation to the President for the removal of Chief Justice and judges of Supreme Court and high courts, chief election commissioner and comptroller and auditor general.
- Approval of ordinances issued by the President.
- Selection of ministers including the Prime Minister. Under the Constitution, the ministers including the Prime Minister can be members of either House. However, irrespective of their membership, they are responsible only to the Lok Sabha.
- Approval of proclamation of all three types of emergencies by the President.
- Enlargement of the jurisdiction of the Supreme Court and the Union Public Service Commission.
- Consideration of the reports of the constitutional bodies like Finance Commission, Union Public Service Commission, comptroller and auditor general, etc.

Special Powers of the Lok Sabha-

- The Rajya Sabha cannot remove the council of ministers by passing a no-confidence motion. This is because the Council of ministers is collectively responsible only to the Lok Sabha. But, the Rajya Sabha can discuss and criticise the policies and activities of the government
- The responsibility with the collective note is a thing to be considered and the Lok Sabha enjoys special powers with respect to the "Collective Responsibility" of the government in the financial matters.
- A Money Bill can be introduced only in the Lok Sabha and not in the Rajya Sabha.
- Rajya Sabha cannot amend or reject a Money Bill. It should return the bill to the Lok Sabha within 14 days, either with recommendations or without recommendations.
- A financial bill, not containing solely the matters of Article 110, also can be introduced only in the Lok Sabha and not in the Rajya Sabha. But, with regard to its passage, both the Houses have equal powers.
- The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha. In both the cases, the money bill is deemed to have been passed by the two Houses.
- The Speaker of Lok Sabha presides over the joint sitting of both the Houses.
- The final power to decide whether a particular bill is a Money Bill or not is vested in the Speaker of the Lok Sabha.
- The Lok Sabha with greater number wins the battle in a joint sitting except when the combined strength of the ruling party in both the Houses is less than that of the opposition parties.
- A resolution for the discontinuance of the national

emergency can be passed only by the Lok Sabha and not by the Rajya Sabha.

- Rajya Sabha can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the Lok Sabha).
- All the financial bills and the money bills are passed by the Lok Sabha and not the Rajya Sabha.
- The Indian Constitution provides that the Council of Ministers shall be collectively responsible to the Lok Sabha and the power to control the finances also lies with the Lok Sabha.

Special Powers of Rajya Sabha

The Rajya Sabha has been given four exclusive or special powers that are not enjoyed by the Lok Sabha:

- It can authorise the Parliament to make a law on a subject enumerated in the State List (Article 249).
- It alone can initiate a move for the removal of the Vice-President. In other words, a resolution for the removal of the vice-president can be introduced only in the Rajya Sabha and not in the Lok Sabha (Article 67).
- It can authorise the Parliament to create new All-India Services common to both the Centre and states (Article 312).
- If a proclamation is issued by the President for imposing national emergency or president's rule or financial emergency at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place within the period allowed for its approval, then the proclamation can remain effective even if it is approved by the Rajya Sabha alone (Articles 352, 356 and 360).

An analysis of the above points makes it clear that the position of the Rajya Sabha in our constitutional system is not as weak as that of the House of Lords in the British constitutional system nor as strong as that of the Senate in the American constitutional system. Except in financial matters and control over the council of ministers, the powers and status of the Rajya Sabha in all other spheres are broadly equal and coordinate with that of the Lok Sabha.

Parliamentary Privileges (Article 105)

Parliamentary privilege is the total of specific rights enjoyed by each House collectively and by members of each House individually, which outweigh those owned by other groups or persons and without which they could not execute their tasks.

Some privileges are based purely on Parliamentary law and custom, while others are governed by statute.

Background

- The origins of Parliamentary powers in India can be traced back to 1833 when the governor-council generals were expanded to include a fourth member following the 1833 Charter Act. A new form of legislative apparatus was created. This created the groundwork for an institution that, through time, evolved into a full-fledged legislative body.
- After the Indian Councils Act of 1909 permitted for indirect election to the legislature, the official opposition to the assembly's privileges was lessened.
- Freedom of speech in the legislature was guaranteed under the Government of India Act of 1935.
- Some of Parliament's privileges, as well as those of its members and committees, are now enshrined in the Constitution, and certain legislation and rules of procedure govern the House; others are still dependent on House of Commons precedents.
- The primary articles of India's Constitution dealing with Parliamentary privileges are 105 and 122, while the state-specific provisions are 194 and 212.

Sources

The five sources of the privileges are:

- Constitutional provisions
- Various laws made by Parliament
- Rules of both the Houses
- Parliamentary conventions
- Judicial interpretations

Parliamentary Privileges

- Parliamentary privileges (Art 105 & 194) are special rights, immunities, exemptions enjoyed by the members of the two houses of Parliament and their committees.
- These rights are also given to those individuals who speak and participate in any committee of the Parliament, which includes the Attorney General of India and the Union Ministers.
- President, who is integral part of the parliament, does not enjoy these.
- Article 105 (3) was amended by the Constitution 44th Amendment and now has two aspects.
    - Powers, privileges and immunities of each Houses of Parliament, its Members and Committees shall be such as may be defined by Parliament by law in time.

- Till such powers, privileges and immunities are defined by Parliament, shall be the same as that enjoyed by the House of Commons as on 26th January 1950.

Types of Parliamentary Privileges in India

Collective Privileges

The privileges belonging to each House of Parliament collectively are:

- The ability to publish reports, debates, and proceedings, as well as the ability to prevent others from doing so. It can publish truthful reports of Parliamentary proceedings without the House's authorization under the freedom of the press. However, in the case of a House meeting held in secret, this right of the press does not apply.
- Keep strangers out of the gathering and organize covert sessions to address vital issues.
- Make rules to govern its own procedure and commercial activity, as well as to adjudicate on such issues.
- Right to immediate notification of a member's arrest, custody, conviction, imprisonment, and release.
- Initiate inquiries and compel a person's attendance.
- The courts are not allowed to investigate a House's or its committees' proceedings.
- Without the consent of the Presiding officer, no one (whether a member or an outsider) can be arrested, and no legal process (civil or criminal) can be served within the House's boundaries.

Individual Privileges

The privileges belonging to the members individually are:

- During the session of Parliament, from 40 days before the beginning to 40 days after the finish, no member may be arrested. This privilege is only granted in civil matters; it is not granted in criminal or preventive detention situations.
- In Parliament, members have the right to free expression. No member of Parliament or its committees is accountable in any court for anything said or voted in Parliament or its committees. This independence is limited by the Constitution's provisions as well as the norms and standing orders that govern Parliament's functioning.
- Members of Parliament are exempt from jury duty when Parliament is in session. They have the right to decline to give evidence and testify in court.

Freedom of Publication - Article 361-A

- Article 361-A was added by the Constitution 44th Amendment which says that no person shall be liable to any proceedings, civil or criminal in any Court of law in respect of any publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or Legislative Assembly, unless the publication is proved to have been made with malice. A similar immunity is extended to broadcast on air. Newspapers were not immune to publications of parliamentary proceedings prior to 44th Amendment Act.
- In the famous Searchlight case, the Supreme Court ruled that publication of inaccurate or mashed versions of speeches delivered in the House or misreporting the proceedings amounts to breach of privilege.
- The Court held that publication of those parts of proceedings by a newspaper which were expunged by the House amounts to breach of privilege of the House and the offending party can take action in spite of protection from Article 361A.
- The Supreme Court also held that the House can impose a prohibition on publication of any debates, proceedings even if such prohibitions amounted to violation of freedom of speech and expression under Article 19 (1)(a).

Parliamentary Privileges - Provisions related Internal Autonomy

- Article 122 (1) grants immunity on the same lines to internal functioning of the House. The validity of any proceedings in Parliament cannot be called into question on the ground of alleged irregularity or procedure.
- Article 122 (2) further says that officers of Parliament who regulate its procedure and maintain order are not subject to the jurisdiction of any court while exercising those powers. Thus, the House of Parliament is free from judicial control in its functioning.
- Speaker cannot be sued for damages for any action taken against a member including that of arrest. A High Court or Supreme Court cannot issue a writ under Article 226 or Article 32 to restrain the functioning of the House or legislation even though the subject of legislation is ultra vires. Only when a

Bill becomes a law after the President's assent, the Courts can decide upon its constitutionality.

- Thus, the House enjoys immunity from judicial process and such courtesy is also extended to the Committee of the House as a committee is one of its parts through which a House functions. However, illegality or unconstitutionality of a procedure can be inquired into by a Court of Law.

What is a breach of privilege?

A breach of privilege is a violation of any of the privileges of MPs/Parliament. Among other things, any action 'casting reflections' on MPs, parliament or its committees could be considered a breach of privilege. This may include publishing of news items, editorials or statements made in newspaper/magazine/TV interviews or in public speeches

Advantages of Parliamentary Privileges

- It lowers tensions, fosters goodwill, and encourages collaboration between the two branches of government: The parliamentary system of governance is beneficial because it fosters cooperation between the executive and legislative branches of government.
- Faster and more efficient decision-making: The legislative and executive branches of government, as well as the parliamentary system, are linked together to allow for faster and more efficient decision-making.
- The fusion of the legislature and the executive to run a cabinet system of government in a parliamentary system of government means that less personnel and cost are required. Unlike a presidential system, where all the arms of government are separated and occupied by different sets of people.
- It encourages good governance: The Parliamentary form of government also promotes good governance for the successful management of the country because the individual and collective duty provided to the parliament would inspire all members of the cabinet to work hard. Accountability and transparency are also ensured.

Issues with Parliamentary privileges

- While a parliamentary system may appear to constantly support good governance, it can also make parliamentarians overly strong and arrogant, which can lead to political power abuse. Members of parliament will become supreme and untouchable as a result of the legislative system.
- Because he is directly elected as Prime Minister as the leader of his party in a parliamentary system of government, the prime minister is loyal to his party rather than the people of the country. As a result, he will be more loyal to his party than to his people.
- Without a doubt, in a parliamentary system of government, the prime minister's tenure is always in doubt because the parliament can fire him at any time with a "vote of no confidence." This could result in a crisis, segregation, or governance instability.
- Members of the cabinet may be overburdened with double duties as a result of the convergence of legislative and executive powers, and certain ministers may be unable to cope.
- Finally, while the parliamentary system necessitates persons to perform both legislative and executive tasks, it is crucial to remember that a minister's lack of specialty may result in inefficiencies in one arm of government's control.

Measures need to be taken

Need to Codify Parliamentary Privileges - Thus, there is a stringent need to codify privileges, powers, and immunities of the House. It will provide proper guidelines to be followed and remove uncertainties that currently prevail. In a democracy, free speech and rule of law should be the norm, not the exception.

Special Powers of the Parliament

Parliamentary Group

The Indian Parliamentary Group is an autonomous body formed in the year 1949 in pursuance of a motion adopted by the Constituent Assembly (Legislative) on 16th August, 1948.

Composition of the Indian Parliamentary Group

- All members of the Parliament are eligible to join the IPG.
- Former members of Parliament can join the organisation as associate members. Associate members, on the other hand, have limited rights.

They do not have the right to be represented at International Parliamentary Union (IPU) and Commonwealth Parliamentary Association (CPA) meetings and conferences. They are also ineligible for travel discounts offered by certain CPA branches to members.

- The Group's ex-officio president is the Speaker of the Lok Sabha.
- The ex-officio vice-presidents of the Group are the Deputy Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha. The Group's ex-officio secretary-general is the secretary-general of the Lok Sabha.

Objectives

The aims of the IPG are as follows:

- To encourage personal contact between members of India's Parliament.
- To research issues of public interest that are likely to be brought before the legislature; to organise seminars, talks, and orientation courses; and to publish information for the Group's members.
- Members of the parliament will give lectures on political, defence, economic, social, and educational issues.
- Arrange for a few members of the committee to go to other countries in order to create links with other parliaments throughout the world.

Functions

The functions of the Indian Parliamentary Group are as follows:

- The group serves as a link between the Indian Parliament and other parliaments throughout the world. This contact is maintained with foreign parliaments through goodwill missions, delegations, and other means.
- Under the aegis of the IPG, visiting chiefs of state and governments of foreign nations deliver addresses to members of Parliament, as well as speeches by renowned people.
- On a national and international level, legislative seminars and symposia are held on a regular basis.
- Members of the Group are provided letters of introduction to the Secretaries of the IPU National Groups and Secretaries of the CPA branches when they travel overseas. The Indian Mission at the counters is likewise well-informed, allowing them to provide assistance and common courtesy.
- The Indian Parliamentary Delegations may only include members of the Parliament Group who have served for at least six months at the time of the delegation's formation.

Significance

- In today's globalised society, inter-parliamentary connections are extremely important. The world today is troubled by various issues, and the challenges that a parliament faces now may be replaced by other ones tomorrow.
- As a result, it is critical that a link exists between various parliaments around the world to allow for open and honest debate.
- India maintains this contact by exchanging delegations, goodwill missions, documents, and other items with foreign parliaments through the Indian Parliamentary Group's machinery (IPG).
- The IPG serves as the Indian Branch of the Commonwealth Parliamentary Association (CPA), which is part of the Commonwealth of Nations, as well as the National Group of the Inter-Parliamentary Union (IPU).

21 Parliamentary Committee

A good deal of legislative business is transacted by Committees of the House, known as Parliamentary Committees. Parliamentary Committee means a Committee which is appointed or elected by the House or nominated by the Speaker and which works under the direction of the Speaker and presents its report to the House or to the Speaker and the Secretariat for which is provided by the Lok Sabha Secretariat.

Parliamentary Committees are of two kinds:

- Standing Committees
- Ad hoc Committees

Standing Committees are permanent and regular Committees which are constituted from time to time in pursuance of the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business in Lok Sabha. The work of these Committees is of continuous nature. Whereas ad-hoc Committee are temporary one and cease to exist on completion of the task assigned to them.

The Financial Committees, DRSCs and some other Committees come under the category of Standing Committees. Ad hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. The principal Ad hoc Committees are the Select and Joint Committees on Bills.

Standing Committees

There are six standing Committees on the basis of their function

- Financial Committees
  - Public accounts Committee
  - Estimates Committee
  - Committee on Public undertakings
- Departmental related standing Committee
- Committees to inquire
  - Committee on petitions
  - Committee on privileges
  - Ethics Committee
- Committee to scrutinize and control
  - Committee on government assurances
  - Committee on subordinate Legislation
  - Committee on Papers laid on the table
  - Committee on the welfare of SC's and ST's
  - Committee on Empowerment of Women
  - Joint Committee on Offices of Profit
- Committees relating to the day-to day business of the House
  - Business Advisory Committee
  - Committee on Private Members' Bills and Resolutions
  - Rules Committee
  - Committee on the absence of members

6. Service Committees or Housekeeping Committees

- General Purposes Committee
- House Committee.
- Library Committee
- Joint Committee on Salaries and Allowances of Members

Ad Hoc Committee

Ad hoc Committees are Committees that are appointed for a limited time to meet specific goals.

Ad Hoc Committees are of two types:

- Inquiry Committee
- Advisory Committee - to report on specific bills

Financial Committees

1. Public Accounts Committee

Historical Background

- The Montague-Chelmsford Reforms or Government of India act 1919 prompted the creation of the Committee on Public Accounts in 1921.
- With the enactment of the Constitution on January 26, 1950, the Committee became a Parliamentary Committee, accountable to the Speaker and led by a non-official Chairman nominated by the Speaker from among the Lok Sabha Members elected to the Committee.
- Until 1966-67, the Chairman of the Committee belonged to the ruling party.

- Since 1967 a convention has developed, the Chairman of the Committee is selected invariably from the opposition.

Composition and tenure

- The Committee consists of 22 members (15 from the Lok Sabha and 7 from the Rajya Sabha)
- The members are elected by the Parliament every year from amongst its members according to the principle of proportional representation by means of a single transferable vote.
- The term of office of members is one year
- A minister cannot be elected as a member of the Committee.
- The Chairman of the Committee is appointed by the speaker from amongst the members.

Functions

The functions of the Public Accounts Committee are:

- Its job is to keep a vigil on the spending and performance of the government, to bring to light inefficiencies, wasteful expenditure, and indiscretion in the implementation of policies approved by Parliament.
- To make recommendations to streamline the administration for efficient, speedy and economical implementation of policy.
- The function of the Committee is to examine the audit reports of Comptroller and Auditor General of India (CAG), annually.
- The report laid before the Parliament by the president
- The CAG submits three reports,
  - Audit report on appropriation accounts
  - Audit report on finance accounts
  - Audit report on public undertakings
- The Committee examines public expenditure not only from a legal and formal point of view but also from the economic point of view to reduce inefficiency and extravagance.
- To examine the union government's appropriation and finance accounts, as well as any other accounts laid before the Lok Sabha.
- To examine the accounts of state corporations, trading concerns and manufacturing projects and the CAG reports on them.
- To examine the accounts of and semi-autonomous bodies, and the CAG report on them.
- To examine any money spent on any service throughout a fiscal year in excess of the amount granted by the Lok Sabha for that purpose.

2. Estimates Committee

The Committee on Estimates, constituted for the first time in 1950, is a Parliamentary Committee consisting of 30 members, elected every year by the Lok Sabha from amongst its members. The Chairperson of the Committee is appointed by the Speaker from amongst its members. A Minister cannot be elected as a member of the Committee and if a member after selection to the Committee is appointed a Minister, the member ceases to be a Member of the Committee from the date of such appointment.

Term of Office

The term of office of the Committee is one year.

Functions

The functions of the Estimates Committee are:

- to report what economies, improvements in organisation, efficiency or administrative reform, consistent with the policy underlying the estimates may be affected;
- to suggest alternative policies in order to bring about efficiency and economy in administration;
- to examine whether the money is well laid out within the limits of the policy implied in the estimates; and
- to suggest the form in which the estimates shall be presented to Parliament.

The Committee does not exercise its functions in relation to such Public Undertakings as are allotted to the Committee on Public Undertakings by the Rules of Procedure and Conduct of Business of Lok Sabha or by the Speaker.

3. Public Undertakings

Composition and tenure:

The Committee on Public Undertakings is a Parliamentary Committee consisting of 22 Members, fifteen of whom are elected by the Lok Sabha every year from amongst its members according to the principle of proportional representation by means of a single transferable vote and seven Members to be nominated by Rajya Sabha for being associated with the Committee.

The Chairman is appointed by the Speaker from amongst the Members of the Committee. A Minister is not eligible to become a Member of the Committee. If a member after his election to the Committee is appointed

a Minister, he ceases to be a Member of the Committee from the date of such appointment. The term of the Committee does not exceed one year.

Functions:

The functions of the Committee on Public Undertakings are—

(a) to examine the reports and accounts of Public Undertakings.

(b) to examine the reports, if any, of the Comptroller and Auditor General on the Public Undertakings.

(c) to examine in the context of the autonomy and efficiency of the Public Undertakings whether the affairs of the Public Undertakings are being managed in accordance with sound business principles and prudent commercial practices.

(d) such other functions vested in the Committee on Public Accounts and the Committee on Estimates in relation to the Public Undertakings as are not covered by clauses (a), (b) and (c) above and as may be allotted to the Committee by the Speaker from time to time.

NB: The Committee does not, however, examine matters of major Government policy and matters of day-to-day administration of the Undertakings.

Department-related Standing Committees (DRSCs)

Composition and Tenure

There are 24 Department-related Standing Committees (DRSCs). Each of these Committees have 31 members – 21 from Lok Sabha and 10 from Rajya Sabha.

The 17 Departmentally Related Standing Committees were formally constituted with effect from April, 1993. After experiencing the working of the DRSC system for over a decade, the system was restructured in July, 2004 wherein the number of DRSCs was increased from 17 to 24.

These members are to be nominated by the Speaker of Lok Sabha or the Chairman of Rajya Sabha respectively. The term of office of these Committees does not exceed one year.

These Committees are serviced either by Lok Sabha secretariat or the Rajya Sabha secretariat depending on who has appointed the Chairman of that Committee.

There are 24 standing Committees as 16 departmental standing Committees in Lok Sabha and 8 departmental standing Committees in Rajya Sabha.

Functions of Department-related Parliamentary Standing Committee:

- To consider the Demands for Grants of the related Ministries/Departments and report thereon. The report shall not suggest anything of the nature of cut motions;
- To examine Bills, pertaining to the related Ministries/ Departments, referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon;
- To consider the annual reports of the Ministries/ Departments and report thereon; and
- To consider national basic long term policy documents presented to the Houses, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon

Significance of Department - related Parliamentary Standing Committees

- Emphasis on long-term plans, policies guiding the working of the Executive, these Committees are providing necessary direction, guidance and inputs for broad policy formulations and in achievement of the long-term national perspective by the Executive.
- It is easier to examine a topic in depth by a committee of 30 than by an assembly of 700.
- The work put in by the total 24 DRSCs in examining the Demands for Grants of all the ministries equals 30 days of functioning of the Parliament.
- They enable input from experts and those who may be directly affected by a policy or legislation.
- Being outside direct public glare allows members to discuss issues and reach consensus without worrying about constituency or party pressures.
- Overall, secure more accountability of the executive towards the legislature.

Committees to Inquire

This Committee can be divided into three categories.

Committee on Petitions:

- This Committee examines all the petitions referred to it and also reports on specific complaints and suggests remedial measures.
- The Committee on Petitions of Lok Sabha is one of the oldest Committees of the House, which was first constituted on 20 February, 1924 by the President of the Central Legislative Assembly

Committee of Privilege:

Composition

- This Committee consists of 15 members nominated by the Speaker

Functions

- Its function is to examine every question involving breach of privilege of the House or of the members of any Committee thereof referred to it by the House or by the Speaker.
- It determines with reference to the facts of each case whether a breach of privilege is involved and makes suitable recommendations in its report
- They examine issues relating to the violation of privilege either of the House or the members of any Committee. They also look into specific situations to analyse the violation of privilege and suggest recommendations accordingly.

Committee on Ethics:

Composition:

- The ethics Committee in Lok Sabha has 15 MPs. In Rajya Sabha this number stands at 10.

Function:

- It formulates Code of Conduct for members and suggest amendments to it from time to time.
- It also oversees moral and ethical conduct of Members.
- It examines complaints related to any unethical conduct by members of Lower House of Parliament.
- It can also initiate suo- motu investigation into matters related to unethical conduct of a member and make recommendations, as it may deem fit.

Committee to scrutinize and control

Committee on government assurances: The functions of the Committee on Government Assurances are to scrutinize the Assurances, promises, undertakings etc., given by the Ministers, from time to time on the floor of the House and to report on:

- the extent to which such Assurances, promises, undertakings etc., have been implemented; and
- where implemented, whether such implementation has taken place within the minimum time necessary for the purpose.

Committee on subordinate Legislation: This Committee scrutinizes and reports to the legislature whether the executive is utilizing its powers of making rules and laws efficiently which have been conferred to it by the constitution and delegated by the Parliament.

Committee on Papers laid on the table: The Committee consists of 15 Members, nominated by the Speaker, Lok Sabha. The Chairperson of the Committee is appointed from amongst the Members of the Committee. The Committee shall hold office for a term not exceeding one year.

Functions

- The functions of the Committee, as per Rule 305B, shall be to examine all papers laid on the Table of the House by the Ministers and to report to the House on:
  - whether there has been compliance of the provisions of the Constitution, Act, rule or regulation under which the paper has been laid;
  - whether there has not been any unreasonable delay in laying the paper;
  - if there has been such delay, whether a statement explaining the reasons for delay has been laid on the Table of the House and whether those reasons are satisfactory;
  - whether both Hindi and English versions of the paper have been laid on the Table; and
  - whether a statement explaining the reasons for not laying the Hindi version has been given and whether such reasons are satisfactory. [Rule 305B (1)]
- The Committee shall perform such other functions in respect of the papers laid on the Table as may be assigned to it by the Speaker from time to time.

Committee on the welfare of SC's and ST's:

Composition:

- Committee on the welfare of SC's and ST's consists of 30 members- of this 30 as many as 20 members are from Lok Sabha and the remaining 10 are from Rajya Sabha elected by the Presiding Officer every year from amongst its members.

Function:

- It considers the reports of the National Commission for SC's and National Commission for ST's.
- To examine all matters relating to the welfare of Scheduled Caste and Schedule Tribes.

Committee on Empowerment of Women:

Composition:

- Committee on the welfare of women consists of 30 members- of this 30 ,20 members are from Lok

Sabha and the remaining 10 are from Rajya Sabha elected by the Presiding Officer every year from amongst its members.

Function:

- They analyse and scrutinize the reports of the National Commission for Women.
- To examine all measures taken by the Government to secure status, dignity and equality for women in all fields.

Joint Committee on Offices of Profit:

Composition:

- This Committee consists of 15 members- of this 15 ,10 members are from Lok Sabha and the remaining 5 are from Rajya Sabha elected by the Presiding Officer every year from amongst its members.

Function:

- This Parliamentary Committee examines the composition and nature of Committees and bodies, also ensures the eligibility of people in a position in these organizations.

Committees relating to the day-to-day business of the house

Business Advisory Committee:

Composition

- It consists of 15 members in Lok Sabha headed by the Speaker and 11 members in Rajya Sabha headed by the ex-officio Chairperson. Members are nominated by the Speaker or Chairman in Lok Sabha and Rajya Sabha respectively proportional to party strength.
- Ministers can't be members of this Committee.
- The Committee usually meets at the start of each Session and then as needed after that.
- The Committee makes its decision unanimous in character.

Functions

- To recommend the amount of time to be considered for government bills and other matters that the Speaker, in agreement with the Leader of the House, may direct to be referred to the Committee.
- The Committee may also recommend to the Government that specific topic be brought forward for consideration in the House and that time be set aside for such discussions.
- The Business Advisory Committee was first constituted in 1952.

Committee on Private Members' Bills and Resolutions:

Composition

- This Committee consists of 15 members of Lok Sabha and the Deputy Speaker is its Chairman when nominated as a member of the Committee.
- The Committee is nominated by the Speaker.

Functions

- The functions of the Committee are to allot time to Private Members' Bills and Resolutions, to examine Private Members' Bills seeking to amend the Constitution before their introduction in Lok Sabha, to examine all Private Members' Bills after they are introduced and before they are taken up for consideration in the House and to classify them according to their nature, urgency and importance into two categories and also to examine such Private Members' Bills where the legislative competence of the House is challenged.
- The Committee, thus, performs the same function in relation to Private Members' Bills and Resolutions as the Business Advisory Committee does in regard to Government Business.
- The Committee holds office for one year.

Rules Committee:

Composition

- The Committee consists of 15 members including the Chairman. The Speaker is the ex-officio Chairman. The Speaker nominates members to the Committee. If the Deputy Speaker is not a member of the Committee, he is invited to all the sittings of the Committee.

Tenure

- No fixed term of Office is laid down for the Committee. It continues in Office till it is reconstituted by the Speaker.

Functions

- To consider matters of procedure and conduct of business in the Lok Sabha and recommend any amendments or additions to the Rules as may be deemed necessary.
- It looks after the proper conduct of the business in the House and ensures that Rules of Procedure are upheld. It also makes necessary amendments wherever necessary.

Committee on the absence of members:

Composition:

- Special Committee of Lok Sabha and consists of 15 members. No such Committee in Rajya Sabha and all such matters are dealt by the House itself.

Function:

- It examines the leave application of the members of the Houses.
- Examines the cases of members who have been absent for a period of 60 days or more without permission.

Service Committees or Housekeeping Committees

These Committees are concerned with the Provision of Facilities and Services to the members.

General Purposes Committee:

Composition

- The Committee shall consist of the Chairman, the Deputy Chairman, Members of the Panel of Vice-Chairmen, Chairmen of all Standing Parliamentary Committees of Rajya Sabha, Leaders of recognised Parties and Groups in Rajya Sabha and such other Members as may be nominated by the Chairman. The Chairman shall be the ex-officio Chairman of the Committee.
- The Committee nominated under Sub-rule(I) shall hold office until a new Committee is nominated.
- Casual vacancies in the Committee shall be filled by the Chairman.

Function

- The functions of the Committee are to work towards the affairs, and matters that are referred from time to time by the Speaker of the House.
- This Committee takes up issues that do not fall under the purview of any other Parliamentary Committee.

House Committee:

Composition:

- Both houses have their respective House Committees. It consists of 12 members.

Function:

- The facilities that are given to the members of the House, for instance, medical aid, food, etc. are looked after by this Committee.

Library Committee:

Composition:

- Consists of 9 members, of which 6 are from Lok Sabha and 3 from Rajya Sabha

Function:

- The library of the Parliament and assists the member in utilising the library services.

Joint Committee on Salaries and Allowances of Members:

Composition:

- This Committee was constituted under the salary, Allowances and Pension of Members of Parliament Act, 1954. It consists of 15 members, of which 10 from Lok Sabha and 5 from Rajya Sabha

Function:

- This Committee looks after the salaries and allowances of the members of the House.

Ad Hoc Committee

Inquiry Committee

An Inquiry Committee is formed from time to time to look into specific incidents. For instance, the Committee on Food Management in Parliament House Complex is one such Committee to look at the revision of rates at the Parliamentary canteen. The rules of operation are mentioned in the Rules of Procedure of the Parliament.

Examples of some of the Inquiry Committees are mentioned below:

- Committee on Food Management in Parliament House Complex
- Committee on Installation of Portraits/Statues of National leaders and Parliamentarians
- Committee on Provision of Computers to Members of Lok Sabha
- Joint Committee on Security in Parliament House Complex
- Railway Convention Committee
- Committee to Inquiry into the Improper Conduct of a Member
- Joint Committee on Maintenance of Heritage Character and Development of Parliament House Complex

Advisory Committee

These Committees report on particular bills. Select or Joint Committees on bills are included in these Committees. They follow a procedure distinct from the Inquiry Committees, as the procedure to be followed by them is laid down in the Rules of Procedure and the Directions provided by the speaker/Chairman. Whenever a particular Bill is introduced in any House, the House refers it to the Select Committee to study the Bill clause by clause.

Advisory Committees are formed to report on specific bills referred to it. For instance, the Joint Committee on the Personal Data Protection Bill, 2019 is one such Advisory Committee to analyse the draft bill.

The Rules of procedure and functioning of these Committees are determined by the Speaker of Lok Sabha or chairperson of Rajya Sabha.

Other Important Features

Composition: It consists of members nominated by the Speaker and Chairman in Lok Sabha and Rajya Sabha respectively. The exact number of members is determined by the Speaker and Chairman.

Chairman: The Chairman of the Committee is appointed by the Speaker or Chairman among its members. The Committees submit the report to the respective ministries and disintegrate.

Consultative Committees

Formation

- These Committees are constituted by the Ministry of Parliamentary Affairs.
- These are normally constituted after the new Lok Sabha is constituted.
- This implies that these Committees stand dissolved upon dissolution of every Lok Sabha and thus, are reconstituted upon constitution of each Lok Sabha.

Composition

- The guidelines regarding the composition, functions and procedures of these Committees are formulated by the Ministry of Parliamentary Affairs.
- The same Ministry also makes arrangements for holding their meetings both during the session and the intersession period of Parliament.
- These consist of members of both the Houses of Parliament.
- However, the membership of these Committees is voluntary and is left to the choice of the members and the leaders of their parties.
- The maximum membership of a Committee is 30 and the minimum is 10.

Functions

- These Committees are attached to various ministries/ departments of the Central Government.
- The Minister/Minister of State in charge of the Ministry concerned acts as the Chairman of the consultative Committee of that ministry.
- These provide a forum for informal discussions between the ministers and the members of Parliament on policies and programmes of the government and the manner of their implementation.
- The Consultative Committees are not Parliamentary Committees.

A Parliamentary Committee means a Committee that:

- Is appointed or elected by the House or nominated by the Speaker or Chairman.
- Works under the direction of the Speaker or Chairman.
- Presents its report to the House or to the Speaker or Chairman.
- Has a secretariat provided by the Lok Sabha or Rajya Sabha.
- Parliamentary Committees draw their authority from Article 105 (on privileges of Parliament members) and Article 118 (on Parliament's authority to make rules for regulating its procedure and conduct of business).

Parliamentary Committees are an essential component of the Indian Parliamentary system. They provide better analysis and scrutiny of important issues These Parliamentary Committees play an important role in influencing the policies of the government and also act as an interface between the government and the people. Most importantly, it makes the executive accountable to the legislature

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22 Parliamentary Forums

The Parliamentary Forums have been constituted with the objective of equipping members with information and knowledge on specific issues of national concern and in assisting them to adopt a result-oriented approach towards related issues. These forums provide a platform to members to have interaction with the Ministers concerned, experts and key officials from the nodal Ministries.

The Objectives behind the Constitution of Parliamentary Forums are:

- To provide a platform to the members for interaction and discussion with the ministers concerned, experts and key officials from the nodal ministries on critical issues with a result-oriented approach for speeding up the implementation process.
- To sensitize the members about the key areas of concern and also about the ground level situation and equip them with the latest information, knowledge, technical know-how and valuable inputs from experts both from the country and abroad for enabling them to raise these issues effectively on the floor of the House and in meeting of various parliamentary committees.
- To prepare a data base on critical issues coming under the ambit of each parliamentary forum after culling out relevant information from different sources such as the ministries concerned, United Nations, NGOs, internet, newspapers etc and circulation thereof to the members so that they can meaningfully participate in the discussions held in the meeting of the forums.

Composition of Parliamentary Forums:

- The Speaker is the ex-officio President of all the parliamentary forums except the Parliamentary Forum on Population and Public Health where the chairman of Rajya Sabha is the ex-officio President and the Speaker of the Lok Sabha is ex-officio Co-President.
- Each forum consists of not more than 31 members (excluding the President and vice Presidents of the forum) including 21 members from the Lok Sabha and 10 members from the Rajya Sabha.
- 15th Lok Sabha had 8 forums, which are described below:

Functions of the Forums

1. Parliamentary Forum on Water Conservation and Management

The functions of the Parliamentary Forum on Water Conservation and Management are:

- To identify problems relating to water and make recommendations for consideration and taking appropriate action by the government/organizations concerned
- To identify ways of involving members of parliament in conservation and augmentation of water resources in their respective states/constituencies
- To organize seminars/workshops to create awareness of conservation and efficient management of water.

2. Parliamentary Forum on Children

The functions of the Parliamentary Forum on Children are:

- To enhance awareness and attention of parliamentarians towards critical issues affecting children's well being
- To provide a platform to parliamentarians to exchange ideas, views, experiences, expertise, practices in relation to children through workshops, seminars, orientation programmes etc.
- To provide parliamentarians an interface with the civil society for highlighting children's issues including, inter alia, the voluntary sector, media and corporate sector
- To enable parliamentarians to interact with specialized UN agencies and other comparable multilateral agencies on expert reports, studies, news and trend analysis etc. Worldwide.

3. Parliamentary Forum on Youth

The functions of the Parliamentary Forum on Youth are:

- To have focused deliberations on strategies to leverage human capital among the youth for accelerating development initiatives.
- To build greater awareness amongst public leaders and at the grass-root level on the potential of youth power for effecting socio-economic change.
- To interact on regular basis with youth representatives and leaders in order to better appreciate their hopes, aspirations, concerns and problems.
- To consider ways for improving parliament's outreach to different sections of youth, in order to reinforce their faith and commitment in democratic institutions and encourage their active participations
- To hold consultations with experts, national and international academicians and government agencies concerned redesigning of public policy in the matter of youth employment.

4. Parliamentary Forum on Population and Public Health

The functions of the forum are:

- To have focused deliberations on strategies relating to population stabilization
- To discuss and prepare strategies on issues concerning public health
- To build greater awareness in all sections of the society, particularly at the grass-root level, regarding population control and public health
- To hold comprehensive dialogue and discussion in the matter of population and public health with experts at the national and international levels and to have interaction with the multilateral organizations like WHO, United Nations Population Fund, academicians and government agencies.

5. Parliamentary Forum on Global Warming and Climate Change

The functions of the forum are:

- To identify problems relating to global warming and climate change and make recommendations for consideration and appropriate action by the government/organizations concerned to reduce global warming.
- To identify ways of involving members of parliament to interact with specialist of national and international bodies working on to mitigate global warming and climate change by developing new technologies.
- To organize seminars/workshops to create awareness about the causes and effects of global warming and climate change.
- To identify ways of involving members of parliament to spread awareness to prevent global warming and climate change.

6. Parliamentary Forum on Disaster Management

The functions of the forum are:

- To identify problems relating to disaster management and make recommendations for consideration and appropriate action by the government/organizations concerned to reduce the effects of disasters
- To identify ways of involving members of parliament to interact with specialist of national and international bodies working on disaster management with increased effort to develop new technologies to mitigate the effects of disasters
- To organize seminars/workshops to create awareness about the causes and effects of disasters

7. Parliamentary Forum on Artisans and Craftspeople

The functions of the forum are:

- To further enhance awareness and attention of parliamentarians towards critical issues affecting artisans and craftspeople
- To provide a platform to parliamentarians to exchange ideas, views, experiences, expertise, practices in relation to artisans and craftspeople through workshops, seminars, orientation programmes etc.
- To enable parliamentarians to interact with representatives of various union ministries, government organizations like Khadi Village Industries Commission (KVIC), Coir Board, and the Council for Advancement of People's Actions and Rural Technology (CAPART) and other related organizations/bodies
- To hold comprehensive dialogue and discussion on the matters relating to preservation of art and traditional craft and the promotion of artisans and craftspeople with organizations at the national and international levels

8. Parliamentary Forum on Millennium Development Goals

The functions of the forum are:

- To review and enhance awareness and attention of parliamentarians towards critical issues which have bearing on achievement of targets set under Millennium Development Goals by 2015
- To provide a platform to parliamentarians to exchange ideas, views, experiences, expertise,

practices in relation to implementation of Millennium Development Goals

- To provide parliamentarians an interface with the civil society for highlighting issues related Millennium Development Goals.
- To enable parliamentarians to interact with specialized UN agencies and other comparable multilateral agencies, expert report, studies, news and trend analysis etc.

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23 Governor

Introduction

Part VI of the Constitution of India deals with the State executive. The State executive consists of the Governor, the Chief Minister, the Council of Ministers and the advocate-general of the State. In India, the President and Governor are regarded as a titular head of the State. Appointment of a Governor has been specified in article 153 of the Indian Constitution. Therefore, the Governor has been made just a nominal head at the State level; the real official comprises the Council of Ministers headed by the Chief Minister.

Appointment of Governors

According to Article 155, the Governor is appointed by the President under his hand and seal. Thus, in case of Governor, no elections are held and he is selected directly, unlike the President who is chosen by election, and a person can be appointed as the Governor by the authority of the President.

Reason for adopting this system of appointment of Governor:

- Direction elections would be incompatible with the Parliamentary system established in the States.
- Direction election could create conflicts.
- Direction election would be a costly affair.
- An elected Governor could be a non-neutral person.
- The system of Presidential nomination enables the centre to maintain its control over the States.

Keeping in mind, the above-mentioned reasons, the appointment form of appointing the Governor was taken (This model is followed in Canada)

The Supreme Court in 1979 said that the office of Governor is not an employment under the central government. It is an independent constitutional office and is not under the control of or subordinate to the central government.

Term of Office of Governor

The provisions for the term of the Office of the Governor have been provided in Article 156 of the Constitution. Under this article the following terms are provided:

- The Governor holds his office at the pleasure of the President. It means that a Governor serves till the time President deems it fit and he can be removed by him at any time.
- The Governor also has the power to resign from his office during his term. He can resign by addressing his intention to do so in writing to the President.
- Unless the Governor resigns from his office or the President removes him, the normal term of a Governor is provided for a period of 5 years from the date of him entering his office. (Article 156 (3)

Qualification

For a person to become a Governor he has to fulfil some requirements. According to Article 157, a person is eligible for appointment as the Governor if:

- He is a citizen of India
- He has completed the age of 35 years

Conventions that have developed while appointing a Governor

- He should be not from a State where he is appointed
- While appointing the Governor, the President is required to consult the Chief Minister of the State concerned

Conditions of the Governor's office

Some conditions are also attached to the office of Governor which have to be observed. These conditions have been provided under Article 158 of the Constitution which are:

- He should not be member of either house of Parliament or a house of the State Legistature. If any such person is elected as Governor, he is deemed to have vacated his seat in that house on the date which he enters upon his office
- He should not hold an office of profit
- He is entitled, without payment of rent, to the use of his official residence
- He is entitled to such emoluments, allowances and privileges as may be determined by Parliament
- His emoluments and allowances cannot be diminished during his term of office
- If he is appointed as the Governor of two or more States, his salary and allowances payable to him

are shared by the States in such proportion as determined by the President

Term of Governor's office

- He holds the office for a term of five years
- However, his term is subjected to the pleasure of the President
- The Constitution has not laid down any grounds for the removal of the Governor by President
- A Governor can also hold office beyond his term until his successor assumes charge

Oath of the Governor

The Governor on being appointed has to undertake an oath before entering the Office. The oath of the Governor is observed under Article 159 of the Constitution.

The oath is adMinistered by the Chief Justice of the High Court of the concerned State and in case the Chief Justice is not present, then the senior most judge of the High Court adMinisters the oath and he/she addresses his resignation to President of India.

Immunity

- He enjoys personal immunity from legal liability for his official acts
- During his term of office, he is immune from any criminal proceedings, even in respect of his personal acts. He cannot be arrested or imprisoned
- However, after giving two months' notice civil proceedings can be instituted against him during his term of office in respect of his personal acts

Powers of Governor

The Governor by being the Executive head of the State has been given many powers which can be broadly categorized into several categories. The powers of the Governor are similar to those of the President. These categories of the powers of Governor are as follows:

Executive powers

Article 154 of the Indian Constitution talks about the executive power of the State being vested in the hands of the Governor which shall be exercised by him either directly or indirectly, through officers' subordinate to him in accordance with this Constitution.

The following comes under his executive powers:

- Every executive action that the State government takes, is to be taken in the name of the Governor of that State.
- The Governor specifies the rules and instructions for how an order that has been taken up in his name is to be authenticated.
- The Governor makes rules for the exchange of the matters and portfolios of the legislature of the State for its allotment among Ministers.
- He has been entitled with the privilege to look for data from the Chief Minister, and the Chief Minister of the State must notify and answer him regarding all choices of his service and can likewise require the Chief Minister to present any individual Minister's choice for the thought of the Council of Ministers.
- The Governor may/may not generate rules for simplification of transactions of the business of the State government.
- Chief Ministers and other Ministers of the States are appointed by the Governor himself.
- It is the responsibility of the Governor to appoint Tribal Welfare Minister in the following States of:
  - Chhattisgarh
  - Jharkhand
  - Madhya Pradesh
  - Odisha
- The Governor appoints the advocate general of States and determines their remuneration.
- He appoints the people for the following posts:
  - State Election Commissioner
  - Chairman and Members of the State Public Service Commission
  - Vice-Chancellors of the universities in the State
- The Governor seeks information from the State government.
- A constitutional emergency in the State is recommended by the Governor to the President.
- The Governor enjoys extensive executive powers as an agent of the President during the time of President's rule in the State.

Judicial Powers

The Governor is also provided with some judicial powers under the Constitution. Under Article 161 of the Constitution, the Governor has been granted this power.

- Just like the President, the Governor also has the power to grant pardon. By allowing the request of pardon, the Governor can allow a person to be free from any punishment even if the Court finds him guilty of the offence. The power to grant pardon is discretionary and is not a right which can be exercised by every offender and thus the Governor has the right to decide in which cases he wants to grant pardon to a person and in which cases he does not want to grant such pardon.
- He also has the power to reprieve, commute, respite or remit the punishment of a person. Thus, in many

cases, the Governor can overturn the decision of the High Court but this power has to be exercised wisely because it can lead to a conflict between the Executive and Judiciary.

- In consultation with the State High Court, Governor looks after the appointments, postings, and promotions of the district judges.
- In consultation with the State high court and State public service commission, the Governor also appoints persons to the various judicial services.

Legislative Powers

Even though the Governor is part of the Executive branch in the State, he has been given certain Legislative powers as well. These powers are as follows:

- The Governor of a State is said to be a part of the State Legistature, and so he has the right to address and send messages, summon, defer and even dissolve the State Legistature, just like the President has, in adherence to the Parliament. Although these are formal powers, in reality, the Governor is guided by the Chief Minister along with his Council of Ministers before making and executing such decisions.
- The Governor inaugurates the State Legistature, in the first session every year, and addresses the Assembly, emphasizing on the new administrative policies of the ruling government.
- He may adjourn the Houses or either House and break up the Legislative Assembly. For instance, on12th of March, 1967, the Governor of Punjab, Dr D.C. Pavate, had prorogued the State Legislative Assembly (Legislative Assembly) which was deferred by the Speaker for two months on March 7, 1967, preceding the House could think about the Budget. This was an initial play towards an answer of established emergency that captivated the State. The disintegration of the Assembly has been finished by the Governors numerous periods.
- The Governor can address either or both of the Houses, amassed together at the beginning of the first session after each General Election and furthermore, at the initiation of the main session every year.
- He is engaged in saving specific Bills for the consent of the President like the Bills which accommodate obligatory procurement of the property or diminishing the forces of the High Court has to be saved for President's assent.
- The Governor puts forth before the State Legistature, the annual financial Statement and also makes demands for grants and recommendation of 'Money Bills'.
- The Governor constitutes the State Finance Commission and also beholds the authority to make advances out of the Contingency Fund of the State in situations leading to unforeseen circumstances.
- All bills passed by the Legislative Assembly become a law, only after the approval of the Governor of the State. In case it is not a money bill, the Governor upholds the right to send it back to the Legislative Assembly for reconsidering it. But if the Legislative Assembly sends back the Bill to the Governor again, he is bound to sign it.
- The Governor has full competency to promulgate an ordinance when the Legislative Assembly is not in session, and a law is necessitated to be brought into effect immediately. However, the ordinance is presented in the State Legistature in the next session, and remains operative for a total number of six weeks, unless it is approved by the legislature.
- If the speaker and the deputy speaker of the legislative assembly, both are absent, then Governor is empowered to appoint a person for the purpose of presiding over the session.
- Governor appoints ⅙ of the total members of the legislative Council from the fields of:
  - Literature
  - Science
  - Art
  - Cooperative Movement
  - Social Service
- The Governor has the right to consult Election Commission for the disqualification of members.
- With respect to the bill introduced in the State Legistature, the Governor can give assent, withhold his assent, Return the bill or even reserve the bill for the President's consideration.

Financial Powers

The Governor enjoys the following financial powers under the Constitution:

- The demand for a grant can be made by the State only on the recommendation of the Governor.
- The Governor can ask the State Legistature for additional grants under Article 205 of the Constitution.
- To introduce a Money bill in the State Assembly, the prior recommendation of the Governor is necessary and, in its absence, no money bill can be presented in the Assembly.
- The Contingency Fund of the State can be used by the Governor at his disposal. He can use the fund to meet

any unforeseen expenditure if the State Legistature approves it.

- The recommendations of the Governor are essential for making amendments regarding financial matters.
- The Governor has the authority to ensure that the annual budget is laid before the House(s) and is also passed by it.

Emergency powers

- While the President and the Governor have been provided with similar powers under the Constitution, a Governor does not have the power to declare emergency in a State because this power is only vested in the President.
- But the Governor still plays a great role in the proclamation of emergency in a State. Under Article 356 the Governor has the power to send a report to the President when he is satisfied that the Constitutional machinery in the State has failed and the State Government can no longer function according to the provisions of the Constitution.
- Thus, the Governor plays an advisory role in the proclamation of Emergency in a State and in many cases even though President's rule is imposed in the States, it is the Governor who assumes the function of the State Government by working as an agent of the President.

Ordinance making power

Under Article 213, the Governor can issue an ordinance if the circumstances compel him to do so, when either house of the Legislative Assembly are not in session. However, there are two circumstances under which the Governor cannot issue an ordinance. They are:

- If the ordinance has certain provisions which the Governor would have reserved for the President in case it was a Bill.
- If the State Legistature has an act with similar provisions and the same would be declared invalid without the President's assent.

Constitutional position of the Governor differs from the President in the following ways:

- While the constitution envisages the possibility of the Governor (Art 163) acting at times in his discretion, no such possibility has been envisaging for the President
- After the 42nd constitutional amendment act, Ministerial advice was made binding on the President, no such provision has been made with respect to Governor so far

Provisions in Article 163

- There shall be a Council of Ministers, led by the Chief Minister, to assist and advise the Governor in the exercise of his functions, except where he is required to exercise all or any of them at his discretion.
- If there is any doubt as to whether a matter is within the Governor's discretion or not, the Governor's decision shall be final, and the validity of anything done by the Governor shall not be called into question on the grounds that he ought or ought not to have acted in his discretion.
- The advice given to the Governor by Ministers shall not be investigated in any court.

The Governor has constitutional discretions in the following cases:

- Can dissolve the Legislative Assembly if the Chief Minister advices him to do following a vote of no confidence. Following which, it is up to the Governor what he/ she would like to do.
- Can recommend the President about the failure of the constitutional machinery in the State.
- Can reserve a bill passed by the State Legistature for President 's assent.
- Can appoint anybody as Chief Minister. If there is no political party with a clear-cut majority in the assembly.
- Determines the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration.
- Can seek information from the Chief Minister with regard to the administrative and legislative matters of the State.
- Can refuse to sign to an ordinary bill passed by the State Legistature.

Special Responsibilities of Governor

The constitution has also laid down certain special powers and functions possessed by the Governor in particular States which have to be exercised in consultation with the Council of Ministers in State. These include:

- Establishment of two different development boards for Vidarbha and Marathwada in the State of Maharashtra (Article 371).
- Establishment of two separate development boards for Saurashtra and Kutch in Gujarat (Article 371).
- The Governor of Nagaland has a distinctive

responsibility with regard to the law and order in the State of Nagaland for so long as in his opinion internal disturbances and disputes occurring in the Naga Hills-Tuensang Area immediately before the formation of that State has been continued. (Article 371A)

- Special powers with respect to administration of tribal areas in the State of Assam (Article 371B).
- Special powers with respect to Manipur in relation to administration of hill areas in Manipur (Article 371C)
- For peace and wellbeing and to ensure social and economic advancement of the different sections of the population in Sikkim (371F).
- With respect to law and order in the State of Arunachal Pradesh (371H).

Comparison of Ordinance Issuing Power of President and Governor

President	Governor
He may issue an ordinance only when both Houses of Parliament are not in session, or when one of the two Houses is not in session. The second provision implies that an ordinance can be promulgated by the President even when only one House is in session, because a law has to be passed by both Houses, not just one.	He can only promulgate an ordinance when the Legislative Assembly is not in session (in the case of a unicameral legislature) or when both Houses of the State Legistature are not in session (in the case of a bicameral legislature) or when either of the two Houses of the State Legistature is not in session. The final provision implies that an ordinance can be promulgated by the Governor even if only one House (in the case of a bicameral legislature) is in session, because a law can be passed by both Houses, not just one.
He can only issue an ordinance if he is convinced that circumstances exist that necessitate immediate action on his part.	He can only issue an ordinance if he is convinced that circumstances exist that necessitate immediate action on his part.
His ordinance-making authority is coextensive with Parliament's legislative authority. This means that he can only issue ordinances on subjects that the Parliament can legislate on.	His ordinance-making authority is coextensive with the State Legistature's legislative authority. This means that he can only issue ordinances on subjects that the State Legistature can legislate on.
An ordinance issued by him has the same legal force and effect as a Parliamentary act.	An ordinance issued by him has the same legal force and effect as a State Legistature act.
An ordinance issued by him is subject to the same restrictions as a Parliamentary act. This means that any ordinance he issues will be null and void to the extent that it makes any provision that Parliament cannot make.	An ordinance issued by him is subject to the same restrictions as a State Legistature act. This means that any ordinance he issues will be null and void to the extent that it makes any provision that the State Legistature cannot make.
He has the right to withdraw an ordinance at any time.	He has the right to withdraw an ordinance at any time.
His ordinance -making authority is not discretionary. This means that he can only issue or withdraw an ordinance with the advice of the prime Minister's Council of Ministers.	His ordinance-making authority is not discretionary. This means that he can only issue or withdraw an ordinance on the advice of the Council, which is chaired by the Chief Minister.
When Parliament reconvenes, an ordinance issued by him should be laid before both Houses.	When the Legislative Assembly or both Houses of the State Legistature (in the case of a bicameral legislature) reconvene, an ordinance issued by him must be laid before the Legislative Assembly or both Houses of the State Legistature (in the case of a bicameral legislature).
An ordinance issued by him becomes ineffective six weeks after the reassembly of Parliament. It may be terminated earlier than the six-week period if both Houses of Parliament pass resolutions opposing it.	An ordinance issued by him becomes ineffective six weeks after the State Legistature reconvenes. It may be terminated earlier than the six-week period if the Legislative Assembly passes a resolution opposing it and the legislative Council agrees (in case of a bicameral legislature).
He doesn't need any instructions to make an ordinance.	He cannot issue an ordinance without the President's instructions in the following three cases: • If a bill containing the same provisions would have required the President's prior approval before being introduced in the State Legistature. • If he thought it necessary to reserve a bill with the same provisions for the President's consideration. • If a State Legistature act containing the same provisions would have been invalid if it had not received the President's assent.

Concerns related to office of Governor

- ***Appointment of Governor:*** Article 155 says that Governor should be appointed (not elected) from amongst persons of high status with eminence in

public. The elected government at the State is not even consulted while making appointment of the Governors. Further successive governments have reduced this important constitutional office to a sinecure and resting place for loyal and retired / about to retired / about to retire politicians apart from docile bureaucrats.

- ***Appointment and dismissal of the Chief Minister:*** Governor appoints Chief Minister, other Ministers, Advocate General, Chairmen and members of the State Public Service Commission in the State. After elections in the State, there is a convention to invite the largest party to form government in the State. This convention has been flouted many times at the whim of the Governor. E.g.: the recent episode of Karnataka after 2018 hung assembly elections.
- ***Reservation of Bills for Consideration of President:*** As per Article 200 of the Constitution, the Governor can reserve certain types of bills passed by the State Legistature for the President 's consideration. The President can either give assent to it or ask the Governor to send it back for the State Legistature to reconsider it, along with his comments. The chief intent of this provision is for the centre to keep a tab on the legislation in the interest of the nation. However, the central government, through the office of the Governor, has used this provision to serve partisan interests.
- ***Misuse of Article 356:*** Article 356 is the most controversial article of the Constitution. It provides for State emergency or President 's rule in 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 in accordance with the provisions of the Constitution. The duration of such emergency is six months and it can be extended further. In the Constituent Assembly, Ambedkar had made it clear that the Article 356 would be applied as a last resort. He also hoped that" such articles will never be called into operation and that they would remain a dead letter."
- ***Removal of the Governor:*** Article 156 says that the Governor will hold office during the pleasure of the President for five years. President works on aid and advice of the Council of Ministers under Article 74. In effect it is the central government that appoints and removes the Governors. The Governor has no security of tenure and no fixed term of office. E.g.: The mass changing of the Governors of State whenever a new government comes to power at Centre.

Major recommendations to improve Governor's office in federal polity of India:

- ***Appointment of Chief Minister during hung assembly:*** Recent Karnataka case, 2018: Supreme Court observed that Governor's discretion cannot be arbitrary or fanciful.
- ***SR Bommai vs. Union of India, 1994:*** The case was about the limits to the Governor's powers in dismissing a State government under Article 356 of the Constitution. The floor of the Assembly is the only forum that should test the majority of the government of the day, and not the subjective opinion of the Governor.
- ***Rameshwar Prasad Case, 2006:*** Supreme Court was called upon to pronounce its verdict on the validity of the proclamation of President 's Rule and the dissolution of the Assembly in Bihar in 2005. The SC held that the Governor could not decide based on his subjective assessments.
- ***On removal of Governor:*** BP Singhal vs Union of India: The Supreme Court ruled that even though the President could dismiss a Governor without having to provide reasons for doing so, this power could not be exercised in an "arbitrary, capricious or unreasonable manner"
- ***Sarkaria Commission Report (1988):*** Important recommendations- Governor should be a detached figure without intense political links or should not have taken part in politics in recent past, Governors must not be removed before completion of their five-year tenure, except in rare and compelling circumstances
- ***Venkatachaliah Commission (2002):*** Important recommendations: Governor's appointment should be entrusted to a committee comprising the prime Minister, the home Minister, the speaker of the Lok Sabha and the Chief Minister of the concerned State, if Governor to be removed before completion of term, the central government should do so only after consultation with the Chief Minister.
- ***Punchhi Commission (2010):*** The phrase "during the pleasure of the President" should be deleted from the Constitution; Governor should be removed only by a resolution of the State Legistature.

The Governor of a State isn't just a figurehead. He can practice a few powers in his prudence, and free of the suggestions made by the Chief Minister. Governor is anything but a pointless height. The Governor goes

about as the connection between the Union and the State. He goes about as the operator of the President in the country both when he goes nearly as the nominal and constitutional head of the State in typical occasions just as when he goes about as the whole head of the State amid the time of President's rule operates in the State. The Governor relies on his prudence in informing the President for the declaration concerning an emergency in the State. He can make a decision concerning whether there has been a breakdown of constitutional machinery in the State or not. Thus, the Governor plays an important in the governance of a State in the country.

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24 Chief Minister

Introduction

As a real executive authority, the Chief Minister is called the head of the government. He is assisted by his Council of Ministers who are a part of State executive along with Governor and Advocate-General of State. Similar to Prime Minister who is the head of the government at the centre, the Chief Minister is the head of the government at the State level.

Appointment Of Chief Minister

The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. Article 164 only specifies that Chief Minister shall be appointed by the Governor.

- This does not imply that the Governor is free to appoint any one as the Chief Minister. In accordance with the conventions 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.
- But, when no party has a clear majority in the assembly, then the Governor may exercise his personal discretion in the selection and appointment of the Chief Minister The Governor appoints the leader of the largest party of the house or leader chosen by the largest coalition to become the Chief Minister.
- The Constitution does not require that a person must prove his majority in the legislative assembly before he is appointed as the Chief Minister. He may ask a leader to become Chief Minister and then prove his majority on floor of the house within a reasonable period.
- The Governor may have to exercise his individual judgement in the selection and appointed 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.
- A person who is not a member of the State Legistature can be appointed as Chief Minister for six months, within which time, he should be elected to the State Legistature, 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 Legistature.
- 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.
- CM occupies position at the Governor's pleasure but the Governor can't dismiss him till he has a majority in the house

Oath:

The Governor adMinisters to him the oaths of office and secrecy.

Term:

- 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.

Salary and Allowances:

Determined by the State Legistature.

Powers and Functions of Chief Minister

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

In Relation to Council of Ministers

The Chief Minister enjoys the following powers as head of the State Council of Ministers:

- The Governor appoints only those persons as Ministers who are recommended by the Chief Minister.
- He allocates and reshuffles the portfolios among Ministers.
- He can ask a Minister to resign or advise the Governor

to dismiss him in case of difference of opinion.

- He presides over the meetings of the Council of Ministers and influences its decisions.
- He guides, directs, controls and coordinates the activities of all the Ministers.
- 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.

In Relation to the Governor

The Chief Minister enjoys the following powers in relation to the Governor:

- He is the principal channel of communication between the Governor and the Council of Ministers. It is the duty of the Chief Minister:
- To communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs the State and proposals for legislation;
- 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
- 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
- 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.

In Relation to State Legistature

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

- He advises the Governor with regard to the summoning and proroguing of the sessions of the State Legistature.
- He can recommend the dissolution of the legislative assembly to the Governor at any time.
- He announces the government policies on the floor of the house.

Other Powers and Functions

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

- He is the chairman of the State Planning Board.
- He acts as a vice-chairman of the concerned zonal Council by rotation, holding office for a period of one year at a time.
- He is a member of the Inter-State Council and the Governing Council of NITI Aayog, both headed by the prime Minister.
- He is the chief spokesman of the State government.
- He is the crisis manager-in-chief at the political level during emergencies.
- As a leader of the State, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.
- 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 reduces to some extent the power, authority, influence, prestige and role of the Chief Minister in the State administration.

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25 Council of Ministers

Introduction

The States, or the other half of Indian federalism, are addressed within Part VI of the Constitution. Articles 152-237 deal with various State-related provisions. It encompasses the State's executive, legislative, and judicial bodies. Articles spanning from 163 to 177 in Part VI broadly deals with State Council of Minister.

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 166 deals with the Conduct of Business of the Government of a State.

Qualifications

To be a Minister of a State Council, one should be a member of the State Legistature, if he is not a member of State Legistature while becoming a member of the State Legistature, he has to become one within the period of six months from the date of entering the office.

Further, the qualifications needed to be a member of the State Legistature are:

(a) He must be a citizen of India.
(b) He must bear true faith and allegiance to the Constitution of India.
(c) He must be not less than 30 years of age in the case of the legislative Council.
(d) He must not be less than 25 years of age in the case of the legislative assembly.

Appointment of Ministers

- The Chief Minister is appointed by the Governor.
- The other Ministers are appointed by the Governor on the advice of the Chief Minister, implies that the Governor can appoint only those persons as Ministers who are recommended by the Chief Minister.

Important articles regarding Council of Ministers

Article 163: Conduct of Business of the Government of a State

- There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion.
- 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.

Article 164: Other Provisions as to Ministers

- The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister.
- The Ministers shall hold office during the pleasure of the Governor.
- The Council of Ministers shall be collectively responsible to the State Legislative Assembly.
- A Minister who is not a member of the State Legistature for any period of six consecutive months shall cease to be a Minister.

In the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work. The State of Bihar was excluded from this provision by the 94th Amendment Act of 2006.

Article 166: Conduct of Business of the Government of a State

- All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
- Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor.
- Moreover, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
- The Governor shall make rules for the more convenient transaction of the business of the government of the State, and for the allocation among Ministers of the said business.

Article 167: Duties of Chief Minister

It shall be the duty of the Chief Minister of each State-

- 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.
- To furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for.
- 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.

Article 177: Rights of Ministers as Respects the Houses

Every Minister shall have the right to speak and take part in the proceedings of the Assembly (and also the Council where it exists) and any Committee of the State Legistature of which he may be named a member. But he shall not be entitled to vote.

91st Constitutional Amendment Act

- The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed 15 per cent of the total strength of the legislative assembly of that State.
- However, the number of Ministers, including the Chief Minister, in a State shall not be less than 12.
- A member of either House of State Legistature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a Minister.

Nature of advice tendered by the Council of Ministers

- The nature of advice tendered by Ministers to the Governor cannot be enquired by any court.
- This provision emphasises the intimate and the confidential relationship between the Governor and the Ministers.
- The Indian courts are barred from inquiring into the nature of advice rendered by the Ministers to the Governor.

Removal / Disqualifications

- A Minister hold office during the pleasure of Governor. Actually, this pleasure is the consent of Chief Minister.
- It is the Chief Minister who select the members of his team. This power is given to the Chief Minister to uphold the Collective Responsibility in the legislature.
- No person shall be retained as a member of Council, if the Chief Minister want to dismiss a sitting member.
- If he loses elections.
- Cannot gets elected or nominated (in case of Legislative Council) within 6 months.

Functions of State Council of Ministers

Formulation of Policies

- Ministers are in charge of formulating the government's policies.
- The Cabinet makes decisions on all key issues, including public health, disability and unemployment benefits, plant disease control, water storage, land tenures and production, and the supply and distribution of goods.
- The appropriate department implements the policy when it has been developed.
- Administration and Maintenance of Public Order
- The executive power must be used in a way that ensures that State laws are followed.
- The Governor is empowered by the Constitution to create -rules for the more efficient conduct of government activities.
- The Council of Ministers advises on all such regulations.

Appointments

- The Governor has the authority to appoint the Advocate-General and State Public Service Commission members.
- The Governor appoints the Vice-Chancellors of the State Universities, as well as members of numerous Boards and Commissions. These appointments cannot be made at the Governor's discretion. On the advice of his Ministers, he must carry out these duties.

Legislative duties

- The majority of the bills voted by the legislature are government bills drafted by ministries.
- The Ministers introduce, explain, and defend them before the State Legistature. Each year, before the start of the first session of the Legislature, the Cabinet prepares the Governor's Address, in which it lays out its legislative agenda.

Control over the State Exchequer

- The finance Minister presents the State Legistature

with the State budget, which includes estimates of revenue and expenditure for the coming year.

- In the case of a Money Bill, the Legislature cannot take the initiative.
- Only a Minister can introduce such a Bill, which must be recommended by the Governor. The Executive does have the initiative regarding financial matters.

Execution of Central Laws and Decisions of the Union Government

- In certain situations, the Union Government has the authority to issue directives to State governments.
- States should use their executive power to guarantee that the laws passed by Parliament are followed.
- They should not do anything that might jeopardize the Union's executive power.

Types of Responsibilities of Council of Ministers

There are two types of responsibilities:

- Collective responsibility
- Individual responsibility

Collective Responsibility:

Article 164 clearly States the Council of Ministers is collectively responsible to the legislative assembly of the State.

- This means that all Ministers have shared responsibility for all their actions of omission and commission before the legislative assembly.
- They operate together as a team and sink or swim as a unit.
- When the legislative assembly approves no-confidence motions against the Council of Ministers, all Ministers, including those on the legislative Council, are required to resign.
- The notion of collective responsibility also indicates that a cabinet decision binds all cabinet Ministers (and other Ministers), even if they deferred in cabinet.
- It is the responsibility of all Ministers to support cabinet decisions both inside and outside the State Legistature. A Minister must resign if he disagrees with a cabinet decision.

Individual responsibility

Individual accountability is likewise enshrined in Article 164. The Ministers serve at the Governor's leisure, according to the law.

- This means that the Governor can dismiss a Minister if the Council of Ministers has the legislative assembly's confidence.
- The Governor, on the other hand, can only remove a Minister on the advice of the Chief Minister.
- In the event of a disagreement or unhappiness with a Minister's performance, the Chief Minister may ask him to quit or advise the Governor to remove him.

Cabinet

Cabinet: A Smaller body called cabinet is the nucleus of the Council of Ministers. It consists of only the cabinet Ministers. It is the real centre of authority in the State government. It is steering wheel of the State government.

It is the Cabinet and not the Council of Ministers who advises the Governor of the State.

Advantage of Cabinet

- It is easier to build consensus among various stakeholders.
- More effective discussion and efficient time utilization
- Less burden on public exchequer – Economic efficiency
- More priority to secrecy
- More rational division of work – Large size Council of Ministers ties up too many tongues and less viewpoint is available.

Functions of the Cabinet

- It is the highest decision-making authority in the politico- administrative system of a State.
- It is the chief policy formulating body of the State
- It is the supreme executive authority of the State government.
- It is the chief coordinator of State administration.
- It is an advisory body to the Governor.
- It is the chief crisis manager and thus deals with all emergency situations.
- It deals with all major legislative and financial matters.
- It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

Cabinet Committees

The cabinet works through various committees called cabinet committees. They are of two types:

- Standing committees – permanent nature
- Ad Hoc – temporary nature.

They are set up by the Chief Minister according to the exigencies of the time and requirements of the situation.

Hence, their number, nomenclature and composition vary from time to time.

They not only sort out issues and formulate proposals for the consideration of the cabinet but also take decisions. However, the cabinet can review their decisions.

The Council of Ministers decides the State legislative agenda and takes the lead in introducing and passing government legislation. It's the strong State legislative Council that makes the State progress on the path of development faster and safer. The Expansion of the government arm in the improvement of the lives of people of the State begins with the Council of Ministers. It goes down the history line of democratic India how the strong legislation and its implementation is responsible for changing lives. The State Council of Ministers can be treated as the backbone of the government.

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26 State Legistature

Introduction

The Legislative Assembly, also called the Vidhan Sabha is analogous to Lok Sabha in the country, the Legislative Assembly functions in the same manner in a State as the Lok Sabha functions in the Parliament.

Organisation of State Legistature

Article 168: Constitution of Legislatures in States.

(1) For every State there shall be a Legislature which shall consist of the Governor, and
   a. in the States of Andhra Pradesh, Telangana, Uttar Pradesh, Bihar, Maharashtra, Karnataka two Houses;
   b. in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

There is no uniformity in State Legistatures. There are 6 States with bicameral Legislature out of 28 States in India:

- Andhra Pradesh
- Telangana
- Maharashtra,
- Karnataka,
- Uttar Pradesh,
- Bihar

State Legistature consist of à Governor, legislative assembly and legislative Council (in case of bicameral).

Article 169: Abolition or creation of Legislative Councils in States.

State Legistature can abolish a Legislative Council or create it, if the legislative assembly of the concerned State passes a resolution by a Special Majority to that effect. This Act of State Legistature is not to be deemed as an amendment of the Constitution for the purposes of Art. 368 and is passed like an ordinary piece of legislation (by Simple Majority).

Composition of the Houses

Article 170 of the Indian Constitution talks about the configuration of the Legislative Assemblies. On the other hand, the configuration of the Legislative Council is given in Article 171 of the Indian Constitution.

Legislative Assembly

Qualifications [Article 173]

To become a Member of Legislative Assembly a person must:

- be a citizen of India;
- have attained the age of 25 years;
- must not hold any office of profit.

Accordingly, the Parliament has laid down the following additional qualifications in the Representation of People Act (1951):

(a) A person to be elected to the legislative council must be an elector for an assembly constituency in the concerned state and to be qualified for the governor's nomination, he must be a resident in the concerned state.

(b) A person to be elected to the legislative assembly must be an elector for an assembly constituency in the concerned state.

(c) He must be a member of a scheduled caste or scheduled tribe if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Composition of Legislative Assembly [Article 170]

- The Legislative Assembly of State can have at most 500 constituencies and at least 60 constituencies.
- These constituencies would be represented by the members who would be selected through the process of direct election.
- However, the division of territorial constituencies would be determined in such a manner that it

becomes dependent on the population of that constituency. Here by the term "population" we mean population which has been published in the precedent census.

- The composition of the Legislative Assembly in any State can change according to the change in the population of that State. It is determined by the census of population.
- The territorial constituencies demarcation should be done as far as possible, such that the ratio between the population of each constituency and the number of seats allotted to it is the same all over the State.
- Apart from these general provisions, there are also special provisions with respect to the representation of Scheduled Caste and Scheduled Tribes.
- The Constitution provided for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each State on the basis of population ratios. Originally, this reservation was to operate for ten years (i.e., up to 1960). But this duration has been extended continuously since then by 10 years each time. Now, under the 95th Amendment Act of 2009, this reservation is to last until 2020.
- However, there are several exceptions to the composition of the Legislative Assembly. For example, Mizoram, Sikkim, and Goa which has less than 60 constituencies.

Tenure

The tenure or duration of the Legislative Assembly is mentioned in Article 172 of the Indian Constitution.

- The Legislative Assembly should work for a time period of five years. Its tenure starts from the day of its first meeting.
- However, it can be dissolved earlier by the special procedure established by the law.
- There can be an extension in the tenure of the Legislative Assembly. This can be done during the National Emergency.
- During the period of the National Emergency, the State Legistature can extend the tenure of the Legislative Assembly for a period of maximum one year. Also, this extension should not be more than six months after the proclamation has ceased to operate.

Legislative Council

Composition of Legislative Council [Article 171]

- The Legislative Council of a State Comprises not more than one-third of the total number of members in the Legislative Assembly of the State and in no case less than 40 members.
- However, in Jammu and Kashmir, the strength is only 36.
- The system of the composition of the Council as provided for in the Constitution is not final. The final power is given to the State Legistature of the Union.
- Legislative Council is a partly nominated and partly elected body, the election being an indirect one and in accordance with the principle of proportional representation by the single transferable vote. The members being drawn from various sources, the Council shall have a variegated composition.
- Broadly speaking 5/6 of the total number of members of the Council shall be indirectly elected and 1/6 will be nominated.
  - one-third of the total number of members of the Council would be elected by electorates consisting of members of local bodies like the municipalities and the district boards.
  - one-twelfth of the members would be elected by electorates comprising of graduates of the standing of three years dwelling in that particular State.
  - one-twelfth of the members would be elected by electorates consisting of teachers who have been in the teaching profession for at least 3 years in educational institutes in that State, which are not lower than secondary schools in the standard.
  - one-third would be elected by members of the Legislative Assembly from amongst people who are not Assembly members.
  - The rest would be nominated by the Governor from persons having knowledge or practical experience in matters like science, literature, cooperative movement, art and social service.

Tenure:

- The Legislative Council, like Legislative Council is a permanent House. It is never dissolved.
- The tenure of its members is six years.
- One-third of its members retire after every two years.

- The retiring members are eligible for re-election. In case of vacancy arising out of resignation or death by-election is held for the remaining period of such members' tenure.

Qualifications [Article 173]

To become a member of the Legislative Council the person concerned should

- be a citizen of India:
- have attained the age of 30 years;
- not hold any office of profit.

Disqualifications (Article 191) :

According to the constitution, a person shall be disqualified as Member of Legislative Assembly (MLA) or Member of Legislative Council (MLC) if:

- he holds any office of profit under the Government of India or a State or an office declared by a law of the State,
- any competent court declares any member to be of unsound mind,
- he is charge-sheeted, bankrupt or insolvent,
- he is not a citizen of India,
- has voluntarily acquired the citizenship of a foreign State or is under any acknowledgement of allegiance or adherence to a foreign State.

According to Schedule 10 (Anti-Defection Act), a person shall be disqualified as Member of Legislative Assembly (MLA) or Member of Legislative Council (MLC) if:

- an elected member voluntarily gives up his membership of a political party,
- an elected member votes or abstains from voting in such House contrary to any direction issued by his political party or anyone authorised to do so, without obtaining prior permission.

According to Representation of the People (RP) Act, 1951 a person shall be disqualified as Member of Legislative Assembly (MLA) or Member of Legislative Council (MLC) if:

- If he/she is convicted for indulging in corrupt practices during the election or any other election-related offenses.
- If he/she is convicted under certain acts of Indian Penal Code, Unlawful Activities Prevention Act, Prevention of Terrorism Act 2002, etc.
- If he/she is convicted under any law that results for at least two years of imprisonment and will remain disqualified for a further 6 years after his release.
- He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
- If he/she is convicted under any law relating to drugsor dowry prevention.
- Dismissal from the Government due to disloyalty or involvement in corrupt practices.
- If he/she fails to lodge their election expenses.

Vacation of Seats

According to Article 190, in the following cases, a member of the state legislature vacates his seat:

1. ***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.
2. ***Disqualification:***
   If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.
3. ***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.
4. ***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.
5. ***Other Cases:***
   A member has to vacate his seat in the either House of State Legislature,
   - if his election is declared void by the court,
   - if he is expelled by the House,
   - if he is elected to the office of President or office of Vice-President and
   - if he is appointed to the office of Governor of a State.

Oath (Article 188)

Every member of either House of State Legistature, before taking his seat in the House, has to make and subscribe an oath or affirmation before the Governor or some person appointed by him for this purpose. In this oath, a member of the State Legistature swears:

- to bear true faith and allegiance to the Constitution of India;
- to uphold the sovereignty and integrity of India; and

- to faithfully discharge the duty of his office.

Under Article 193, Unless a member takes the oath, he cannot vote and participate in the proceedings of the House and does not become eligible to the privileges and immunities of the State Legistature. A person is liable to a penalty of ₹500 for each day he sits or votes as a member in a House:

- before taking and subscribing the prescribed oath or affirmation; or
- when he knows that he is not qualified or that he is disqualified for its membership; or
- when he knows that he is prohibited from sitting or voting in the House by virtue of any law made by State Legistature or the State Legistature.

Members of a State Legistature are entitled to receive such salaries and allowances as may from time to time be determined by the State Legistature.

Presiding Officers of State Legistature

The Speaker

Article 178 gives the power to the Speaker to preside over the sessions of the Legislative Assembly of the State. Similar powers are given to the Speaker of the Legislative Assembly, as mentioned in Article 93 of the Indian Constitution. The Speaker is elected by the assembly itself from amongst its members and remains in office during the life of the assembly.

However, 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.
- If he is removed by a resolution passed by a majority of all the members of the assembly. Such resolution can be moved only after giving 14 days advance notice.

The decision of the Speaker cannot be challenged in a court of law.

Functions/ Powers of the Speaker are as follows:

- The most important function of the Speaker is to preside over the sessions of the Legislative Assembly and also to maintain discipline and order in the assembly He/she does not participate in the debate of the assembly.
- Only votes when there is a condition of a tiebreak.
- He sees whether there is a necessary quorum. He adjourns the assembly or suspends the meeting in the absence of a quorum and maintains order and decorum in the assembly for conducting its business and regulating its proceedings.
- He can allow a secret sitting of the house at the request of the leader of the house.
- He decides the questions of disqualification of a member of the assembly, arising on the ground of defection under the provisions of the Tenth Schedule of the Constitution.
- He appoints the Chairman of all the committees of the assembly and supervises their functioning. He himself is the Chairman of the Business Advisory Committee, the Rules Committee and the General-Purpose Committee.
- He has the power to suspend or to expel the member for his/ her unruly behaviour.
- Within the assembly, the Speaker is the master. He has the power to decide whether the Bill is a Money Bill or not.

Deputy Speaker

- Like the speaker, the Deputy Speaker is also elected by the assembly itself from amongst its members.
- He is elected after the election of the Speaker has taken place.
- 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 speaker.
  - If he is removed by a resolution passed by a majority of all the members of the assembly. Such resolution can be moved only after giving 14 days advance notice.

The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He also acts as the Speaker when the latter is absent from the sitting of assembly. In both the cases, he has all the powers of the Speaker.

The Speaker nominates from amongst the members a panel of chairman. Any one of them can preside over the assembly in the absence of the Speaker or the Deputy Speaker. He has the same powers as the speaker when so presiding. He holds office until a new panel of chairman is nominated.

Chairman of the Legislative Council

The working of the Legislative Council is quite complex. The process of membership, the appointment of its head and the power of the Legislative Council is also quite difficult to understand.

According to Article 182 of the Indian Constitution, the Legislative Council must choose its two members as Chairman and Deputy Chairman.

The Chairman is elected by the Council itself from amongst its members. It also mentions that the Legislative Council must choose the Chairman and Deputy Chairman of the Legislative Council as soon as their office becomes vacant.

The offices of Chairman and Deputy Chairman become vacant very often. However, the reason for their removal/ resignation is mentioned in Article 183 of the constitution. The reasons are as follows:

- If he ceases to be a member of the assembly.
- If he resigns by writing to the Deputy Chairman.
- If he is removed by a resolution passed by a majority of all the members of the assembly. Such resolution can be moved only after giving 14 days advance notice.

Power of Chairman of Legislative Council

- His powers and functions are comparable to the Speaker of the Assembly with few exceptions. 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.

Deputy Chairman of Legislative Council

- Like the Chairman, the Deputy Chairman also elected by the Council itself from amongst its members.
- He is elected after the election of the Chairman has taken place.
- 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 Chairman.
  - If he is removed by a resolution passed by a majority of all the members of the assembly. Such resolution can be moved only after giving 14 days advance notice.

Powers of Deputy Chairman of Legislative Council

According to Article 184 of Indian Constitution

- While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such a member of the Council as the Governor may appoint for the purpose.
- During the absence of the Chairman from any sitting of the Council the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

Difference between Legislative Assembly and Legislative Council

Criteria	Legislative Assembly	Legislative Council
Number of members	Minimum: 60 members Maximum:500 members	Minimum: 40 members; Maximum: There has been no upper limit set here.
Dissolution	It is dissolved every 5 years.	It cannot be dissolved as it is permanent in nature.
Composition	It is in accordance with Article 170 of the Indian Constitution.	It is in accordance with Article 171 of the Indian Constitution.
House	It is the lower house of the State Legistature.	It is the upper house of the State Legistature.
Election	Members are directly elected through universal suffrage and secret ballot.	Members are elected indirectly through proportional representation and nomination by the Governor.
Presiding officer	Speaker is the presiding officer.	Chairman is the presiding officer.
Presence	Every Indian State and union territory (except the ones governed directly by the Union Government) have a legislative assembly.	Only six Indian States have a legislative Council- Bihar, Maharashtra, Karnataka, Uttar Pradesh, Andhra Pradesh and Telangana.
Age	Must be 25 years or above.	Must be 30 years or above.
Age	Must be 25 years or above.	Must be 30 years or above.
Tenure	MLA's bear office for a term of 5 years.	MLC's bear office for a term of 6 years.

Article 174: Sessions of the State Legistature, prorogation and dissolution

1. The Governor shall from time to time summon the House or each House of the Legislature of the State 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 first sitting in the next session.
2. The Governor may from time to time-
   a. prorogue the House or either House;
   b. dissolve the Legislative Assembly.

Summoning of State Legistature:

- Summoning is the process of calling all members of the State Legistature to meet. The Governor

summons each House of the State Legistature from time to time. The gap between two sessions of the State Legistature cannot exceed 6 months, which means the State Legistature meets at least two times in one year.

Adjournment:

- Adjournment terminates the sitting of the House which meets again at the time appointed for the next sitting. The postponement may be for a specified time such as hours, days or weeks.
- If the meeting is terminated without any definite time/date fixed for the next meeting, it is called Adjournment sine die.
- The power of adjournment as well as adjournment sine die lies with the presiding officer (speaker or Chairman) of the House.

Prorogation:

- Prorogation is the end of session and not the dissolution of the house (in case of Legislative Assembly, as Legislative Council does not dissolve). It is done by the Governor of State.

Recess:

- The period between the prorogation of State Legistature and its reassembly in a new Session is termed as a recess.

Quorum:

- Quorum refers to the minimum number of the members required to be present for conducting a meeting of the house.
- The Constitution has fixed one-tenth strength as quorum for both Legislative Assembly and Legislative Council.

Dissolution

- A dissolution ends the very life of the existing House, and a new House is constituted after general elections are held.
- Legislative Council, being a permanent House, is not subject to dissolution. Only the Legislative Assembly is subject to dissolution.
- The dissolution of the Legislative Assembly may take place in either of two ways:
  - ***Automatic dissolution:*** On the expiry of its tenure of five years or the terms as extended during a national emergency.
  - ***Order of Governor:*** If Governor is authorized by Council of Ministers, he can dissolve Legislative Assembly, even before the end of the term. He may also dissolve Legislative Assembly if Council of Ministers loses confidence and no party is able to form the government. Once the Legislative Assembly is dissolved before the completion of its normal tenure, the dissolution is irrevocable.

Note: When the Legislative Assembly is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committee's lapse.

According to Article 196, the position with respect to lapsing of the Bill are as follows:

When does a Bill lapse?

- A Bill that originates in the Legislative Assembly and remains pending in the Lower House itself is considered lapsed with the dissolution of the House.
- A Bill that originates and is passed by the Legislative Council (in bicameral State), but is pending in the Legislative Assembly also lapses with the dissolution of the Lower House.
- Bills that originate and are passed in the Legislative Assembly but are pending in the Legislative Council (in bicameral State) are also considered lapsed.
- Bill that originates and is passed in the Legislative Council (in bicameral State) but is returned with amendments to the Upper House by the Legislative Assembly and then does not get the clearance of the Legislative Council is considered to have lapsed on the date of dissolution of the Lower House.

When does a Bill not lapse?

There are instances when certain Bills, despite the dissolution of the Lower House, are not considered to have lapsed.

- A Bill that is pending in the Legislative Council (in bicameral State) but is not passed by the Legislative Assembly.
- Bills that have cleared both the Houses (in bicameral State) but are pending assent from the Governor.
- A bill passed by legislative Assembly or both Houses (in bicameral State) but returned by the Governor for reconsideration of Legislative Council.
- Pending bills and all pending assurances that are to be examined by the Committee on Government Assurances.

Article 175: Right of Governor to address and send messages to the House or Houses.

1. The Governor may address the Legislative Assembly

or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

2. The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Article 176: Special address by the Governor.

1. At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.
2. Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.

Voting in the House (Article 189)

- All matters at any sitting of either House are decided by a majority of votes of the members present and voting excluding the presiding officer.
- Only a few matters which are specifically mentioned in the Constitution like removal of the speaker of the assembly, removal of the Chairman of the Council and so on require special majority, not ordinary majority.
- The presiding officer (i.e., Speaker in the case of assembly or chairman in the case of Council or the person acting as such) does not vote in the first instance, but exercises a casting vote in the case of an equality of votes.

Language in State Legistature (Article 210)

- Constitution of India has declared that business in State Legistature shall be transacted in Hindi or in English.
- Presiding officers may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother-tongue.
- The State Legistature is authorised to decide whether to continue or discontinue English as a floor language after the completion of fifteen years from the commencement of the Constitution (i.e., from 1965).
- In case of Himachal Pradesh, Manipur, Meghalaya and Tripura, this time limit is twenty-five years and that of Arunachal Pradesh, Goa and Mizoram, it is forty years.

Rights of Ministers and Advocate General

Article 177 States that: Every Minister and the Advocate-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of State Legistature of which he may be named a member, but shall not by virtue of this article be entitled to vote.

Every Minister and Advocate General of India shall have the right to speak in and otherwise participate in:

- the proceedings of either House
- any committee of State Legistature to which he may be named a member
- But by virtue of this article, he/she shall not be entitled to vote in the discussions.
- For instance, Ministers who are elected to the Legislative Assembly participate in the discussion in Legislative Council and certain State Legistature committees. However, they are not entitled to vote where they are not authorized to.

Legislative Procedure in the State Legistature

Ordinary Bills

- With regards to ordinary bills, the procedure is same as Parliament. The bills go through three readings and if it is passed by a simple majority, it goes directly to the Governor [unicameral legislature] or to the second chamber [bicameral legislature]. With respect to ordinary bills, the legislative assembly is highly powerful than the Lok Sabha.
- If the legislative Council rejects the bill or passes it with amends or takes no action for three months, the bill goes to the legislative assembly again.
- The assembly may pass it again with or without amends. Then the bill goes to the legislative Council where, Legislative Council has following alternatives:
  - Accept the bill, or
  - Reject the bill, or
  - Amend the bill or
  - Take no action on bill
- After one month bill is sent back to legislative assembly. But this time the bill is deemed to have been passed in the form passed by the legislative assembly in the second time.

- Ordinary bill, 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. There are four alternatives before the Governor:
  - 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; and
  - 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. 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. Thus, the Governor enjoys only a suspensive veto.
- When a bill is reserved by the Governor for the consideration of the President, the President has following alternatives:
  - 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 Legistature.
- 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.
- There is no provision for joint sittings to resolve deadlocks. Thus, the legislative Council can only withhold a bill for 4 months [3 months in first instance and 1 month in second]. Also, if a bill passed by legislative Council is disapproved by legislative assembly, then the bill ends.

Money Bill

- No money bill can be introduced without the Governor's recommendation.
- Such a bill is a government bill and can be introduced only by a Minister. No private member can introduce money bill.
- According to Article 198, money bill can be introduced only in legislative assembly. The bill if passed goes to the legislative Council. The Council can only discuss it and make recommendation. It has to return bill in 14 days.
- The assembly may reject or accept such recommendations. The bill is then given to Governor for assent.
- When a Money Bill is presented to the Governor, he has following alternatives:
  - he may either give his assent, or
  - withhold his assent, or
  - reserve the bill for Presidential assent but cannot return the bill for reconsideration of the State Legistature.
- Normally, the Governor gives his assent to a money bill as it is introduced in the State Legistature with his prior permission.
- President can do the following with the bill sent to him by the Governor:
  - give his assent or
  - withhold his assent
- But neither Governor nor President can return the bill for reconsideration.

Constitutional Amendment referred for ratification by States:

- If constitutional amendment bill is referred to State Legistatures for assent, it is considered by both houses of State Legistature.
- In this case, will of the legislative assembly prevails. It the legislative Council rejects the amendment; the assembly can pass it again as in case of ordinary bill.
- Governor in the matter of constitutional amendment referred for ratification by States has following alternatives with him:
  - give his assent, or
  - withhold his assent, or
  - send the bill back to State Legistature for reconsideration, or
  - send it for President's consideration.
- If the bill sent for reconsideration is passed by both houses with or without amendments the Governor has to give his assent to it [Suspensive veto].
- If the bill is reserved for President's assent, but is returned to State Legistature for reconsideration and the State Legistature pass it again, it isn't obligatory for the President to give his assent to the bill. President can return a State bill any number of times.
- Approval of ordinances of the Governor also has the domination of legislative assembly.

Powers and Functions of the State Legistature

Law Making Function

- The primary function of the State Legistature, like the Union Parliament, is law-making. The State Legistature is empowered to make laws on State List and Concurrent List.
- The Parliament and the Legislative Assemblies have the right to make the laws on the subjects mentioned in the Concurrent List. But in case of contradiction between the Union and State law on the subject the law made by the Parliament shall prevail.
- Bills are of two types-
  - Ordinary bills and
  - Money bills.
- Ordinary bills can be introduced in either of the Houses (if the State Legistature is bicameral), but Money bill is first introduced in the Legislative Assembly. After the bill is passed by both Houses, it is sent to the Governor for his assent. The Governor can send back the bill for reconsideration. When this bill is passed again by the Legislature, the Governor has to give his assent.
- The Governor can issue an Ordinance on the State subjects when legislature is not in session. The Ordinances have the force of law. The Ordinances issued are laid before the State Legistature when it reassembles. It ceases to be in operation after the expiry of six weeks, unless rejected by the Legislature earlier. The Legislature passes a regular bill, to become a law, to replace the ordinance. This is usually done within six weeks after reassembly of Legislature.

Financial Powers

- The State Legistature keeps control over the finances of the State. A money bill is introduced first only in the Legislative Assembly.
- The money bill includes authorisation of the expenditure to be incurred by the government, imposition or abolition of taxes, borrowing, etc. The bill is introduced by a Minister on the recommendations of the Governor. The money bill cannot be introduced by a private member.
- The Speaker of the Legislative Assembly certifies that a particular bill is a money bill. After a money bill is passed by the Legislative Assembly, it is sent to the Vidhan Parishad. It has to return this bill within 14 days with, or without, its recommendations.
- The Legislative Assembly may either accept or reject its recommendations. The bill is deemed to have been passed by both Houses. After this stage, the bill is sent to the Governor for his assent. The Governor cannot withhold his assent, as money bills are introduced with his prior approval.

Control over the Executive

- Like the Union Legislature, the State Legistature keeps control over the executive. The Council of Ministers is responsible to Legislative Assembly collectively and remains in the office so long as it enjoys the confidence of the Legislative Assembly.
- The Council of Ministers is removed if the Legislative Assembly adopts a vote of no-confidence, or when it rejects a government bill.
- In addition to the no-confidence motion, the Legislature keeps checks on the government by asking questions and supplementary questions, moving adjournment motions and calling attention notices.

Electoral Functions

- The elected members of the Legislative Assembly are members of the Electoral College for the election of the President of India. Thus, they have their say in the election of the President of the Republic. The members of the Legislative Assembly also elect members of the Rajya Sabha from their respective States.
- One-third members of the Legislative Council (if it is in existence in the State) are also elected by the members of the Legislative Assembly. In all these elections, members of the Legislative Assembly cost their votes in accordance with single transferable vote system.

Constitutional Functions

- An Amendment requires special majority of each House of the Parliament and ratification by not less than half of the States relating to Federal subjects.
- The resolution for the ratification is passed by State Legistatures with simple majority. However, a constitutional amendment cannot be initiated in the State Legistature.

Comparison between Legislative Procedure in Parliament and State Legistature	
With Regard to other Bills except Money Bill	
Parliament	**State Legistature**
Bills may be proposed by either House of Parliament.	Bills may be proposed by either House of State Legistature.
A Minister or a private member may present it.	A Minister or a private member may present it.
has to go through first, second and third reading in the originating House.	It has to go through first, second and third reading in the originating House.
Only when both Houses agree to it, with or without amendments, it is considered as passed by Parliament. In the event of a deadlock between the two Houses, only a joint sitting of the two Houses, summoned by the President, can resolve the deadlock.	In case of disagreement between two houses, the will of the Legislative Assembly takes precedence. As a result, there is no provision of Joint sitting to resolve deadlock.
The deadlock may occur if • one house passes the bill and the other house rejects it, or • one house proposes amendments that the other house does not agree with. • If the house does not pass the Bill within six months of receiving it.	The deadlock may occur if • one house passes the bill and the other house rejects it, or • one house proposes amendments that the other house does not agree with.
In the Rajya Sabha, the time limit for passing a Bill received from the Lok Sabha is six months.	In the Legislative Council, the time limit for passing a Bill received from the Legislative Assembly is three months.
In the event of disagreement, a joint sitting of the two Houses is the only way to resolve the deadlock. However, if the President does not convene a joint sitting at his discretion, the Bill becomes null and void, and Rajya Sabha thus has the effective capacity to block a Bill from being passed.	In the event of a disagreement, passage of the Bill by the Legislative Assembly for a second time is sufficient for passage by the State Legistature. If the Bill is transmitted to the Legislative Council again after it has been passed, the Council's only option if it is not in agreement with the bill is to withhold it for one month from the date of its reception on its second journey. If the Council rejects the Bill again or suggests revisions that the Legislative Assembly rejects, or allows one month to pass without passing the Bill, the Bill is presumed to have been passed by the State Legistature in the form in which it is passed for the second time by the Legislative Assembly.
If a bill is introduced and passed in the Rajya Sabha, it has equal power in the case of ordinary bills and constitution amendment bills.	If the Legislative Council originates, enacts, and forwards a Bill to the Legislative Assembly, and the Legislative Assembly either rejects the Bill or makes amendments that are unacceptable to the Legislative Council, the Bill is terminated immediately.

With Regard to Money Bill	
With Regard to other Bills except Money Bill	
Parliament	**State Legistature**
Only the Lok Sabha can introduce it, not the Rajya Sabha.	Only the Legislative Assembly can introduce it, not the Legislative Council.
It can only be introduced on the President's recommendations.	It can be introduced only on the Governor's recommendations
It can only be proposed by a Minister and not by a private member.	It can only be proposed by a Minister and not by a private member.
The Rajya Sabha cannot reject it or amend it. Within 14 days, it should be returned to the Lok Sabha, either with or without recommendations.	The Legislative Council cannot reject it or amend it. Within 14 days, it should be returned to the Legislative Assembly, either with or without recommendations.
The Lok Sabha can accept or reject all or any of the Rajya Sabha's recommendations.	The Legislative Assembly can accept or reject all or any of the Legislative Council's recommendations.
If the Lok Sabha accepts any suggestions given by the Rajya Sabha, the bill is considered to have been passed in its modified form by both Houses.	If the Legislative Assembly accepts any suggestions given by the Legislative Council, the bill is considered to have been passed in its modified form by both Houses.
If the Lok Sabha rejects a proposal, the bill is considered to have been passed in the same form by both Houses.	If the Legislative Assembly rejects a proposal, the bill is considered to have been passed by both Houses in the same form as passed by the Legislative Assembly.

Limitation on the Powers of the State Legistature by Parliament

The powers of law-making by the Legislature are limited in the following manner:

- State Legistature can make a law on the subjects listed in the State List and also the Concurrent List. But in case, the State law on a subject in the Concurrent list is in conflict with the Union law, the law made by the Parliament shall prevail.
- The Governor of the State may reserve his assent to a bill passed by the State Legistature and send it for the consideration of the President. It is compulsory in

case the powers of Structure of Government the High Court are being curtailed. In some other cases, prior approval of the President for introducing the bill in the Legislature is essential such as, for imposition of restriction on the freedom of trade and commerce within the State or with other States.

- The Parliament has the complete control on the entire State List at the time when the national emergency has been declared (under Art. 352), although the State Legistature remains in existence and continues to perform its functions. In case of breakdown of constitutional machinery (under Art. 356) after fall of popular Government in the State, the President's rule is imposed. The Parliament then acquires the power to make laws for that State, for the period of constitutional emergency.
- The Parliament can also make laws on a subject of the State list in order to carry on its international responsibility. If the Rajya Sabha adopts a resolution by two-thirds majority to this effect, on its own or at the request of two or more States, the Parliament can enact laws on a specified subject of the State list.
- Fundamental rights also impose limitations on the powers of the State Legistature. It cannot make laws which violate the rights of the people. Any law passed by the State Legistature can be declared void by the High Court or Supreme Court if it is found unconstitutional as violate of the fundamental rights.

Position of Legislative Council

Equivalent to the Legislative Assembly

In the following matters, the powers and status of the Council are broadly equal to that of the assembly:

- Introduction and passage of ordinary bills. However, in case of disagreement between the two Houses, the will of the assembly prevails over that of the Council.
- Approval of ordinances issued by the Governor.
- Selection of Ministers including the Chief Minister. Under the Constitution the, Ministers including the Chief Minister can be members of either House of the State Legistature. However, irrespective of their membership, they are responsible only to the assembly.
- Consideration of the reports of the constitutional bodies like State Finance Commission, State public service commission and Comptroller and Auditor General of India.
- Enlargement of the jurisdiction of the State public service commission.

Unequal with the Legislative Assembly

In the following matters, the powers and status of the Council are unequal to that of the assembly:

- The Council does not participate in the election of the President of India and representatives of the State in the Rajya Sabha.
- The Council has no effective say in the ratification of a constitutional amendment bill.
- A Money Bill can be introduced only in the assembly and not in the Council.
- The Council cannot amend or reject a money bill. It should return the bill to the assembly within 14 days, either with recommendations or without recommendations.
- The assembly can either accept or reject all or any of the recommendation of the Council. In both the cases, the money bill is deemed to have been passed by the two Houses.
- The final power to decide whether a particular bill is a money bill or not is vested in the Speaker of the assembly.
- The final power of passing an ordinary bill also lies with the assembly. At the most, the Council can detain or delay the bill for the period of four months–three months in the first instance and one month in the second instance.
- The Council can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the assembly).
- The Council cannot remove the Council of Ministers by passing a no-confidence motion. This is because, the Council of Ministers is collectively responsible only to the assembly.
- When an ordinary bill, which has originated in the Council and is sent to the assembly, if rejected by the assembly, the bill ends and becomes dead.
- The existence of the Council depends on the assembly. The Council can be abolished by the Parliament on the recommendation of the assembly.

Rajya Sabha v/s Legislative Council

- The position of the Legislative Council is much weaker than the position of the Rajya Sabha.
- The Rajya Sabha has equal powers with the Lok Sabha in every matters except financial matters and control over the Government.
- The Legislative Council is subordinate to the assembly in all respects. Thus, the dominance of the assembly over the Council is fully established.

- Though both the Council and the Rajya Sabha are second chambers, the Constitution of India has given the legislative Council lesser power compared to Rajya Sabha due to the rationale mentioned below:
  - The Rajya Sabha consists of the representatives of the States and thus reflect the federal element of the polity. By defending State interests from the Centre's excessive involvement, it helps to keep the federal system balanced. It must therefore function as an efficient revising body rather than only an advising or ineffective entity like the Legislative Council. On the other hand, a Legislative Council's matter does not involve the question of federal significance.
  - The Council is made up of a variety of people. It is made up of variously elected members who represent various interests, as well as some nominated members. Its ineffectiveness as a revising body is a result of its very makeup, which weakens its position. The Rajya Sabha, on the other hand, has a uniform makeup. It is made up primarily of elected members and only represents the States (only 12 out of 250 are nominated).
  - The position given to the Council is consistent with democratic ideals. The popular house of the legislature should prevail over the legislative Council.

The Council has been referred to as a "secondary chamber," "costly ornamental luxury," "white elephant," etc. by detractors who have taken into account its weakness and less important position and role. The Legislative Council, according to the opponents, has functioned as a haven for individuals who lost the assembly elections. Despite having fewer authority than the assembly, the usefulness of legislative Council can be justified by the following:

1. By including provisions for review and consideration, it checks the assembly's rushed, flawed, reckless, and poorly thought-out legislation.
2. It makes it easier for prominent specialists and professionals who are ineligible for direct elections to be represented. To represent these people, the Governor proposes one-sixth of the Council members.

The Legislative Council nevertheless commands a higher calibre due to its indirect election system and nomination of individuals with specialised knowledge, and even with its dilatory power, it serves to check hasty legislation by drawing attention to the flaws or defects of any ill-considered measure.

Privileges of State Legistatures

Article 194 of the Indian constitution talks about the powers, privileges, etc, of the House of Legislatures and of the members and committees thereof.

Collective Privileges

The privileges belonging to each House of Parliament collectively are:

- The ability to publish reports, debates, and proceedings, as well as the ability to prevent others from doing so. It can publish truthful reports of Parliamentary proceedings without the House's authorization under the freedom of the press. However, in the case of a House meeting held in secret, this right of the press does not apply.
- Keep strangers out of the gathering and organize covert sessions to address vital issues.
- Make rules to govern its own procedure and commercial activity, as well as to adjudicate on such issues.
- Right to immediate notification of a member's arrest, custody, conviction, imprisonment, and release.
- Initiate inquiries and compel a person's attendance.
- The courts are not allowed to investigate a House's or its committees' proceedings.
- Without the consent of the Presiding officer, no one (whether a member or an outsider) can be arrested, and no legal process (civil or criminal) can be served within the House's boundaries.

Individual Privileges

The privileges belonging to the members individually are:

- During the session of Parliament, from 40 days before the beginning to 40 days after the finish, no member may be arrested in a civil proceeding. If he is arrested, he must be released to let him attend the Session. But a member can be arrested in a criminal proceeding, but the detaining authority must notify the House the reason, time, place of his detention.
- In Parliament, members have the right to free expression. No member of Parliament or its committees is accountable in any court for anything said or voted in Parliament or its committees. This independence is limited by the Constitution's provisions as well as the norms and standing orders that govern Parliament's functioning.
- Members of Parliament are exempt from jury duty when Parliament is in session. They have the right to decline to give evidence and testify in court.

27 Supreme Court

Introduction

In order to ensure transparency and fair work in the system, the constitution-makers kept these three organs independent of each other. The Judiciary is the ultimate interpreter of the rights while it acts as a guardian of the Constitution. It can also conduct checks on the legislature and the executive and ensure that no one goes beyond their ambit of power. The Constitution ensures that the judiciary remains even-handed in all circumstances. The Supreme Court of India is the highest judicial court and the final court of appeal under the Constitution of India, the highest constitutional court, with the power of judicial review. India is a federal State and has a single and unified judicial system with three tier structure, i.e., Supreme Court, High Courts and Subordinate Courts.

History of the Supreme Court of India

- The Supreme Court of Judicature in Calcutta was constituted as a Court of Record with full jurisdiction and authority with the adoption of the Regulating Act of 1773.
- The Supreme Courts at Madras and Bombay were formed by King George - III in 1800 and 1823, respectively.
- The India High Courts Act of 1861 established High Courts in a number of provinces and as well as the Supreme Courts in Calcutta, Madras, and Bombay.
- These High Courts had the distinction of being the highest Courts for all cases till the creation of Federal Court of India under the Government of India Act 1935. The Federal Court had the authority to hear appeals against decisions from High Courts and resolve issues between provinces and federal states.
- After Independence, Supreme Court of India was established, and its inaugural session took place on January 28, 1950.
- It's the highest authority and the final interpreter of the law which means that it has the power to give final decisions on all the matters of the law. Its judgments are binding on all the lower courts. It has the power of judicial review through which it can review the action of the executive and the legislature.

Constitutional Provisions

The Indian Constitution provides for a provision of Supreme Court under Part V (The Union) and Chapter 6 (The Union Judiciary). Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers and procedures of the Supreme Court.

Article 124 of the Constitution,

- The first part of this Article provides for the setting up of the Supreme Court which will be composed of one Chief Justice of India and only seven Judges until the Parliament by law prescribes any more Judges.
- The second part of this Article states that the Chief Justice of India will be appointed by the President after consulting other Judges whom he thinks suitable and will hold the office until he attains the age of 65 years. Whereas the President will have to take into account the Chief Justice's opinion when he appoints the other Judges.
- This Article in its part 2(a) says that a judge can by writing to the President, resign from his position, whereas,
- this Article in its part 2(b) says that the judge can be removed under the provision contained in clause 4.
- The Jurisdiction of the Supreme Court of India can broadly be categorised into original jurisdiction, appellate jurisdiction and advisory jurisdiction. However, there are other multiple powers of the Supreme Court.

Composition of Supreme Court

With respect to Article 124(2), the number of Judges

was only limited to seven but the Parliament by law prescribed & amended that the number of Judges should be increased to thirty-one, i.e., thirty Judges and the Chief Justice of India.

This was done with a rationale that seven-Judges will not be able to suffice the work, the Judiciary undertakes. In order to work efficiently, the number of Judges should be increased otherwise the cases will keep on piling up and there will be more scenes of injustice. The Parliament is authorised to regulate them.

Earlier, the Supreme Court consists of thirty-one Judges (one Chief Justice and thirty other Judges). Recently, Supreme Court (Number of Judges) Bill, 2019 added four Judges. It increased the judicial strength from 31 to 34, including the Chief Justice of India.

Qualification of Judges

Article 124 in its clause (4), provides a checklist for the qualification of the Judges of Supreme Court which is as follows-

The person,

- Should be a citizen of India,
- Should have been a judge of the High Court or of at least two courts in succession, for a span of five years,
- Should have been an advocate of the High Court or at least two courts in succession, for a span of 10 years,
- And should be a distinguished jurist.

Salaries and Allowances

Article 125, talks about the salaries and allowances to be given to the Judges of the Supreme Court.

- In clause (1), it was mentioned that the Judges of the Supreme Court will be paid the salaries determined by the Parliament by law. This is present in the second schedule until any other law regarding the salaries is made.
- In clause (2), it was further mentioned that the Judges will get privileges, allowances, and rights regarding leave of absence and pension with respect to the law prescribed by the Parliament.

Now, the Parliament by law can alter the rights that may hamper the judge's position. But this Article makes sure that it should not happen as it states further that, the Parliament should not enact any law which will stand as a disadvantage to the position of the judge after he has been appointed.

Oath or Affirmation

A person appointed as a judge of the Supreme Court, before entering upon his office, has to make and subscribe to an oath or affirmation before the President, or some other person appointed by him for this purpose. In his oath, a judge of the Supreme Court swears:

- to bear true faith and allegiance to the Constitution of India;
- to uphold the sovereignty and integrity of India;
- to duly and faithfully and to the best of his ability, knowledge and judgement to perform the duties of the Office without fear or favour, affection or ill-will; and
- to uphold the Constitution and the laws.

Seat of the Supreme Court

Article 130, of the Constitution declares Delhi as the seat of the Supreme Court. It also authorises Chief Justice of India to appoint other place or places as seat of the Supreme Court.

He can take decision in this regard only with the approval of the President. This provision is only optional and not compulsory. This means that no court can give any direction either to the President or to the Chief Justice to appoint any other place as the seat of the Supreme Court.

Other Temporary Judges

Acting Chief Justice (Article 126)

The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:

- the office of Chief Justice of India is vacant; or
- the Chief Justice of India is temporarily absent; or
- the Chief Justice of India is unable to perform the duties of his office.

Ad-hoc Judge (Article 127)

- When there is a lack of quorum of the permanent judges to hold or continue any session of the Supreme Court, the Chief Justice of India can appoint a judge of a High Court as an Ad-hoc judge of the

Supreme Court for a temporary period. He can do so only after consultation with the Chief Justice of the High Court concerned and with the previous consent of the President.

- The judge so appointed should be qualified for appointment as a judge of the Supreme Court. It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office. While so attending, he enjoys all the jurisdiction, powers and privileges of a judge of the Supreme Court.

Retired Judges (Article 128)

At any time, the Chief Justice of India can request a retired judge of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period.

He can do so only with the previous consent of the President and also of the person to be so appointed.

Such a judge is entitled to such allowances as the President may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of the Supreme Court. But he will not otherwise be deemed to be a judge of the Supreme Court.

Appointment of Judges

The Judges of the Supreme Court are appointed by the President. The Chief Justice of India is appointed by the President after consultation with such Judges of the Supreme Court and High Courts as he deems necessary.

The other Judges are appointed by the President after consultation with Chief Justice of India and such other Judges of the Supreme Court and the High Courts as he deems necessary. The consultation with the Chief Justice is obligatory in the case of appointment of a judge other than Chief Justice of India.

Controversy over consultation

The Supreme Court has given different interpretation of the word consultation.

In first Judges case

The court held that consultation does not mean concurrence and it only implies exchange of view.

Appointment of Chief Justice From 1950 to 1973:

The practice has been to appoint the senior most judge of the Supreme Court as the Chief Justice of India. This established convention was violated in 1973 when A. N. Ray was appointed as the Chief Justice of India by superseding three senior Judges. Again in 1977, M. U. Beg was appointed as the Chief Justice of India by superseding the then senior-most judge.

This discretion of the Government was curtailed by the Supreme Court in the Second Judges Case (1993), in which the Supreme Court ruled that the senior most judge of the Supreme Court should alone be appointed to the office of the Chief Justice of India.

Second Judges' case

The court reversed its earlier ruling and changed the meaning of the word consultation. Hence, it ruled that the advice tendered by the Chief Justice of India is binding on the President in matters of appointment of the Judges of the Supreme Court. but the Chief Justice would tender his advice on the matter after consulting two of his senior most colleagues.

Third Judges' case

The court held that the consultation process to be adopted by the Chief Justice of India requires consultation of plurality Judges. Sole opinion of Chief Justice of India does not constitute the consultation process. He should consult a collegium of four senior most Judges of Supreme Court and even if two Judges give an adverse opinion, he should not send the recommendation to the Government the court held that the recommendation made by the Chief Justice of India without complying with the norms and requirements of the consultation process are not binding on the Government.

National Judicial Appointments Commission (NJAC)

The 99th Constitutional Amendment Act of 2014 have replaced the collegium system of appointing Judges to the Supreme Court and High Court with a new body called the National Judicial Appointments Commission (NJAC). After this amendment, under Article 124(2), every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Appointment Commission referred to in Article 124 A.

NJAC, as provided by Article 124 (A), consisted of

- Chief Justice of India;
- two other senior Judges of the Supreme Court;
- Union Law Minister

- 2 eminent people' to be nominated by the committee consisting of the Prime Minister, Chief Minister of India and the leader of opposition.

The above composition clearly states that NJAC has both judicial as well as executive the representatives.

Thus, the 99th Amendment Act which brought NJAC held that the established wisdom of appointment of Judges can be shared with the political executive. This was a huge change in the methodology used to appoint a Judge of the Supreme Court.

But thereafter, in Supreme Court Advocates on Record Association v. Union of India (Fourth Judges case), the Supreme Court struck down NJAC act as 'unconstitutional and void'. The Court declared that the 'NJAC' act altered the basic features of the constitution as it impairs the 'independence of the judiciary' and the 'separation of powers' by conferring arbitrary and uncharted powers on various authorities under the statute. Therefore, the amendment cannot be sustained. As a result of this discussion, the position as it stood prior to the constitution 99th Amendment Act i.e., 'collegium system' got revived.

Tenure and Removal of Judges

According to Article 124(2), the Judges of the Supreme Court will hold their office until they reach the age of 65 years. However, the tenure of the judge can be shortened on the following conditions:

- If he resigns (Article 124(2))
- If he dies during his tenure.
- If he is impeached

Procedure of Impeachment

A judge of the Supreme Court stands removed if:

- A motion is signed by the 50 members of Rajya Sabha and 100 members of the Lok Sabha.
- An inquiry committee under Judges Inquiry Act,1968 is constituted for the investigation of the charges.
- If the inquiry committee proves the charges, then it is addressed in both the house of Parliament.
- If the motion is passed with two-third majority in both houses then the motion is addressed to the President.
- The judge has the right to in order to prove that he is not guilty.
- If the President is satisfied with motion addressed to him, he may issue an order to remove the judge.

Judge should be proved incapable or guilty of his act. It can be proved through the procedure for the investigation regarding the same matter and the following procedure has to be laid down by the law of the Parliament. This right is given to the Parliament under Article 124(5).

Judges (Inquiry) Act, 1968 [Inquiry Committee]

In this, the procedure for the investigation into the charges against the Judges was laid down.

The Judge can only be removed after proven misbehaviour or incapacity. This Act further specified that it will consist of the following people-

- Any judge of the Supreme Court, or the Chief Justice of the Supreme Court,
- Any Chief Justice of the High Court, and
- Any person who is a distinguished jurist in the opinion of the Speaker.

These members will unanimously frame charges against the judge and will investigate it.

Independence of Supreme Court

The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution. Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive and the Legislature. It should be allowed to do justice without fear or favour.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court:

- Mode of appointment
- Security of tenure
- Fixed service conditions
- Expenses charged on the consolidated fund
- Conduct of judges cannot be discussed
- Ban on practice after retirement
- Power to punish for its contempt
- Freedom to appoint its staff
- Its jurisdiction cannot be curtailed

- Separation from Executive

Jurisdiction and Powers of the Supreme Court

Supreme Court of India is the apex judicial authority in India. Under Article 141 it has been stated that the decision of the Supreme Court is binding upon all the other courts. It tends to regulate the judicial system of the country in order to maintain public peace and protect it from any external transgression. Therefore, it possesses a very wide range of powers and functions which are discussed below:

- ***Original Jurisdiction:*** Under Article 131 of the Indian constitution, the Supreme Court has original jurisdiction in the following cases:
  - If there is a dispute between the Government of India and one or more States
  - Between the Government of India and any state or states on the one side and one or more States on the other side
  - Between two or more States

  Even the dispute arising in the election of the President and Vice President is dealt with by the Supreme Court. In these matters, the Supreme Court has original jurisdiction to exercise its power without the intervention of any other judicial authority.

  This jurisdiction of the Supreme Court is subjected to certain limitations.
  - A dispute arising out of any pre-Constitution treaty, agreement, covenant,
  - engagement, sanad or another similar instrument.
  - A dispute arising out of any treaty, agreement, etc, which specifically provides that the said jurisdiction does not extend to such a dispute.
  - Inter-state water disputes.
  - Matters referred to the Finance Commission.
  - Adjustment of certain expenses and pensions between the Centre and the States.
  - Ordinary dispute of Commercial nature between the Centre and the States.
  - Recovery of damages by a State against the Centre.
- ***Writ Jurisdiction:*** Under Article 32 it has given the right to an individual to approach the Supreme Court if there is any violation of his fundamental rights. Under Article 32, a court an issue orders or writs (habeas corpus, certiorari, mandamus, prohibition, quo-warranto) for the enforcement of the fundamental rights of an aggrieved citizen.

  In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can go directly to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive. The High Courts are also empowered to issue writs for the enforcement of the Fundamental Rights.

  As the Supreme Court is the highest judicial authority it protects the fundamental rights of an individual from any kind of infringement.
- ***Appellate Jurisdiction:*** The Supreme is the apex judicial authority of appeals and enjoys constitutional, civil as well as criminal appeals.
  - ***Constitutional Appeal:*** Under Article 132 of the constitution, it has been stated that appeal for any final judgement of the High Court whether of civil or criminal nature for which the High Court issues a certificate stating that it contains a substantial question of law as to the interpretation of the provisions of the constitution lies in the Supreme Court. Even if the High Court refuses to issue the certificate, the Supreme Court has the power to grant special leave petition in these matters.
  - ***Civil Appeals:*** Cases of civil nature shall lie in the Supreme Court if the High Court is satisfied with the following conditions and certifies that:
    - The matter involves a substantial question of law
    - If the High Court thinks that this case needs to be decided by the Supreme Court
  - Criminal Appeals: under Article 134(1) a criminal appeal shall lie in the Supreme Court under the following circumstances:
    - If the High Court in an appeal has reversed the judgment of the lower court and sentenced death penalty to the accused who has been acquitted.
    - In the second situation when the High Court itself has withdrawn a case from a lower court and then sentenced the accused person death penalty.

- If a case is certified by the High Court that it is fit for the appeal in the Supreme Court. Sometimes the Supreme Court is conferred with powers by the parliament in order to deal with certain cases decided by the High Court.

- ***Special Leave Petition:*** The Supreme Court has the jurisdiction to grant special leave petition to the final judgement given by any lower courts except for the courts or tribunal which has been formed by the law relating to armed forces. However, if the judgement or order is given by a High Court (single judge bench) then the no appeal for that matter will be entertained in the Supreme Court.

Under Article 138 of the Indian Constitution the law expands the jurisdiction of the Supreme Court in respect of subjects contained under the union list and shall also have jurisdiction over any other subject for which the consent of state has been obtained.

- ***Advisory Jurisdiction:*** Article 143 authorises the President of India to seek an advisory opinion from the Supreme Court in the two categories of matters:
  a. matters of public importance
  b. of any question arising out of pre-constitution, treaty, agreement, engagement, Sanad or other similar instruments.

  Also, Article 144 states that all authorities civil and judicial in the territory of India shall act in aid of the Supreme Court.

- ***Courts of record:*** Under Article 129 of the Indian constitution, it has been stated very clearly that the Supreme Court of India is a court of record and has the power to punish for contempt itself. A court of record means the proceedings, decisions or acts of a court which are enrolled for the evidential matter and for the interminable and testimonial purposes. They are unquestionable when presented before any other court.

Miscellaneous Powers and Functions

Apart from the powers mentioned above Supreme Court has following powers too:

1. ***Power to punish for contempt:*** Supreme Court under Article 129 has the power to punish a person if found guilty of contempt of court. Contempt of court basically means hampering the proceedings of the court neglecting its order, defying its authority which ultimately results in disrespect of the court. The consequences arising out of it includes both the civil or criminal penalties depending upon the gravity of the consequences. Civil contempt means wilful disobedience to any judgment. Criminal contempt means doing any act which lowers the authority of the court or causing interference in judicial proceedings.
2. ***Judicial review:*** If any law is passed by the Parliament or the State Legislature which does not comply with the provisions of the Indian constitution or is passed with the jurisdiction which they even do not possess will be declared void by the Supreme Court through judicial review.
3. ***Custodian of the fundamental rights:*** It is the custodian of the fundamental rights. Under Article 32 every citizen of India has the Locus Standi to move to court in order to seek legal remedy if there is any kind of infringement to the fundamental rights.
4. The Supreme Court is conferred with the power to make rules for carrying out its practice and procedure.
5. ***Appointment of Ad-hoc Judges:*** Article 127 states that if at any time there is a lack of quorum of Judges of Supreme Court, the Chief Justice of India may with the previous consent of the President and Chief Justice of High Court, concerning request in writing the attendance of Judge of High Court duly qualified to be appointed as Judge of the Supreme Court.
6. ***Appointment of retired Judges of the Supreme Court or High Court:*** Article 128, states that the Chief Justice of India any time with the previous consent of the President and the person to be so appointed can appoint any person who had previously held the office of a Judge of Supreme Court.
7. ***Appointment of Acting Chief Justice:*** Article 126, states that when the office of Chief Justice of India vacant or when the Chief Justice is by reason of absence or otherwise unable to perform duties of the office, the President in such case can appoint

Judge of the court to discharge the duties of the office.

8. ***Revisory Jurisdiction:*** The Supreme Court under Article 137, has the power to review its own judgement
   a. If new evidence is found.
   b. If a fact which is related to the records of the came to the light.
   c. If there are enough reasons to suffice for a review Supreme Court itself states that nothing can restrain it from reviewing its own decisions if it is satisfied with its effects over the general public.
9. ***Supreme Court as a Court of Record:*** Under Article 129, Supreme Court is the court of record. Its judgment is unquestionable and are accepted by all the lower courts as precedents. Under Article 141 the decision of the High Court is considered to be final and binding upon all the lower courts and regarded as law.
10. Appeals under The Peoples Representation Act, 1951 can be filed in the Supreme Court.
11. Deciding authority regarding the election of President and Vice President.
12. Enquiring authority in the conduct and behaviour of UPSC members.
13. Withdraw cases pending before High Courts and dispose of them themselves.

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28 High Court

Introdution

The first High Court was the Calcutta. The Bombay and Madras High Court was established in the year of 1862. There are 25 High Courts in the country. Most recent is the High Court built in Amaravati. Out of them, only three High Courts have jurisdiction over more than one state. Delhi is the only Union Territory which has a separate High Court (since 1966). The Union Territories of Jammu and Kashmir and Ladakh have a common High Court. The other Union Territories fall under the jurisdiction of different state High Courts. The Parliament can extend the jurisdiction of a High Court to any union territory or exclude the jurisdiction of a High Court from any union territory.

Articles 214 to 231 in Part VI of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the High Courts.

Composition (Article 216)

The head of the High Court is the Chief Justice of the High Court. There is one Chief Justice. Every High Court of a state or states consists of a Chief Justice appointed by the President with the consultation of the Chief Justice of India and the Governor of that State.

Along with the Chief Justice, other judges are appointed by the President as per the requirement of work. There is no specific limit prescribed for the appointment of judges in a High Court. It may vary from time to time.

Tenure of High Court Judges

- A judge of the High Court holds the office until the age of 62 years.
- A High Court judge gives his resignation to the President in writing.
- If the President desires so and on the recommendation of Parliament, he may remove any High Court judge.
- A High Court judge is said to vacate his office when he is transferred to another High Court or is elevated to the Supreme Court.

Appointment of Judges

Article 217 talks about the appointment, qualification and conditions of the office of a Judge of a High Court.

- The judges and the Chief Justice of the High Courts are appointed officially by the President.
- The Chief Justice is appointed by the President in consultation with Chief Justice of India and Governor of the state which the High Court's jurisdiction falls under.
- For the appointment of other judges of the High Court, they are appointed by the President on the advice of the Chief Justice of India, the Governor of that state and the Chief Justice of the High Court.

Qualifications to become a High Court Judge

A person who is to be appointed as a judge of a High Court must possess the following qualifications:

- He must be a citizen of India.
- He should have ten years of experience as a judge or
- He should be a practising advocate for a period of ten years in the High Court.

No age limit is prescribed for the appointment of judges of the High Court.

But unlike the Supreme Court, any eminent jurist is not eligible for becoming a High Court judge.

Oath of Office (Article 219)

- The Chief Justice of the High Courts and judges of the High Court take an oath before the Governor of state or some person appointed by him.
- While their appointment and removal are done by the President, they take an oath in front of the Governor.

Transfer of Judges (Article 222)

- The President can transfer a High Court judge after consultation with the Chief Justice of India.
- In 1994, the Supreme Court held that judicial review is necessary to check arbitrariness in transfer of judges.

- In third judges' cases, it was opined that the Chief Justice of India should consult an addition of collegium of four senior-most judges of the Supreme Court, Chief Justice of the two High Courts involved in the process before taking any final decision.

Removal of High Court Judges (Article 218)

Article 218 talks about the removal of High Court judges. The removal of the judge of a High Court can be based on two grounds:

i. Misbehaviour

ii. Incapacity to hold office.

The procedure for impeaching a High Court judge is quite similar to that of a Supreme Court judge.

Process of Removal of Judges

The Constitution provides that a judge can be removed only by an order of the President, based on a motion passed by both Houses of Parliament. The procedure for removal of judges is elaborated in the Judges Inquiry Act, 1968. The Act sets out the following steps for removal from office:

- Under the Act, an impeachment motion may originate in either House of Parliament. To initiate proceedings:
  - at least 100 members of Lok Sabha may give a signed notice to the Speaker, or
  - at least 50 members of Rajya Sabha may give a signed notice to the Chairman.
- The Speaker or Chairman may consult individuals and examine relevant material related to the notice. Based on this, he or she may decide to either admit the motion or refuse the motion.
- If the motion is admitted, the Speaker or Chairman (who receives it) will constitute a three-member committee to investigate the complaint. It will comprise:
  - a Supreme Court judge;
  - Chief Justice of a High Court; and
  - a distinguished jurist.
- The Committee will frame charges based on which the investigation will be conducted. A copy of the charges will be forwarded to the judge who can present a written defence.
- After concluding its investigation, the Committee will submit its report to the Speaker or Chairman, who will then lay the report before the relevant House of Parliament. If the report records a finding of misbehaviour or incapacity, the motion for removal will be taken up for consideration and debated.
- The motion for removal is required to be adopted by each House of Parliament by:
  - a majority of the total membership of that House; and
  - a majority of at least two-thirds of the members of that House present and voting.
- If the motion is adopted by this majority, the motion will be sent to the other House for adoption.
- Once the motion is adopted in both Houses, it is sent to the President, who will issue an order for the removal of the judge.

Comparison between the Supreme Court and the High Court

Supreme Court	High Court
The Supreme Court is the apex court of Justice.	The High Court is the highest court of authority in the state its jurisdiction falls under.
Headed by Chief Justice of India	Headed by Chief Justice of the High Court.
Supreme Court has supreme power over all the courts in India.	The High Court has supreme power over only the tribunal and other subordinate courts in its state.
The Chief Justice of India is appointed by the President and the other judges of the Supreme Court are appointed by the President on the recommendation of the Chief Justice of India.	The Chief Justice of India is appointed by the President on the recommendation of Chief Justice of India and Governor of the state. The judges of the High Court are appointed by the President of India after consulting the Chief Justice of India, the governor of that state and the Chief Justice of the High Court.
The judges of the Supreme Court retire at 65.	The judges of the High Court retire at 62.
The Supreme Court is the highest court of appeal and there is no other court above it.	The judgement of the High Court can plead to the Supreme Court.
There is one Supreme Court in India.	There is a total of 25 High Courts in India.

Other temporary judges:

Acting Chief Justice (Article 223)

- The President can appoint a High Court judge as acting chief justice in case the vacancy of office of

Chief Justice or Chief Justice is temporarily absent or unable to perform his duties.

- President can appoint additional judges for a period of two years if additional work load is seen or to clear arrears. The appointees should be duly qualified.
- For Acting judges, the President can appoint duly qualified people till the judge is temporarily absent or unable to perform his duty.

Additional Judges [Article 224(1)]

- If by reason of any temporary increase in the business of High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specific.
- Can hold office till the age of 62 years.

Acting Judge [Article 224 (2)]

- An Acting judge can be appointed when any Judge, other than the Chief Justice, is unable to perform his duties due to absence or otherwise, or when a permanent Judge of the High Court is appointed as its acting Chief Justice.
- An Acting judge holds office until the permanent Judge resumes his duties but cannot hold office beyond the age of 62 years.

Retired judges (Article 224 (A))

- The Chief Justice of a High Court, can request a retired High Court Judge to shit and act as a Judge of the High Court for a temporary period.
- He can take this step after getting consent from the President of India and also of the person to be so appointed.
- The appointed person in this case will receive such salary and allowances as determined by the President of India.

Autonomy of High Courts

The autonomy of the High Courts can be summarised by the points given below:

- ***Appointment of Judges and other staffs:*** The appointment of judges, other officials and staffs of the High Court's lies within the judiciary itself and is not connected to the legislature or the executive.
- ***Tenure of the Judges:*** High Court judges enjoy the security of tenure till the age of retirement, which is 62 years. A High Court cannot be removed except by an address of the President.
- ***Salaries and allowances:*** The High Court judges enjoy good salaries, perks and allowances and these cannot be changed to their disadvantage except in case of a financial emergency. The expenses of the High Court are charged on the Consolidated Fund of the State, which is not subject to vote in the State Legislature.
- ***Powers:*** The Parliament and the State Legislature cannot cut the powers and jurisdiction of the High Court as guaranteed by the Constitution.
- ***Conduct of judges:*** Unless a motion of impeachment has been moved, the conduct of the High Court judges cannot be discussed in the Parliament.
- ***Retirement:*** After retirement, High Court judges cannot hold an office of emolument under the Government of India or that of a State. There is an exception to this clause, however, when, with the consent of the Chief Justice of India, retired judges can be nominated to a temporary office, and in the situation of emergencies.

Jurisdiction and Powers of High Court

A High Court is the highest appellate authority in a state. It enjoys many powers like:

Original Jurisdiction

- It means the High Court has the power to hear a case in the first instance as an original court, not by way of appeal.
- High Courts are empowered to issue writs in order to enforce fundamental rights.
- Matters of admiralty, will, marriage, divorce, company laws and contempt of Court.
- Disputes relating to the selection of members of parliament and state legislatures.
- Regarding revenue matter or an act ordered or done in revenue collection.
- Cases ordered to be transferred from a subordinate court involving the interpretation of the constitution to its own file.

- Election petitions can be heard by the High Courts.
- The High Courts of Calcutta, Bombay and Madras have original jurisdiction in criminal and civil cases arising within these cities.
- An exclusive right enjoyed by these High Courts is that they are entitled to hear civil cases which involve property worth over Rs.20000.

Writ Jurisdiction

- Article 226 of Constitution empowers a High Court to issue writs including Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo-Warranto for the enforcement of the fundamental rights of the citizens and for any other purpose. The phrase "any other purpose" refers to the enforcement of an ordinary legal right.
- A writ is a discretionary remedy and the High Court can refuse it on the Ground of acquiescence, delay, available alternate remedy and no benefit to the party.
- The scope of issuing a writ under Article 226 to the High Court is wider than that of the Supreme Court. High Courts in India have the power to issue writs for the enforcement of fundamental rights as well as legal rights. Whereas the Supreme Court issues only on enforcement of fundamental rights.
- The writ jurisdiction of the High Court is not an exclusive but concurrent with the writ jurisdiction of the Supreme Court. It means, when the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the High Court or the Supreme Court directly.

Appellate Jurisdiction

- The High Court is the topmost court in terms of hierarchy in a state. It is subordinate to the Supreme Court but controls all subordinate courts.
- The High Court of a state has appellate jurisdiction in following matters – civil, criminal and constitutional.
- In civil matters, an appeal can be made directly from the subordinate or lower courts if the case involves a value higher than Rs. 5000. It may be filed for an appeal on both question of law and question of fact. The second appeal lies only when there is a question of law in the judgement or order passed by the subordinate courts.
- ***In criminal matters:*** it extends to cases decided by Sessions and Additional Sessions Judges.
  - If the sessions judge has awarded imprisonment for 7 years or more.
  - If the sessions judge has awarded capital punishment.
- The jurisdiction of the High Court extends to all cases under the State or federal laws.
- In constitutional matters, an appeal can be made if the High Court certifies that a case involves a substantial question of law.

Supervisory Jurisdiction

- According to Article 227 of the Constitution, the High Court works as a supervisory body in a state. It has to supervise all the courts and tribunals in a state that come under its territorial jurisdiction.
- The power of the High Court is not unlimited to have unnecessary control over subordinate courts. But this power must be used by the High Court in rare cases and sparingly.
- A High Court has the power of superintendence over all Courts and Tribunals functioning in its territorial jurisdiction. Thus, it may:
  - Call for returns from them;
  - Make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;
  - Prescribe forms in which books, entries and accounts are to be kept by them; and
  - Settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

Court of Record

- The High Court is a court of record under Article 215 of the Constitution. All the judgements and orders which the concerned High Court pass shall be kept as the court of record for future references. These judgments act as precedents for the lower and subordinate courts.
- The High Court has the power to punish for the contempt of court:
  - If any person disregards or disobeys the High Court's judgment, or

- Attempts to scandalise the authority of the court, or
- In any manner, tries to obstruct the proceedings of the court.

Judicial Review

- Judicial review means examining the correctness of the legislative acts of the legislature and executive orders of both the central government and state government.
- If the High Court's find it to be against the spirit of the Constitution or violative of fundamental rights or made by an authority incompetent to make it, then it is declared void.
- The 42nd Amendment of 1976 curtailed the power of judicial review of the High Court. But then 43rd Amendment 1977 restored the position of High Court for judicial review.

Administrative Powers

- It superintends and controls all the subordinate courts in its territorial jurisdiction.
- It can ask for details of proceedings from subordinate courts.
- It issues rules regarding the working of the subordinate courts.
- It can transfer any case from one court to another and can also transfer the case to itself and decide the same.
- It can enquire into the records or other connected documents of any subordinate court.
- It can appoint its administration staff and determine their salaries and allowances, and conditions of service.

Control over Subordinate Courts:

- Article 235 of Constitution of India talks about control of High Court over subordinate courts.
- In addition to its appellate jurisdiction and supervisory jurisdiction over the subordinate Courts as mentioned above, a High Court has an administrative control and powers over them. These include the following:
  - It is consulted by the Governor in the matters of appointment, posting and promotion of district Judges and in the appointment of persons to the judicial service of the state.
  - It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the State.
  - It can withdraw a case pending in a subordinate Court if it involves substantial question of law that require the interpretation of the constitution.
  - Its law is binding on all subordinate Courts functioning with its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all Courts in India.

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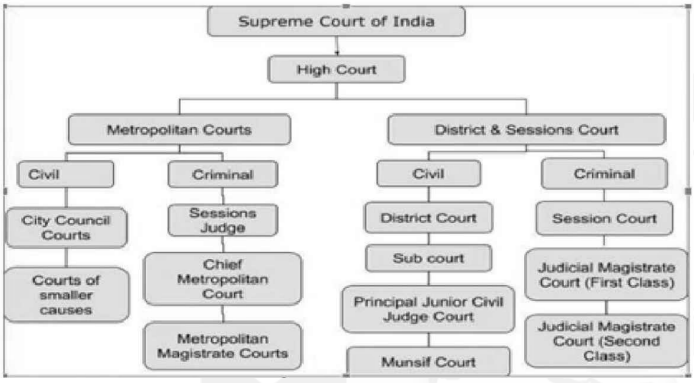
29 Subordinate Courts

Introduction

The states establish the organisational structure, legal authority, and nomenclature of the subordinate judiciary. As a result, they vary slightly amongst states. Under the High Court, there are, generally speaking, three tiers of civil and criminal courts.



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.

Appointment of District Judges [Article 233]

The Governor of the State, in consultation with the High Court, appoints, posts, and promotes district judges in the State.

The following qualifications should be present in anyone seeking to be appointed as a district judge:

- He/she should not already be in the service of the Central or the State Government.
- He/she should have been an advocate or a pleader for seven years.
- He/she should be recommended by the High Court for the appointment.

Appointment of persons other than District Judges [Article 234]

Appointment of persons (other than district judges) to the judicial service of a state are made by the Governor of the state after consultation with the State Public Service Commission and the high court

Control over Subordinate Courts [Article 235]

The control over district courts and other subordinate courts including the posting, promotion and leave of persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the high court.

Interpretation of the terms [Article 236]

The expression 'district judge' includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge. The expression 'judicial service' means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

Application of the above Provisions to Certain Magistrates [Article 237]

The Governor may direct that the above-mentioned provisions relating to persons in the state judicial service would apply to any class or classes of magistrates in the state

Subordinate Courts- Structure and Jurisdiction

The States define the subordinate judiciary's organizational structure, jurisdiction, and terminology. As a result, they vary slightly from State to State. Generally, underneath the High Court, there are three tiers of civil and criminal courts.

District Judge

The district judge is the district's highest judicial authority with original and appellate authority in both civil and criminal issues.

To put it another way, the district judge also serves as the sessions judge. He/she is known as the district judge when dealing with civil issues and the sessions judge when dealing with criminal cases.

Both judicial and administrative authorities are exercised by the district judge and also have supervisory authority over all of the district's subordinate courts.

The High Court hears appeals against his/her directives and judgments. Any penalty, including life imprisonment and capital punishment, can be imposed by the session's judge (death sentence). However, whether or not there is an appeal, any capital punishment he/she imposes must be confirmed by the High Court.

Lower Courts

On the civil side, the Subordinate Judge's Court is located below the District and Sessions Court, while on the criminal side, the Chief Judicial Magistrate's Court is located beneath the District and Sessions Court.

In civil cases, the subordinate judge has unrestricted pecuniary jurisdiction while the chief judicial magistrate rules on criminal matters that carry a maximum sentence of seven years in jail.

The Court of Munsiff, on the civil side, and the Court of Judicial Magistrate, on the criminal side, are the lowest levels.

The munsiff has limited jurisdiction and only decides minor civil issues of the low monetary stake while a judicial magistrate is a person who hears criminal proceedings which are punishable by a sentence of up to three years in jail.

On the civil side, there are city civil courts (chief judges) in various metropolitan cities, and on the criminal side, there are courts of metropolitan magistrates.

Small Causes Courts have been established in several States and presidential towns. These courts make quick decisions in civil matters with low stakes. Their decisions are final, although the High Court can overturn them.

Panchayat Courts hear petty civil and criminal cases in several states. Nyaya Panchayat, Gram Kutchery, Adalati Panchayat, Panchayat Adalat, and so on are some of the names given to them.

National Legal Services Authority

Evolution of free legal aid in India

Article 39A of the Indian Constitution assures underprivileged and weaker sections of society free legal help as well as fair justice for all.

The State must also ensure equality before the law and a judicial system that promotes justice on an equal footing for all citizens, according to Articles 14 and 22(1) of the Constitution.

Since 1952, the Indian Government has addressed the issue of legal aid for the underprivileged at a number of conferences of law ministers and law commissions.

The Government issued rules for legal aid schemes in 1960 and plans were proposed by Legal Aid Boards, Societies, and Law Departments in several states. Under the Chairmanship of Justice P.N. Bhagwati, then a Judge of the Supreme Court of India, a national committee was formed in 1980 to oversee and regulate legal assistance programs across the country.

Legal Services Authorities Act was enacted by Parliament in 1987 and came into force on November 9, 1995, to create a nationwide uniform network for delivering free and competent legal services to the weaker parts of society on an equal footing.

National Legal Services Authority (NALSA)

The National Legal Services Authority (NALSA) was founded in 1995 under the Legal Services Authorities Act of 1987 to monitor and review the effectiveness of legal aid programs and to develop rules and principles for providing legal services under the Act.

It also distributes funding and grants to State Legal Services Authorities and non-profit organizations to help them execute legal aid systems and initiatives.

Who is eligible?

The conditions for providing legal assistance to qualified people are outlined in Section 12 of the Legal Services Authorities Act of 1987.

Every person who has to file or defend a lawsuit

under this Act shall be entitled to legal assistance if such person is:

- a member of a Scheduled Caste or Scheduled Tribe.
- a human trafficking victim or beggar, as defined in Article 23 of the Constitution.
- a child or a woman.
- a person who is mentally ill or otherwise impaired.
- a person who is a victim of unjustified poverty, such as a mass disaster, ethnic violence, caste atrocities, flood, drought, earthquake, or industrial calamity.
- a factory worker, etc
- Disabled persons
- Persons in custody
- Persons whose annual income does not exceed ₹1 lakh (in the Supreme Court Legal Services Committee the limit ₹1,25,000/-)

Objective

To develop an inclusive legal system that provides marginalized and disadvantaged people with fair and meaningful justice.

Structural Organization under Legal Services Authority Act

As a result of the Legal Services Act, a National Legal Services Authority (NALSA) was established as the apex body for regulating the legal aid provisions. State Legal Services Authority (SLSA) handles the implementation of NALSA's powers at the state level, which delegates further to a number of organizations.

NALSA is considered to be an alliance between the State, Social Action Groups, individuals, and non-profit organizations that have their presence from the grassroots level to the state level.

After the constitution of NALSA, the following schemes and measures have been envisaged and implemented by the Central Authority:

- Establishing permanent and continuous Lok Adalat's in all districts of the country for the pre-litigation resolution of pending concerns and conflicts;
- Separate permanent and continuous Lok Adalat's for Government Departments, Statutory Authorities, and Public Sector Undertakings for the pre-litigation resolution of pending issues and disputes;
- Accreditation of NGOs for Legal Literacy and Legal Awareness campaign;
- Appointment of "Legal Aid Counsel" in all of the country's courts of Magistrates;
- Disposal of cases through Lok Adalat's on old pattern;
- Publicity to Legal Aid Schemes and programs to make people aware about legal aid facilities;
- Emphasis on competent and quality legal services to the aided persons;
- Legal aid facilities in jails;
- Establishing Counselling and Conciliation Centres in all of the country's districts;
- Educating Judicial Officers on Legal Services Schemes and Programs;
- Publication of "Nyaya Deep", the official newsletter of NALSA;
- Increase the income ceiling for legal help before the Supreme Court of India to Rs.1,25,000/- per annum and to Rs.1,00,000/- per annum for legal aid up to the High Courts; and
- Steps to take to draught guidelines for the return of court fees and the execution of Lok Adalat Awards.

State Legal Service Authority

- A State Legal Services Authority is established in each state to carry out the Central Authority's policies and orders, provide legal services to the people, and conduct Lok Adalat's.
- The State Legal Services Authority is led by the Chief Justice of the State High Court, who also serves as its Patron-in-Chief, and its Executive Chairman is a serving or retired High Court Judge.
- The purpose of each District Legal Services Authority is to carry out the District's Legal Aid Programs and Schemes. The District Judge serves as its ex-officio Chairman.
- Taluk Legal Services Committees are also formed for each Taluk or Mandal, or for a group of Taluks or Mandals, to coordinate legal services activities in the Taluk and organize Lok Adalat's. Every Taluk

Legal Services Committee is chaired by an ex-officio Chairman who is a senior Civil Judge who works within the Committee's jurisdiction.

Lok Adalat

NALSA along with other Legal Services Institutions conducts Lok Adalats. Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987.

Nature and Scope:

Generally speaking, Lok Adalat is not a court in its accepted connotation. The difference between Lok Adalat and law court is that the law court sets at its premises where the litigants come with their lawyers and witnesses goes to the people to delivers justice at their door step. Lok Adalat is a forum provided by the people themselves or by interested parties including social activities or social activist legal aiders, and public-spirited people belonging to every walk of life. It is just a forum provided by the people themselves for enabling the common people to ventilate their grievances against the state agencies or against other citizens and to seek a just settlement if possible.

The basic philosophy behind the Lok Adalat is to resolve the people dispute by discussion, counselling, persuasion and conciliation so that it gives speedy and cheap justice, mutual and free consent of the parties. In short it is a party's justice in which people and judges participate and resolve their disputes by discussion, persuasion and mutual consent.

Lok Adalats is deemed to be a decree of a civil court and is final and binding on all parties.

Nature of cases to be referred to Lok Adalat

The types of cases dealt with generally are:

- Mutation of land cases.
- Compoundable criminal offences.
- Family disputes.
- Encroachment on forest lands.
- Land acquisition disputes.
- Motor accident claim, and
- Cases which are not sub-judice.

Provided that any matter relating to an offence not compoundable under the law shall not be settled in Lok Adalat.

Which Lok Adalat to be approached?

As per the Act, a Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of -

- Any case pending before; or
- Any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised.

Provided that the Lok Adalat shall have no jurisdiction in respect of matters relating to divorce or matters relating to an offence not compoundable under any law.

How to get the case referred to the Lok Adalat for Settlement?

- Case pending before the court.
- Any dispute at pre-litigative stage.

The State Legal Services Authority or District Legal Services Authority as the case may be on receipt of an application from any one of the parties at a pre-litigation stage may refer such matter to the Lok Adalat for amicable settlement of the dispute for which notice would then be issued to the other party.

Levels and Composition of Lok Adalats:

At the State Authority Level

- The Member Secretary of the State Legal Services Authority organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judge of the High Court or a sitting or retired judicial officer and any one or both of- a member from the legal profession; a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes.

At High Court Level

- The Secretary of the High Court Legal Services Committee would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judge of the High Court and any one or both of- a member from the legal profession; a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal

services schemes or programmes.

At District Level

- The Secretary of the District Legal Services Authority organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicial officer and any one or both of either a member from the legal profession; and/or a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes or a person engaged in para-legal activities of the area, preferably a woman.

At Taluk Level

- The Secretary of the Taluk Legal Services Committee organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicial officer and any one or both of either a member from the legal profession; and/or a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes or a person engaged in para-legal activities of the area, preferably a woman.

National Lok Adalat

National Level Lok Adalats are held for at regular intervals where on a single day Lok Adalats are held throughout the country, in all the courts right from the Supreme Court till the Taluk Levels wherein cases are disposed of in huge numbers. From February 2015, National Lok Adalats are being held on a specific subject matter every month.

Permanent Lok Adalat

The other type of Lok Adalat is the Permanent Lok Adalat, organized under The Legal Services Authorities Act, 1987.

- Permanent Lok Adalats have been set up as permanent bodies with a Chair-man and two members for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to Public Utility Services like transport, postal, telegraph etc.
- Here, even if the parties fail to reach to a settlement, the Permanent Lok Adalat gets jurisdiction to decide the dispute, provided, the dispute does not relate to any offence.
- Further, the award of the Permanent Lok Adalat is final and binding on all the parties.
- The jurisdiction of the Permanent Lok Adalats is up to Rs. Ten Lakhs. Here if the parties fail to reach to a settlement, the Permanent Lok Adalat has the jurisdiction to decide the case.

Mobile Lok Adalats

Mobile Lok Adalats are also organized in various parts of the country which travel from one location to another to resolve disputes in order to facilitate the resolution of disputes through this mechanism.

Resources and achievement of Lok Adalat:

Lok Adalat can only expect gratitude of the people in distress in return. They must devote time for the cause of social justice and dedicate their service for its success. Lok Adalats are generally organized in the premises of courts. Lok Adalat can work as substitutes for setting cases which are pending in superior courts. Encouraged by the response that Lok Adalat have been receiving at the district level, the state legal aid boards have started organizing Lok Adalats for cases pending in the High Courts.

The Lok Adalat has also been organized even for the cases pending in the Supreme Court.

Organization of Lok Adalat

The State authority or district authority or the High Court legal services committee or as the case may be; Tehsil legal services committee may organize Lok Adalat at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit. Every Lok-Adalat organized for an area shall consist of such number of;

- Serving or retired on judicial officer, and
- Other person of the area as may be specified by the state authority or the district authority or the High Court legal services committee or as the case may be, the Tehsil legal services committee organizing such Lok Adalats.

The experience and qualifications of persons for Lok Adalats shall be such as may be prescribed by the government in consultation with the chief justice of the High Court.

Procedure of Lok-Adalats

- The Lok Adalats are generally organized by state

legal aid and advice boards or the district legal aid committees etc. Lok Adalats shall have jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute in respect of;

- Any case pending before the court; or
- Any matter which is falling within the jurisdiction of and is not brought before any court for which the Lok Adalat is organized.

- The Lok Adalat shall not have jurisdiction in respect of any matter or case relating to an offence not compoundable under any law.
- The date and place of holding a Lok Adalat are fixed about a month in advance by the Legal Aid Board. The date so fixed is generally a Saturday or Sunday or some other holiday.
- Information about holding a Lok Adalat is given wide publicity through press, posters, radio, TV, etc.
- Before a Lok-Adalat is held, its organizers request the presiding officers of the various local courts to examine cases pending in their courts where in their opinion, conciliation is possible. Once the cases are identified, parties to the dispute are motivated by the judges of the Lok Adalats to settle their cases through Lok Adalat. Generally, senior judicial officers are invited to inaugurate a Lok Adalat.
- The team of Lok Adalat generally consist of retired judges, senior local officers, members of the Bar, spirited public-men, active women social worker, elders of the locality and voluntary social organizations. The members of the Lok Adalat are called conciliators. The number of conciliators is usually three.
- If conciliation result in a settlement of a dispute, a compromise deed is drawn up and after obtaining the signatures of the parties to the disputes and their advocates, it is presented to the presiding officer of the competent court who is normally present at the place where the Lok Adalat is organized.
- The judge (Presiding officer) after examining the fairness and legality of compromise and satisfying himself that the compromise has been arrived at by the free will and mutual consent of the parties, passes a decree.

Award of Lok-Adalat

- Every award of the Lok Adalat shall be deemed to be a decree of civil court. Award made by a Lok Adalat shall be final and binding on all the parties to the dispute and no appeal shall lie to any court against the award.
- If the parties are not satisfied with the award of the Lok Adalat though there is no provision for an appeal against such an award, but parties are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case by following the required procedure.
- There is no court fee payable when a matter is filed in a Lok Adalat. If a matter pending in the court of law is referred to the Lok Adalat and is settled subsequently, the court fee originally paid in the court on the complaints/petition is also refunded back to the parties.
- The Lok Adalat shall not decide the matter so referred at its own instance, instead the same would be decided on the basis of the compromise or settlement between the parties. The members shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute.

Powers of Lok Adalat

The Lok-Adalat shall have the same powers as are vested in a civil court under the code of civil procedure 1908 while trying a suit in respect of the following matters namely;

- 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 of any public record or document or copy of such record or document from any court of office and
- Such other matters as may be prescribed.

Every Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

All proceedings before the Lok Adalat shall be deemed to be judicial proceedings and every Lok-Adalat shall deemed to be civil Court.

Gram Nyayalaya

Gram Nyayalayas are village courts for speedy and easy access to the justice system in the rural areas of India.

The establishment of Gram Nyayalayas in India can be traced to the Gram Nyayalayas Act, 2008 passed by the Parliament of India.

Need for Gram Nyayalayas

- The Constitution of India under Article 39-A mandates for free legal aid to the poor and weaker sections of society.
- The Law Commission of India in its 114th report recommended the establishment of Gram Nyayalayas for providing speedy, substantial and inexpensive justice to the common man.
- Subsequently, the Parliament of India passed the Gram Nyayalayas Act, 2008 providing for its establishment.

Salient features of the Gram Nyayalayas Act

The Gram Nyayalayas Act defines its establishment, jurisdiction, and procedure in civil and criminal cases.

Establishment of Gram Nyayalaya

- The State Government, after consultation with the High Court, may establish one or more Gram Nyayalayas
  - for every Panchayat at intermediate level or
  - a group of contiguous Panchayats at the intermediate level in a district or
  - where there is no Panchayat at intermediate level in any State, for a group of contiguous Gram Panchayats
- The Gram Nyayalayas established shall be in addition to the courts established under any other law for the time being in force.
- The headquarters of every Gram Nyayalaya shall be located at the headquarters of the intermediate Panchayat in which the Gram Nyayalaya is established or such other place as may be notified by the State Government.

Appointments

- The State Government shall, in consultation with the High Court, appoint a Nyayadhikari for every Gram Nyayalaya
- A person qualified to be appointed as a Nyayadhikari must be eligible to be appointed as a Judicial Magistrate of the first class.
- While appointing a Nyayadhikari, representation shall be given to the members of the Scheduled Castes, the Scheduled Tribes, women and such other classes or communities

Jurisdiction

- Gram Nyayalayas have jurisdiction over an area specified by a notification by the State Government in consultation with the respective High Court.
- Nyayadhikari can hold mobile courts and conduct proceedings in villages.
- Gram Nyayalayas has both civil and criminal jurisdiction over the offences.
- They can try criminal offences specified in the First Schedule and civil suits specified in Second Schedule to the Act.
- The Central as well as the State Governments have been given the power to amend the First Schedule and the Second Schedule of the Act.
- The pecuniary jurisdiction of the Nyayalayas is fixed by the respective High Courts.
- High Courts can transfer eligible cases from the district court to the Gram Nyayalayas.
- The Court shall try to settle disputes via conciliation between the parties and the court can make use of the conciliators to be appointed for this purpose.

Working

- The Gram Nyayalayas are is not bound by the Indian Evidence Act and follow the principle of natural justice.
- The Gram Nyayalaya shall exercise the powers of a Civil Court with certain modifications and shall follow the special procedure as provided in the Act.
- The Gram Nyayalaya shall endeavour to settle the disputes by bringing about conciliation between the parties as far as possible and it shall make use of the conciliators appointed for this purpose.
- The Gram Nyayalaya shall follow the summary procedure in case of criminal cases. A summary procedure is a legal procedure for enforcing the right that takes effect faster and more efficiently than ordinary methods.

Nature of Judgement

- The judgements/orders passed by the Gram Nyayalaya are deemed to be a decree
- Appeals
  - Appeal in Civil cases– Appeals in civil cases shall lie to the District Court which shall hear and dispose it within six months from the date of filing of such appeal.
  - Appeal in Criminal Cases– Appeals in criminal cases shall lie to the court of session which shall hear and dispose it within six months from the date of such appeal.

Importance of Gram Nyayalayas

- Access to justice for the poor and marginalized remains a perennial problem in India.
- Various measures such as simplifying procedural laws, establishing alternate dispute redressal mechanisms, setting up fast track courts and providing free legal aid to the poor are undertaken in this regard.
- Despite these measures, access to justice and faster, inexpensive settlement of disputes at the grass-roots level are yet to materialize.
- Gram Nyayalayas can greatly help in
  - devolving justice delivery to the fourth tier
  - ensuring equal access to justice
  - reducing the burden of district courts
  - delivering speedier justice
  - reducing the costs associated with litigation for the common man
  - reducing dependency on extra-constitutional forums of justice

Why Gram Nyayalayas is not operational?

- Lack of infrastructure like buildings, office spaces and related equipment.
- Lack of man-power resources, notaries, stamp vendors etc. at sub-district level.
- Inadequate Central assistance.
- Lack of awareness among lawyers, police officials.
- Non-cooperation of enforcement agencies.
- The reluctance of state functionaries to invoke the jurisdiction of Gram Nyayalayas.
- Setting up of legal services institutions at Taluk level reducing the dependency on Gram Nyayalayas.

Criticisms on Gram Nyayalayas

- The number of disputes settled by Gram Nyayalayas are negligible and most are referred to District forums by appeal. Hence, they are not effective in reducing the burden of District Courts.
- Absence of a regular cadre of Gram Nyayadhikari.
- Ambiguities regarding jurisdiction due to the parallel existence of alternate dispute mechanisms, tribunals, Adalats etc.
- Some Gram Nyayalaya is located at cities and towns which doesn't provide any utility to villagers.
- Inadequate awareness amongst various stakeholders.

How to improve the functioning of Gram Nyayalayas?

- A separate cadre of Nyayadhikaris can be created so that Gram Nyayalayas has its dedicated cadre of Nyayadhikaris.
- Only the creation of separate cadre will not suffice. Appropriate training should be provided to Nyayadhikaris about legal procedures, local languages, etc.
- Separate buildings, its own staff, and other infrastructure must be made available and for those appropriate budgetary measures must be taken.
- Avoiding situations of parallel jurisdiction and duplicity of jurisdiction may go a long way in the success of Gram Nyayalayas.
- Scientific assessment of performance must be done periodically by respective High courts, and policy institutions like NITI Aayog can put things in perspective.
- Awareness generation campaigns through print and digital media and through panchayat raj institutions must be held to make people aware about the importance and ease of Gram Nyayalaya procedures so that they grow willingness to use the platform.

Family Court

Family courts are specialized courts that were established with the goal of preserving the welfare of the family through the use of a multi-disciplinary approach

to resolving family problems within the framework of the law.

These courts aim to protect individuals' legal rights on the one hand, and to serve as a guide, helper, and counsellor on the other, to help families deal with problems and restore family harmony.

To provide speedy settlement with fewer expenses and formalities, in disputes relating to marriage and family and to make an agreement between the parties for their conciliation, the Family Courts Act,1984 was enacted by the parliament. Through this act, the Family Courts were set up in the states through which reasonable efforts for an agreement are made before beginning a trial in other Courts.

Important provisions of the Family Courts Act, 1984

Establishment of family courts in India

According to this act, the State government, after consultation with the High Court shall establish the Family Court in every area of the state where the population is exceeding 1 million or in the area where the State government deem necessary.

The State government, after consultation with the High Court, shall specify the limits of the area till where the jurisdiction of the Family Court extends. It may also reduce, increase, or alter such limits of the jurisdiction of the Family Court.

Appointment of the Judges

The state government has the power to appoint one or more persons as the judges of the Family Court after consulting with the High Court.

The state government, after consulting with the High Court, may also appoint any of the judges as the Principal Judge and any other judge as to the Additional Principal Judge.

The main function of the Principal Judge is to distribute the business of the court among the various judges and the Additional Principal Judge is appointed to exercise the powers of the Principal Judge in his absence or when he is not able to do so due to illness or any other cause.

Qualification

Qualifications which are required for appointing as judge of the Family Court:

- He must have worked for a term not less than seven years in a Judicial Office in India or in the office of a Member of a Tribunal or any post under the Centre or a State which requires special knowledge of law; or
- He must have worked as an advocate of a High Court or two or more courts of succession for a term not less than seven years; or
- He must possess such qualifications as prescribed by the Central government after consulting with the Chief Justice of India; or
- He must have not attained the age of sixty-two years.

In this process of selection of judges, it must be ensured that the person selected must know how to settle a dispute by way of conciliation and counselling, to protect the marriage and to promote the welfare of the children by their reason and experience. While selecting the judges, it must also be ensured that the preference shall be given to the women.

The salary or honorarium, other allowances payable and other terms and conditions of the judges of the Family Court will be decided by the State Government after consulting with the High Court.

Jurisdiction

Act confers those power and jurisdiction on the family courts which are exercised by the District Court or Subordinate Civil Courts in their suits and proceedings.

- proceeding for the decree of nullity of marriage, or restitution of conjugal rights, or for the dissolution of the marriage between the parties;
- proceeding for determining the validity of a marriage or matrimonial status of a person;
- matter related to the properties between the parties to a marriage;
- injunction or order arising out of a marriage;
- declaring the legitimacy of a person;
- proceeding for maintenance;
- proceeding for the guardianship of the person, or custody of any minor.

Significance of Family Court

- It attempts to effect reconciliation or a settlement between the parties to a family dispute.
- During the conciliation stage, it provides for the

association of social welfare agencies, counsellors, and so on, as well as the service of medical and welfare experts.

- The parties to a dispute before a Family Court are not entitled to be represented by a legal practitioner as a matter of right. However, in the interest of justice, the Court may seek the assistance of a legal expert as an amicus curiae.
- The rules of evidence and procedure are simplified so that a dispute is dealt with effectively.
- Only one right of appeal is provided which is to the High Court.
- In order to reduce and simplify legal formalities, they take a multidisciplinary approach to ensure a fair trial and the expeditious resolution of cases at a low cost.
- In order to simplify proceedings, family courts have the authority to establish their own procedures for settlement through rules developed in consultation with the High Courts.
- Thus, expertise and expeditious disposition are two major factors for establishing such a court.
- It also aimed to provide an inexpensive remedy and to have the flexibility and an informal atmosphere in the conduct of proceedings.

Criticism of Family Court

- The term "family," has not been defined in the Act, and a result of which matters arising from economic consequences that affect the family in various ways are not covered by the family court.
- The family court only hears cases involving marriage, maintenance, and divorce.
- When the counsellors and other authorities kept changing, the situation deteriorated.
- If a suit lasted a long time and the counsellors was changed in the middle of it, it became difficult for the parties, particularly women, to convey their problems again.
- Despite the fact that it is mandatory for state governments to establish family courts in cities with populations of over a million people in consultation with the High Court, only a few states have done so.
- Since the family court follows the provisions of the Code of Civil Procedure in suits or proceedings, it makes it difficult for the average person to understand the complex law.
- The act did not create any simplified rules that a layperson could understand.
- The act also prohibits the presence of lawyers in a family court suit or proceeding, making it difficult for the average person to understand the court's procedure and formalities.
- In such cases, the parties to a suit must rely on the clerks and peons of the court.
- The act was enacted to establish family courts across the country with a conciliatory approach to ensure quick relief to the parties, but it failed to ensure gender justice and equality due to judges' orthodox thinking and counsellor's patriarchal attitudes.

Nyaya Panchayat

Nyaya Panchayats are considered as a unit of the Panchayati Raj System of India. They function at the village or district level to deliver justice and thus are considered as the most basic level of the Indian Judiciary.

Reasons for setting up Nyaya Panchayats

The rationale behind setting up the Nyaya Panchayat is:

- Democratic decentralisation.
- Easy access to justice.
- Speedy disposal of cases.
- Inexpensive justice system.
- Revival of traditional village community life.
- Combination of judicial system and local self-government.
- Reduction in pressure on Civil Courts.

However, according to the latest reports, this institution is functioning only in handful of states.

Composition of Nyaya Panchayat

Every Panchayat that comes under the jurisdiction of Nyaya Panchayat elects a member for such Nyaya Panchayat. The elected member must be –

- 30 years old or above,
- He must be a registered voter in the concerned Panchayat,

- He must be literate to read and write in the concerned State's language, and
- He must not be debarred from being elected to the Panchayat under any law in force.

Whoever is elected as the Nyaya Panch shall not hold the office of Sarpanch, or a Parishad, or of a member of Samithi, or a State Legislature or Union Parliament simultaneously.

Jurisdiction of Nyaya Panchayats

- It has judicial functions both in civil as well as in criminal fields.
- It can deal with several minor offences) like simple hurt, wrongful restraint, theft etc, and punish an accused to pay fine.
- In civil matters nyaya panchayat have jurisdiction in cases like suits for money and goods etc. The pecuniary limit of such cases is very low.

Procedure in Nyaya Panchayats

- The procedure laid down for trial of cases has been so designed as to avoid delays and technical difficulties. Therefore, procedure followed in nyaya panchayats is very simple and informal.
- The procedure codes like Code of Civil Procedure, Criminal Procedure Code and Indian Evidence Act apply to the nyaya panchyats.
- But they have power to call witnesses and the parties for recording their evidence or producing any relevant document or fact.
- Unlike courts, they have the power to investigate the facts to find out the truth and at the same time they have the power to punish for its contempt. Lawyers cannot appear before a nyaya panchyats in any of its proceedings.

Advantages of Nyaya Panchayats over the regular courts

- They provide an inexpensive and expeditious mechanism to settle disputes.
- They provide relief to the ordinary courts as they lift the part of burden of judicial work on their shoulders. In a way, they are emerged on solution to the problem of mounting arrears of cases before the courts.
- They provide justice at the door steps for the village folks.
- They provide protection to the local customs and traditions.
- Panchayat System has a great educative value for the villagers.

Disadvantages of Nyaya Panchayats

- They are faction ridden institutions manned by laymen. Justice provided by them is based on caste, community, personal or political considerations. Therefore, chances of injustice cannot be ignored.
- It has been seen that panchs are often corrupt, partial and behave improperly or rudely.
- They are laymen, therefore ignorant of law and they often give arbitrary and irrational decisions.
- One cannot ignore that casteism and groupings are major features of rural India and therefore the influence of these shades on the justice cannot be According to 77th Report of the Law Commission, wherein it observed that, it will be a backward step to revert to the primitive method of administration of justice by taking out disputes to a group of ordinary laymen ignorant of modern complexities of life and not conversant with legal concepts and procedures.

The Mehta Committee opposed the combination of judicial and executive functions in one body and also recommended qualified judges to preside over nyaya panchayat.

Suggestive Measures

Law Commission in its 114th Report concluded with the safeguards designed to ensure nyaya panchayats proper working and improvement. These courts are capable of playing a very necessary and useful part in the administration of justice in the country. Law Commission presented a new model for the establishment of nyaya panchayats.

The suggested model is as follows:

- There should be a panchayat judge and two lay judges in a Nyaya Panchayat. Where the panchayat judge should be legally trained person belonging to the cadre of judges to be specifically set up for the purpose.
- In order to select legally trained judge for nyaya panchayats the state shall constitute a special cadre

of Judges that is Panchayati Raj cadre of judges.

- The judges should be nominated not elected.
- The-local jurisdiction of the Gram Nyayalaya would be over villages comprised in a Taluka/Tehsil.
- There would be no monetary ceiling on its jurisdiction. A broad civil jurisdiction should be given, and the criminal jurisdiction should be equal to that of a judicial magistrate of first class.
- The Nyaya Panchayat would follow a simple procedure to dispose the cases.
- Neither the Code of Civil Procedure, 1908, nor the Indian Evidence Act, 1872 is to be applied in its procedure.
- In criminal trials, the Code of Criminal Procedure, 1973 is to be applied but Indian Evidence Act, 1872 should not applicable.
- Lawyers should be permitted to appear before the Nyaya Panchyats.
- No appeal shall lie in civil cases from the decisions of the Nyaya Panchayats. But a revision petition lies to correct errors of law which may have affected the decision of the Nyaya Panchayats to the district courts.
- In criminal case, an appeal would lie to the session's courts against the decisions of the Nyaya Panchayats in which it was imposed a substantive sentence of imprisonment.

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30 Tribunals

Introduction

Tribunals are judicial or quasi-judicial institutions established by law. They intend to provide a platform for faster adjudication as compared to traditional courts, as well as expertise on certain subject matters. Pendency of cases in courts is one of the key challenges faced by the judicial system. The 42nd Amendment Act of 1976 added a new Part XIV-A to the Constitution. This part is entitled as 'Tribunals' and consists of only two Articles– Article 323 A dealing with administrative tribunals and Article 323 B dealing with tribunals for other matters.

Characteristics of Administrative Tribunals

The following are the few attributes of the administrative tribunals which make them quite different from the ordinary courts:

- Administrative tribunals must have statutory origin i.e., they must be created by any statute.
- They must have some features of the ordinary courts but not all.
- An administrative tribunal performs the quasi-judicial and judicial functions and is bound to act judicially in every circumstance.
- They are not adhered by strict rules of evidence and procedure.
- Administrative tribunals are independent and not subject to any administrative interference in the discharge of judicial or quasi-judicial functions.
- In the procedural matters, an administrative tribunal possesses the powers of a court to summon witnesses, to administer oaths and to compel the production of documents, etc.
- These tribunals are bound to abide by the principle of natural justice.
- A fair, open and impartial act is the indispensable requisite of the administrative tribunals.
- The prerogative writs of certiorari and prohibition are available against the decisions of administrative tribunals.

Categories of Administrative Tribunals

There are diverse forms of tribunals which are governed by the statues, rules and regulations by the central government as well as the state government.

Administrative Tribunals for service matter [Article 323A]

Article 323A provides the establishment of administrative tribunals by law made by Parliament for the adjudication of disputes and complaints related to the recruitment and conditions of service of Government servants under the Central Government and the State Government. It includes the employees of any local or other authority within the territory of India or under the control of the Government of India or of a corporation owned or controlled by the Government.

The establishment of such tribunals must be at the centre and state level separately for each state or for two or more states. The law must incorporate the provisions for the jurisdiction, power and authority to be exercised by tribunals; the procedure to be followed by tribunals; the exclusion of the jurisdiction of all other courts except the Supreme Court of India.

Tribunals for other matters [Article 323B]

Article 323B empowers the Parliament and the State Legislature to establish tribunals for the adjudication of any dispute or complaint with respect to the matters specified under clause (2) of Article 323B. Some of the matters given under clause (2) are a levy, assessment, collection and enforcement of any tax; foreign exchange and export; industrial and labour disputes; production, procurement, supply and distribution of foodstuffs; rent and its regulation and control and tenancy issues etc. Such a law must define the jurisdiction, powers of such tribunals and lays down the procedure to be followed.

In the landmark Chandra Kumar case, the court reached various conclusions as to jurisdictional powers of the tribunal constituted under Articles 323A and

323B. The Supreme Court struck down clause 2(d) of Article 323A and clause 3(d) of Article 323B on the ground that they excluded the jurisdiction of the High Courts and the Supreme Court under Article 226, 227 and 32 respectively.

The Supreme Court ruled that the tribunals created under Article 323A and 323B would continue to be the courts of the first instance in their respective areas for which they are constituted. The litigants are not allowed to approach the High Court's directly by overlooking the jurisdiction of the concerned tribunal.

No appeal for the decision of the tribunal would lie directly before the Supreme Court under Article 136 but instead, the aggrieved party would be entitled to move the High Court under Article 226 and 227 and after the decision of the Division Bench of the High Court, the party may approach the Apex Court under Article 136.

The Administrative Tribunals Act, 1985

In pursuance of the provisions in Article 323A, Parliament passed the Administrative Tribunal Act, 1985, providing for all the matters falling within the clause 1 of Article 323. The Act has prescribed for following types of tribunals:

Central Administrative Tribunal (CAT)

It has the jurisdiction to deal with the service matters about the employees of Central Government, any Union Territory, Local Government or any other Central Government, corporate-owned or controlled by the Central Government.

State Administrative Tribunals (SAT)

These tribunals can be established by the Central Government and the Parliament.

Like the CAT, the SATs exercise original jurisdiction in relation to recruitment and all service matters of state government employees. Similarly, we see the State Legislature under Article 323 B for various matters like levy, assessment, collection and enforcement of any tax matters connected with the land reforms covered under Article 31 A.

So far, the SATs have been set up in the nine states of Andhra Pradesh, Himachal Pradesh, Odisha, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, West Bengal and Kerala. However, the Madhya Pradesh, Tamil Nadu and Himachal Pradesh Tribunals have since been abolished.

Joint Administrative Tribunals (JAT)

This can be established on the request of two or more states collectively, which exercise administrative control over two or more states. For instance, there are various tribunals such as:

- National Green Tribunal (NGT)
- Income Tax Appellate Tribunal (ITAT)
- Water Dispute Tribunal

Objective for the establishment of Administrative Tribunals

The main purpose of the introduction of this act was:

- To relieve congestion in courts or to lower the burden of cases in courts.
- To provide for speedier disposal of disputes relating to the service matters.

Applicability of the Act

According to the Administrative Tribunals Act, 1985, the act applies to all Central Government employees except –

- The members of the naval, military or air force or any other armed forces of the Union.
- Any officer or servant of the Supreme Court or any High Courts.
- Any person appointed to the secretariat staff of either House of the Parliament.

Composition of the Tribunals and Bench

- Act describes the composition of the tribunals and bench. Each tribunal shall consist of a Chairman, Vice Chairman, Judicial and Administrative members.
- Every bench must include at least one judicial and one administrative member.
- The benches of the Central Tribunal shall ordinarily sit at New Delhi, Allahabad, Calcutta, Madras, Bombay and such other place as the Central Government specifies.
- The Chairman may transfer the Vice Chairman or other members from one bench to another bench.

Qualification and Appointment of Members

The Administrative Tribunals Act, 1985, lays the provisions specifying the qualifications and appointment of the members of tribunals.

- Chairman:
  - To be appointed as a chairman, a person must have the following qualifications-
  - He is or has been a judge of a High Court or
  - He has held the office of Vice Chairman for two years or
  - He has held the post of secretary to the Government of India or
  - He has held any other post carrying the scale pay of secretary.
- Vice-Chairman:
  - A person is qualified for the post of Vice-Chairman if he-
  - Is or has been a judge of the High Court or
  - Has for 2 years held the post of Secretary to the Government or holding any other post carrying the same pay scale under the Central or State Governments or
  - Has held for 5 years the post of an Additional Secretary to the Government of India or any other post carrying the scales of pay of Additional Secretary.
- Judicial Member:
  - A person to be appointed as a judicial member must-
  - Be or have been a judge of the High Court or
  - Have been a member of Indian Legal Service and has held a post in Grade I of the service for at least 3 years.
- Administrative Member:
  - A person to be appointed as an administrative member must-
  - Have held the post of an Additional Secretary to the Government of India or another equivalent post for at least 2 years, or
  - Have held the post of a Joint Secretary to the Government of India or other equivalent post, or
  - Have adequate administrative experience.
- The Chairman, Vice-Chairman and other members shall be appointed by the President. The Judicial Members shall be appointed by the President with the consultation of the Chief Justice of India.
- The Chairman, Vice-Chairman and other members of the State Tribunal shall be appointed by the President after consultation with the Governor of the concerned state.
- The chairman and members of a Joint Administrative Tribunal are appointed by the President after consultation with the Governors of the concerned states

Term of Office

According to the Act, the Chairman, Vice-Chairman and other members of the tribunal shall hold the office for a term of 5 years or until he attains-

- Age of 65 years, in the case of the Chairman or Vice-Chairman
- Age of 62 years in the case of other members

Resignation and Removal

The Act prescribes the procedure of resignation by any member and removal of any member.

- The Chairman, Vice-Chairman or other members 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 make rules to regulate the procedure for the investigation of the charges against them.

Jurisdiction of Central Tribunal

The Act states that, the Central Tribunal from the day of the appointment shall exercise all the jurisdiction, powers and authority in relation to the following matters which were within the jurisdiction of other courts (except the Supreme Court) before the enactment of this Act:

- Recruitment of any civil service of Union or All India service or civil post under the Union or civilian employees of defence services;
- All service matters of the above-mentioned employees, and also of employees of any local or other authority within the territory of India or under the control of the Government of India or any corporation or society owned or controlled by the Government;

- All service matters of such persons whose services have been placed by the State Government or any local or other authority or any corporation at the disposal of the Central Government.

Procedure and Powers of Tribunals

The Administrative Tribunals Act, 1985 lays down the powers and procedure of tribunals discussed below-

- A tribunal is not bound to follow the procedure laid down by the Civil Procedure Code, 1908. It has the power to regulate its own procedure but must abide by the principle of natural justice.
- A tribunal shall decide the applications and cases made to it as rapidly as possible and every application shall be decided after scrutinizing the documents and written submissions and perceiving the oral arguments.
- Tribunals have the same powers as vested by the civil courts under the Code of Civil Procedure, 1908, while trying a suit, with regard to the following subject-matter-
  - Summoning and enforcing the attendance of any person and examining him on oath;
  - Production of documents;
  - Receiving evidence on affidavits;
  - Ask for any public record or document from any office
  - Issuing commissions for the examination of witnesses and documents;
  - Reviewing its decisions;
  - Deciding the case ex-parte;
  - Setting aside any order passed by it;
  - Any other matter prescribed by the Central Government;
  - Leading Case Laws

Advantages of Administrative Tribunals

The concept of administrative tribunals was introduced because it has certain advantages over ordinary courts. Few of them are mentioned below-

- ***Flexibility:*** The introduction of administrative tribunals engendered flexibility and versatility in the judicial system of India. Unlike the procedures of the ordinary court which are stringent and inflexible, the administrative tribunals have a quite informal and easy-going procedure.
- ***Speedy Justice:*** The core objective of the administrative tribunal is to deliver quick and quality justice. Since the procedure here is not so complex, so, it is easy to decide the matters quickly and efficiently.
- ***Less Expensive:*** The Administrative Tribunals take less time to solve the cases as compared to the ordinary courts. As a result, the expenses are reduced. On the other hand, the ordinary courts have cumbrous and slow-going, thus, making the litigation costly. Therefore, the administrative tribunals are cheaper than ordinary courts.
- ***Quality Justice:*** Considering the present scenario, the administrative tribunals are the best and the most effective method of providing adequate and quality justice in less time.
- ***Relief to Courts:*** The system of administrative adjudication has lowered down the burden of the cases on the ordinary courts.

Drawbacks of Administrative Tribunals

Although, administrative tribunals play a very crucial role in the welfare of modern society, yet it has some defects in it. Some of the criticisms of the administrative tribunal are discussed below-

- ***Against the Rule of Law:*** It can be observed that the establishment of the administrative tribunals has repudiated the concept of rule of law. Rule of law was propounded to promote equality before the law and supremacy of ordinary law over the arbitrary functioning of the government. The Administrative Tribunals somewhere restrict the ambit of the rule of law by providing separate laws and procedures for certain matters.
- ***Lack of specified procedure:*** The administrative adjudicatory bodies do not have any rigid set of rules and procedures. Thus, there is a chance of violation of the principle of natural justice.
- ***No prediction of future decisions:*** Since the Administrative Tribunals do not follow precedents, it is not possible to predict future decisions.
- ***Scope of Arbitrariness:*** The civil and criminal courts work on a uniform code of procedure as prescribed under Civil Procedure Code and Criminal Procedure

Code respectively. But the administrative tribunals have no such stringent procedure. They are allowed to make their own procedure which may lead to arbitrariness in the functioning of these tribunals.

- ***Absence of legal expertise:*** It is not necessary that the members of the administrative tribunals must belong to a legal background. They may be the experts of different fields but not essentially trained in judicial work. Therefore, they may lack the required legal expertise which is an indispensable part of resolving disputes.

National Green Tribunal

Article 323(B) of the constitution the Indian Constitution provides for the establishment of tribunals in the country. The National Green Tribunal is not bound by either the Civil Procedure code or the Evidence Act but works on the principles of natural justice.

The working of the NGT is guided by two basic principles-

- 'The polluter pays' principle and
- 'Sustainable development' principle.

The National Green tribunal was established on 18 October 2010 through National Green Tribunal Act, 2010.

Objectives

The NGT was formed with the objective of a special focus on environmental related incidents including the protection of forest and natural resources. Following are the major objectives of the tribunal:

- To ensure that environment related laws are obeyed and act as a watchdog in case of any violations.
- To ensure the safety and conservation of forest and forest animals.
- To prevent the harm caused to the environment due to government or private actions.
- To ensure proper implementation of environmental related laws as listed in Schedule I of NGT Act
- To provide compensation to those who are victims of environmental degradation and who have suffered damages as a result of it.
- To work towards spreading awareness about various environment related laws and the issues prevalent in the society.

Composition of the Tribunal

The tribunal shall consist of the following:

- An eligible chairperson as per defined in the National Green Tribunal Bill, 2009 which should be a full-time Chairperson
- Ten to Twelve full-time judicial members or as per the Central government notification
- The Chairperson has the power of calling the specialised person who has a particular experience to the tribunal for assistance.
- The Central Government can notify about the territorial jurisdiction falling under a particular place of sitting.
- The central government with the consultation of Chairperson, can make rules and regulations in relation to the Tribunal.

Qualifications of the members

- The Chairperson should be qualified as a judge of the supreme court or the Chief Justice of the High Court.
- The member of the tribunal should have a qualification in relation to the judge of High Court as a judicial expert.
- As the non-judicial expert, one should have the degree of masters in science or doctorate degree or with a master's degree in engineering.

Appointment of Chairperson, Judicial Member and Expert member

- The manner of appointment in which the Chairperson and other members including Judicial members and Experts are given in the Act.
- The Chairperson, Judicial members and Expert members of the Tribunal shall be appointed by the Central Government. The Chairperson shall be appointed by the Central Government after consulting with the Chief Justice of India. The Judicial members and Experts of the Tribunal shall be appointed by the Selection Committee in the manner as may be prescribed.

Resignation

The manner of resigning from the Tribunal is given in the Act.

- In order to resign from their office, the Chairperson,

Judicial Member and Expert member can give a notice in writing addressing the Central Government.

Salaries & Allowances

The salaries and other allowances to the members of the tribunal are given in the Act.

- The salaries and allowances payable to the Chairperson, Judicial Member and Expert Member of the Tribunal and other terms and conditions which include pension, gratuity and other benefits, shall be such as may be prescribed.
- Neither the salary and allowances nor the other terms and conditions shall be varied to their disadvantage after the appointments.

Removal and Suspension

The process of removal and suspension of the Chairperson, Judicial Member and Expert is mentioned in the Act.

The Central Government, in consultation with the Chief Justice of India, can remove a member from the office of the Chairperson, Judicial Member and Expert Member of the Tribunal if:

- He is an insolvent; or
- He has been convicted for anything which involves moral turpitude.
- He has become mentally or physically incapable.
- He has acquired a financial interest or any other interest which is likely to affect his functions prejudicially.
- He has abused his position as to render his continuance to the public interest prejudicially.

No member can be removed from his office without an order made by the Central Government after an inquiry by a Judge of the Supreme Court related to the ground on which he is getting removed from his position. Such a person must be informed of the charges against him and should be given a reasonable chance of being heard in respect of the charges against him.

Vacancy

The provisions regarding vacancy are given in the Act.

In the case of any vacancy in the Office of the Chairperson of the Tribunal by reason of his death or resignation, a Judicial Member of the Tribunal as the Central Government may think fit to act on the Chairperson's behalf, shall be appointed as the acting Chairperson until a new Chairperson is appointed according to the provisions mentioned under the Act.

Application to the Tribunal

An application to the Tribunal can be filed by anyone who:

- Has sustained the injury
- Is the owner of the property damaged?
- Is the legal representative of the deceased person
- Is an agent authorized by the person affected?
- Is a person aggrieved and it also includes a representative body or an organization?
- The Government/ CPCB /SPCBs /PCCs or any other environmental authority constituted under the Environment Act.

The application or appeal has to be decided quickly after hearing both the parties which a period of 6 months from the date of filing that appeal or application.

Jurisdiction of the Tribunal

The National Green Tribunal has the power to hear all civil cases relating to environment that are linked to the implementation of all the laws listed in Schedule I of the Act. These are mentioned below:

- The Water (Prevention and Control of Pollution) Act,1974
- The Water (Prevention and Control of Pollution) Cess Act,1977
- Forest Conservation Act, 1980
- The Air (Prevention and Control of Pollution) Act,1981
- Environment Protection Act, 1986
- The Public Liability Insurance Act, 1991
- Biological Diversity Act, 2002

Powers of the Tribunal

The Tribunal shall have the power that would be required to regulate its own procedure. The powers of the tribunal are as follows:

- Power to relief by issuing the compensation to the aggrieved person after analysing the matter

in a scientific manner with a properly researched report.

- Issuance of the commission for witnessing the documents.
- Reviewing the decision of a particular case.
- It has a power of dismissing the application if it is considered to have defaulted or it's decided to be ex parte.
- Granting the interim orders are considered as a power to the tribunal and it can be done after hearing both the parties.
- Power to give an order regarding the prevention of a person from further committing or violating the enactments specified in the Schedule I.
- The tribunal has the power to pass any order or award in relation to the substantial development.
- Decisions which are taken by the majority of the members in the tribunal are considered as binding on the aggrieved parties.

Difference between Courts and Tribunals	
Courts	**Administrative Tribunal**
A Court of law is a part of the traditional judicial system.	The administrative tribunal is an agency created by a statue endowed with judicial powers.
A Court of law is vested with general jurisdiction over all the matters.	It deals with service matters and is vested with limited jurisdiction to decide a particular issue.
It is strictly bound by all the rules of evidence and by the procedure of the Code of Civil Procedure.	It is not bound by the rules of the Evidence Act and the CPC unless the statute which creates the tribunal imposes such an obligation.
It is presided over by an officer expert in the law.	It is not mandatory in every case that the members need to be trained and experts in law.
The decision of the court is objective in nature primarily based on the evidence and materials produced before the court.	The decision is subjective i.e., at times it may decide the matters taking into account the policy and expediency.
It is bound by precedents, the principle of res judicata and the principle of natural justice.	It is not obligatory to follow precedents and principle of res judicata but the principle of natural justice must be followed.
It can decide the validity of legislation.	It cannot decide the validity of legislation.
The courts do not follow investigatory or inquisition functions rather it decides the case on the basis of evidence.	Many tribunals perform investigatory functions as well along with its quasi-judicial functions.
'Res Judicata' means a case or suit involving a particular issue between two or more parties already decided by a court.	

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31 Public Interest Litigation (PIL)

Introduction

A Public Interest Litigation also known as PIL is a form of litigation that is filed to safeguard or enforce public interest. Public Interest is the interest belonging to a particular class of the community affects their legal rights or liabilities. It may include pecuniary interest. PIL has not been defined in any Indian statute. However, Courts have interpreted and defined PIL.

History of Public Interest Litigation (PIL) in India

In 1979, Kapila Hingorani filed a petition and secured the release of almost 40000 undertrials from Patna's jails in the famous 'Hussainara Khatoon' case. Hingorani was a lawyer. This case was filed in the SC before a Bench led by Justice P. N. Bhagwati. Hingorani is called the 'Mother of PILs' as a result of this successful case. The court permitted Hingorani to pursue a case in which she had no personal locus standi making PIL's a permanent fixture in Indian jurisprudence.

Justice Bhagwati did a lot to ensure that the concept of PILs was clearly enunciated. He did not insist on the observance of procedural technicalities and even treated ordinary letters from public-minded individuals as writ petitions. Justice Bhagwati and Justice V. R. Krishna Iyer were among the first judges in the country to admit PILs.

Objectives of Public Interest Litigation (PIL):

- PILs were created with the aim of making justice more available to the disadvantaged and oppressed.
- It is a critical tool for bringing human rights to those who have been denied them.
- It improves everyone's access to justice. Any person or organisation that is capable of doing so can file petitions on behalf of those who are unable or lack the resources to do so.
- It aids in the judicial oversight of state facilities such as jails, asylums, and protective homes, among others.
- It's a crucial method for judicial review.
- PIL is a critical tool for social reform, preserving the rule of law, and accelerating the balance of law and justice.
- The introduction of PILs ensures increased public interest in judicial review of administrative action.

Who can file a PIL?

- Any individual or organisation can file a PIL either in his/her/their own standing i.e., to protect or enforce a right owed to him/her/them by the government or on behalf of a section of society who is disadvantaged or oppressed and is not able to enforce their own rights.
- The concept of "Locus Standi" has been relaxed in the case of PILs so as to enable the Hon'ble Court to look into grievances that are filed on behalf of those who are poor, illiterate, deprived or disabled and are unable to approach the courts themselves.
- However, only a person acting in good faith and who has sufficient interest in the proceeding will have the locus standi to file a PIL. A person who approaches the Hon'ble Court for personal gain, private profit, political or any oblique consideration will not be entertained.
- Suo moto cognizance may also be taken by the Court.

Ambit of the PILs in India

The PILs in India, as discussed, are mainly concerned with the public interest at large. In many years of its history, it has seen litigations on road safety, prisoner's rights, road safety, environment, etc. Broadly, the following are the cases in which PILs are filed:

- Violation of the basic human rights of the poor (litigations for protection of fundamental rights, mainly Article 21)
- Content and conduct of the government and its policymaking
- Labour exploitation issues

- Women rights
- Caste and religious issues
- Governance issues and the working of public bodies: Local, state and the union
- Environmental issues
- The issues of culture and heritage
- Other matters of public importance
- Neglected Children
- Non-payment of minimum wages to the workers.
- Atrocities on women, in particular, rape, murder, kidnapping and harassment of bride.
- Food adulteration
- Petitions from jail regarding inhuman treatment, death in jail, speedy trail.
- Petitions from Riot-Victims.
- Harassment of villagers by co-villagers or police.

Exceptions- The cases that do not fall under the category that will be entertained as PIL are:

- Service matter pertaining to pension and gratuity.
- Admission to medical or other educational institution.
- Complaints against Central and State Government and Local Bodies.
- Petitions for early hearing of the cases that are pending in the High Courts or Subordinate Courts.
- Landlord-tenant matter.

Procedure to file PIL in India

Any Indian citizen or organisation can move the court for a public interest/cause by filing a petition:

- In the Supreme Court under Article 32
- In the High Courts under Article 226

The court can treat a letter as a writ petition and take action on it. The court has to be satisfied that the writ petition complies with the following: the letter is addressed by the aggrieved person or a public-spirited individual or a social action group for the enforcement of legal or constitutional rights to any person who, upon poverty or disability, are not able to approach the court for redress. The court can also take action on the basis of newspaper reports if it is satisfied with the case.

Principles of PIL

The Supreme Court laid down the following principles in regard to PIL. These are:

- The Constitution of India under Articles 32 and 226, allows the Court to entertain a petition filed by any public interested person in the welfare of the people who are in a disadvantaged position and thus cannot access the court. The Courts are bound to protect the fundamental rights of these people.
- Whenever injustice is meted out to a large number of people, the court will not hesitate to invoke article 14 and 21 of the Indian Constitution as well as the International Convention on Human Rights which provide for a fair trial.
- When the Court is prima facie satisfied that there has been a violation of any constitutional right to a group of people belonging to the backward category, it may not allow the state to question the maintainability of the petition.
- Even though procedural laws are applied on PIL cases, the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the nature, facts and circumstances of the petition.
- Dispute between two groups purely in the realm of private law would not be allowed to be agitated as PIL.
- In cases, where the petitioner has moved the court for his private interest and the redressal of personal grievances, the Court in furtherance of public interest, may treat it as a PIL.
- The Court shall not transgress into a policy. It shall take utmost care to not transgress its jurisdiction while protecting the rights of the people.

Guidelines for Admitting PIL

PIL has become as important part in the administration of law. With the advent of PIL, they have been misused for personal gains which has led to frivolous litigation on unnecessary issues. Hence, the Supreme Court has laid down the guidelines for checking the misuse of PIL.

- The Court should encourage bona fide PIL and effectively discourage the PIL filed for extraneous considerations.
- Every High Court should formulate a set of rules for encouraging the genuine PIL that are filed and

discourage PIL filed for reasons relating to personal gains.

- Each Court should prima facie verify the credentials of every petitioner before acknowledging the PIL.
- The Court should be prima facie satisfied with the contents of the PIL before acknowledging it.
- The Court should be satisfied with the fact that the PIL involves a substantial public interest.
- The PIL should involve a large public interest, the gravity and urgency of which must be given priority.
- The Court must ensure that the PIL aims to redress public injury and that no personal gain is involved in it.

Some landmark judgements in the history of PIL in India:

- Kamagar Sabha vs. Abdul Thai, Justice Krishna Iyer sowed the seeds of public interest litigation for the first time in India in 1976.
- Hussainara Khatoon vs. State of Bihar (1979), the first recorded case of PIL, focused on the inhumane conditions of prisons and under trial prisoners, and resulted in the release of over 40,000 under trial prisoners.
- M.C. Mehta v/s. Union of India: In a Public Interest Litigation brought against Ganga water contamination in order to avoid further pollution of the Ganga. The Supreme Court ruled that petitioner, despite not being a riparian owner, is entitled to petition the court for the compliance of statutory provisions because he is concerned about the lives of those who use Ganga water.
- Sexual assault was accepted as a violation of the basic constitutional rights of Article 14, Article 15, and Article 21 in Vishakha v/s State of Rajasthan, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013 was also addressed in the guidelines.

Misuse of PIL

There is significant issue related to the misuse of Public Interest Litigation while people abusing it. In India, there are several cases of misuse of PIL. People filed PIL for their private interest not for public interest which came into publicity. There are several cases which set the guidelines for the filing of PIL.

- ***Chhetriya Pardushan Mukti Case.***
  - The Court held that there have to be real intention to safeguard the right of the public for filing the PIL.
  - In this case, there was a lack of public interest, it was mention by the court that the PIL filed by NGO was a conflict between the mill and organization and there is no real intention.
- ***S.P. Gupta Case***
  - In this case, P.N. Bhagwati sets some procedures to defend the misuse of PIL. Justice Bhagwati first defines the concept of PIL in Indian background. It was held that case related to socio- economic crime no PIL would be filed and also no PIL will be filed in the case related to women offence.
- ***Sanganmal Panday Case***
  - In the case, construction was going on from Kanshiram to Jail Road, the Court stops the activity of construction due to PIL was filed for affecting of green belt by the construction.
  - The Court rejected the appeal and allows filing the same in High Court under Article 226 of the Indian Constitution.

Problems of PIL

These are the following problems of PIL: -

- ***Publicity under the veil of PIL***
  - There are various cases in which it has been noticed that the people filed the PIL for publicity not for public or people. People used it as an instrument for gaining publicity. It is one of the major problems, rather used it in a beneficial way, use it as a means to get popular or to come into attention.
- ***Judicial Adventurism***
  - Judicial overreach is when the judiciary starts interference in the functioning of the legislature and executive organs of the government. It is considered undesirable in the democracy. It also said that judicial overreach means judiciary crosses its own function and enter the executive or legislature function.
- ***Symbolic Justice***
  - Sometimes the direction and guidelines issued

in the PIL is not implementing or followed. PIL reflects the "Symbolic Justice". This is not enactment of direction damage the creditability of the Judiciary.

- The Apex Court provided direction related to issues like offence against women, sexual harassment, processes of Court etc. but often it is unable to check its consent.

- ***Obscure Motives of the Litigants***
  - This is the general principle of law that "One should come with clean heads to the Courts" but sometimes the personal critics or political motive hidden behind the PIL. This type of PIL was rejected by the Court and should begin to further move with them. There are many judgments through which the guidelines of PIL were laid down. There is no proper definition of PIL in law.
- ***Tremendous increase in litigation***
  - Due to simple and flexible process of filing a PIL, the filing of unsystematic petition creates lots of pressure on Judiciary and sometime delays the process of disposal of bona fide petition.
- ***Institutional limitation***
  - There is an urgent need for structural change in the operation of the PIL institutions.

Public Interest Litigation has had astonishing results since its introduction. PIL has developed a new jurisprudence of the accountability of the state for legal violations affecting the interests of the backward category. However, the Judiciary must be cautious in the application of PILs to avoid overreach which violates the principle of separation of power.

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32 Judicial Review

Introduction

The doctrine of judicial review originated in the USA. It was first propounded in the case of Marbury vs Madison in 1803. The Constitution of India confers the power of judicial review on the Supreme Court as well as High Courts. Judicial review has been declared as one of the basic structures of the Constitution by the Supreme Court.

Meaning of Judicial Review

Judicial review is the power of courts to examine the legislative enactments and executive orders of the Central as well as State Governments to check its constitutionality. If such enactments or orders are found to be in violation of the Constitution, they shall be declared null and void.

Justice Syed Shah Mohamed Quadri, in judicial review of administrative action, has classified judicial review into the following three categories:

- Judicial review of Constitutional Amendments
- Judicial review of legislation of Parliament and State Legislatures and subordinate legislations
- Judicial review of administrative action of the Union and State and its authorities.

The Supreme Court of India has repeatedly acknowledged the authority of judicial review, saying that this power is inherent in a written Constitution. Such judicial review powers are granted to maintain a balance of power among the legislature, executive, and judiciary. Articles 13, 32, 226, 141, 142, and 144 of the Constitution specifically grant the power of judicial review in light of a wide range of jurisdictions, authorities, and responsibilities, as well as Constitutional purposes.

There have been various instances in India wherein the Supreme Court has delivered landmark judgments using the power of judicial review. These instances include Shankari Prasad, Indira Gandhi, Keshavananda Bharati, Sajjan Singh, Minerva Mills, and many more cases. The Hon'ble Court stated in the case of Keshavananda Bharati that judicial review has become an inherent element of our constitution, and the High Courts and the Supreme Court have been entrusted with the power to determine the legislative competence of statutory provisions.

The scope of judicial review before Indian courts has emerged in three dimensions –

- firstly, to establish fairness in administrative action,
- secondly, to protect the guaranteed constitutional fundamental rights and
- lastly, to rule on questions of legislative competence between the centre and the states.

In Keshavananda Bharati vs State of Kerela, the court held:

'As long as some fundamental rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with the view to see that the guarantees afforded by these rights are not contravened.'

Features of Judicial Review

- ***Power of judicial review can be exercised by both the Supreme Court and High Courts:*** Under Article 226 a person can approach the High Court for violation of any fundamental right or for any legal right. Also, under Article 32 a person can move to the Supreme Court for any violation of the fundamental right or for a question of law. But the final power to interpret the constitution lies with the apex court i.e., Supreme Court. The Supreme Court is the highest court of the land and its decisions are binding all over the country.
- ***Judicial Review of both state and central laws:*** Laws made by centre and state both are the subject to the judicial review. All the laws, order, bye-laws, ordinance and constitutional amendments and all other notifications are subject to judicial review which are included in Article 13(3) of the constitution of India.
- ***Judicial review is not automatically applied:*** The concept of judicial review needs to be attracted and

applied. The Supreme court cannot itself apply for judicial review. It can be used only when a question of law or rule is challenged before the Hon'ble court.

- ***Principle of Procedure established by law:*** Judicial Review is governed by the principle of "Procedure established by law" as given in Article 21 of the Indian Constitution. The law has to pass the test of constitutionality if it qualifies it can be made a law. On the contrary, the court can declare it null and void.

Constitutional Provisions for Judicial Review

There is no direct and express provision in the constitution empowering the courts to invalidate laws, but the constitution has imposed definite limitations upon each of the organs, the transgression of which would make the law void.

The court is entrusted with the task of deciding whether any of the consti¬tutional limitations has been transgressed or not.

Some provisions in the constitution supporting the process of judicial review are:

- Article 372 (1) establishes the judicial review of the pre-constitution legislation.
- Article 13 declares that any law which contravenes any of the provisions of the part of Funda¬mental Rights shall be void.
- Articles 32 and 226 entrusts the roles of the protector and guarantor of fundamental rights to the Supreme and High Courts.
- Article 251 and 254 states that in case of inconsistency between union and state laws, the state law shall be void.
- Article 246 (3) ensures the state legislature's exclusive powers on matters pertaining to the State List.
- Article 245 states that the powers of both Parliament and State legislatures are subject to the provisions of the constitution.
- Articles 131-136 entrusts the court with the power to adjudicate disputes between individuals, between individuals and the state, between the states and the union; but the court may be required to interpret the provisions of the constitution and the interpretation given by the Supreme Court becomes the law honoured by all courts of the land.
- Article 137 gives a special power to the Supreme Court to review any judgment pronounced or order made by it. An order passed in a criminal case can be reviewed and set aside only if there are errors apparent on the record.

Judicial review of the ninth schedule

- Article 31B saves the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the Fundamental Rights.
- However, in a significant judgment delivered in the I.R. Coelho case (2007), the Supreme Court ruled that there could not be any blanket immunity from judicial review of laws included in the Ninth Schedule.
- The court held that judicial review is a 'basic feature' of the Constitution and it could not be taken away by putting a law under the Ninth Schedule.

It said that the laws placed under the Ninth Schedule after April 24, 1973, are open to challenge in court if they violated Fundamental Rights guaranteed under the Articles 14, 15, 19, and 21 or the 'basic structure' of the Constitution

Grounds for Judicial Review

- ***Constitutional Amendment:*** All those amendments which are in violation of Fundamental Rights are declared void and it is held to be unconstitutional
- ***Administrative Actions:*** The administrative actions of the legislature are judged by various parameters. These parameters are as follows:
  - ***Illegality:*** The acts and decisions can be made illegal if legislature fails to follow the law properly. Therefore, an action can be made illegal if the public body has no power to make decisions on its own or if they have acted beyond the powers.
  - ***Irrationality:*** The courts can also interfere to quash a decision if they think that it is unreasonable as it makes it "irrational" or "perverse" on the part of the decision maker.
  - ***Procedure used:*** The decision-makers should act fairly in making their decisions. It is the

principle which applies only to the matters of procedure rather than the substance of decision.

Types of Judicial Review:

- ***Reviews of Legislative Actions:***
  - This review implies the power to ensure that laws passed by the legislature are in compliance with the provisions of the Constitution.
- ***Review of Administrative Actions:***
  - This is a tool for enforcing constitutional discipline over administrative agencies while exercising their powers.
- ***Review of Judicial Decisions:***
  - This review is used to correct or make any change in previous decisions by the judiciary itself.

Importance of Judicial Review:

- It is essential for maintaining the supremacy of the Constitution.
- It is essential for checking the possible misuse of power by the legislature and executive.
- It protects the rights of the people.
- It maintains the federal balance.
- It is essential for securing the independence of the judiciary.
- It prevents tyranny of executives.

Problems with Judicial Review:

- It limits the functioning of the government.
- It violates the limit of power set to be exercised by the constitution when it overrides any existing law.
  - In India, a separation of functions rather than of powers is followed.
  - The concept of separation of powers is not adhered to strictly. However, a system of check and balances have been put in place in such a manner that the judiciary has the power to strike down any unconstitutional laws passed by the legislature.
- The judicial opinions of the judges once taken for any case becomes the standard for ruling other cases.
- Judicial review can harm the public at large as the judgment may be influenced by personal or selfish motives.
- Repeated interventions of courts can diminish the faith of the people in the integrity, quality, and efficiency of the government.

Application of Judicial review

- The Supreme Court used the power of judicial review in various cases, for example, the Golaknath case (1967), the Bank Nationalisation case (1970), the Privy Purses Abolition case (1971), the Keshavananda Bharati case (1973), the Minerva Mills case (1980), and so on.
- In 2015, the Supreme Court declared both the 99th Constitutional Amendment, 2014 and the National Judicial Appointments Commission (NJAC) Act, 2014 as unconstitutional and null and void.

Judicial Activism

Judicial Activism means the proactive role played by the judiciary in the protection of the rights of citizens and in the promotion of justice in the society. In other words, it is the role played by the judiciary to force the other two organs of the government (legislature and executive) to discharge their constitutional duties.

It is an effective tool for upholding citizens' rights and implementing constitutional principles when the executive and legislature fail to do so and counters the opinion that the Judiciary is a mere spectator.

The practice of Judicial Activism originated and developed in the USA, and historian Arthur Schlesinger, Jr. coined the term in 1947.

Judicial Activism in India

In India, Judicial Activism has played an important role in keeping democracy alive. The Indian Judiciary is considered the guardian and protector of the Indian Constitution, and citizens look up to the Judiciary as the last hope for protecting their rights.

According to the Indian Constitution, Article 13 when read with Articles 32 and 226, provides the power of judicial review to the higher judiciary to declare any executive, legislative or administrative action void if it is in contravention with the Constitution.

Judicial Activism evolved through the process of Judicial Review, which can be pursued from Britain's unwritten constitution. In India, the foundation of

Judicial Activism was laid down by Justice V.R. Krishna Iyer, Justice P.N. Bhagwati, Justice O. Chinnappa Reddy, and Justice D.A. Desai.

In India, multiple times, Judicial Activism has led to a controversy concerning the supremacy between Parliament and Supreme Courts.

Source of Judicial activism

Through Judicial Review

- Judicial review is the doctrine under which legislative and executive actions are subject to review by the judiciary.
- Judicial review is an example of check and balances in a modern governmental system.
- Judicial review is adopted in the Constitution of India from the Constitution of the United States of America.
- It gives power to the Supreme Court to examine the constitutionality of any law and if such a law is found to be inconsistent with the provisions of the Constitution, the Court can declare the law as unconstitutional.

Through PIL (Public Interest Litigation)

- Public interest litigation means a suit filed in a court of law for the protection of public interest.
- Judicial activism in India acquired importance due to public interest litigation. It is not defined in any statute or act.
- In India, PIL initially was resorted to towards improving the lot of the disadvantaged sections of the society who due to poverty and ignorance were not in a position to seek justice from the courts.
- Justices P.N. Bhagwati and V.R. Krishna Ayer has played a key role in promoting this avenue of approaching the apex court of the country.

Through Constitutional Interpretation:

- Constitutional interpretation comprehends the methods or strategies available to people attempting to resolve disputes about the meaning or application of the Constitution.
- The possible sources for interpretation include the text of the Constitution, its "original history," including the general social and political context.

Through access to international statutes for ensuring Constitutional rights:

- The court refers to various international statutes in its judgements.
- This is done by the apex courts to ensure the citizens of their rights.
- International Law is referred to by Supreme Court's judgments in many cases. Example: Recently, Supreme Court reaffirmed the rights of disabled person to live with dignity in Jeeja Ghosh v. Union of India. The court underlined the Vienna Convention on the law of treaties, 1963 which requires India's internal legislation to comply with international commitments.

Importance of Judicial activism in Indian democracy:

- Judicial activism allows judges to adjudicate in favour of progressive and new social policies helping in social engineering.
- In a modern democratic set up, judicial activism act as a mechanism to curb legislative adventurism and executive tyranny by enforcing Constitutional limits.
- Judicial activism helps in protecting or expanding individual rights. Where the legislature and the executive fail to protect the basic rights of citizens, like the right to live with dignity, judicial activism plays an important role.
- Failure of Legislature and Executive to discharge their respective functions results in erosion of the confidence in the Constitution and democracy amongst the citizens. Judicial activism helps in upholding faith of citizens in constitution and judicial organs.
- Judicial activism helps in ensuring freedom of citizens and help in providing social justice to suffering masses.
- Judicial activism fills Legislative vacuum i.e., areas, which lack proper legislation. This help country to meet the changing social needs.
- In case of a 'hung' legislature when the government is weak and insecure, judicial activism play an important role in ensuring social justice.
- Sometime politicians afraid of taking honest and hard decisions for fear of losing power. Judicial activism helps in plugging such active political lacunae.
- Judicial activism helps in enhancing administrative efficiency and help in good governance.
- Judicial activism sometimes helps in balancing

powers among various organs of government through judicial control over discretionary powers.

- Judicial activism allows participation of judiciary in advancement of country and upholding democracy by extending the standard rules of interpretation in achieving economic, social and educational objectives.

Examples of Judicial Activism in India

Judicial Activism, in simple words, means when judges interrupt their personal feelings into a conviction or sentence instead of upholding the existing laws. Judicial Activism in India started in 1973 when the Allahabad High Court rejected the candidature of Indira Gandhi. The other examples of Judicial Activism in India include:

- ***A.K. Gopalan Case:*** The Indian Supreme Court rejected the argument that to deprive a person of his life or liberty, not only the procedure prescribed by law for doing so must be followed but also that such procedure must be fair, reasonable and just.
- ***Golaknath Case (1967):*** The Supreme Court declared that Fundamental Rights enshrined in Part 3 are immune and cannot be amended by the legislative assembly.
- ***Kesavananda Bharati case (1973):*** The Supreme Court of India declared that the executive had no right to intercede and tamper with the basic structure of the constitution. The concept of judicial activism started gaining more power from here.
- ***Hussainara Khatoon Case (1979):*** The inhuman and brutal conditions of the undertrial prisoners were published in the newspaper. Under article 21 of the Indian Constitution, the SC accepted it and held that the right to a speedy trial is a fundamental right and directed the state authorities to provide free legal facilities to the under-trial inmates to get justice bail or final release.
- ***Sheela Barse Case (1983):*** A letter by a journalist addressing the custodial violence of women prisoners in jail was addressed to the Supreme Court. The Court treated the letter as a writ petition and took cognizance of that matter. The Supreme Court issued the appropriate guidelines to the concerned authorities
- The Supreme Court rolled out a blanket ban on firecrackers in the Delhi – NCR area with certain exceptions in 2018.
- The Supreme Court invoked terror laws against alleged money launderer Hasan Ali Khan.

Demerits of Judicial Activism

- ***Exceeding Power:*** Judges are supposed to exercise judgement in interpreting the law, according to the Constitution. But sometimes they appear to exceed their power in deciding cases before the Court.
- ***Hampering Spirit of Constitution:*** It destroys the spirit of the constitution as democracy stands on the separation of powers between the organs.
- ***Tyranny of Unelected:*** Results in tyranny of the unelected as Judges assumes central role in day-to-day decision making.
- ***Personal Agenda:*** Judicial activism describes judicial rulings suspected of being based on personal or political considerations rather than on existing law.
- ***Trust Deficit:*** It diminishes the trust of the people in public institutions which can be dangerous for democracy.

Issues related to Judicial activism:

The line between Judicial activism and Judicial Overreach is very narrow. When Judicial activism crosses its limits, it led to Judicial Overreach.

- It may interfere with the proper functioning of the legislative or executive organs of government.
- It destroys the spirit of separation of powers. Thus, damage balance between various organs of government.
- Judicial activism may lead to inactivity of legislature and executive, leading to running away from duties and responsibilities which they hold for people of India.

Judicial Overreach

The distinction between judicial activism and overreach is very narrow. Judicial Overreach is what happens when judicial activism oversteps its bounds and becomes judicial adventurism. When the court exceeds its jurisdiction, it risks interfering with the legislative and executive branches of government's functions.

Judicial overreach power originates from?

Judicial overreach power originates from nowhere. In any democracy, Judicial overreach is undesirable. The spirit of separation of powers is shattered by judicial overreach.

Examples of Judicial Overreach:

Imposition of Patriotism in National Anthem Case.

- The Supreme Court on December 2016, passed its judgment in the case of Shyam Narayan Chouksey v. Union of India, which makes it mandatory, that:
- All the cinema halls in India shall play the National Anthem before the feature film starts.
- To show respect during the National Anthem, everyone in the room is required to stand.
- Before the National Anthem is performed or sung in the movie hall, the entry and exit doors must be closed so that no one can cause a disturbance. After the National Anthem has been performed or sung, the doors can be opened.
- While the National Anthem is being played in the hall, the National Flag should be displayed on the screen.

Ban of Firecrackers

- In November 2020, during the 80th All India Presiding Officers' Conference, the Vice-President of India called the Supreme Court's prohibition on firecrackers during Diwali "judicial overreach." Aspirants should be aware that there are differing perspectives on the Supreme Court's actions, thus they must learn to critically evaluate ideas.
- The 99th Constitutional Amendment and the NJAC bill
- The National Judicial Appointments Commission (NJAC), which was constituted by the 99th Constitutional Amendment, was declared unlawful by the Supreme Court. This was supposed to take the place of the collegiate system.

Censorship of the Film Jolly LLB 2

- After the movie Jolly LLB 2 was certified by the Central Board for Film Certification (CBFC), a petition was filed that claimed that this film violated Section 5B of the Cinematograph Act, 1952.
- Section 5B deals with the prevention of the certification of films that involve defamation or contempt of court.
- The court appointed a commission that looked into it, and finally, the commission ordered four cuts in the film and also asked the CBFC to recertify the film.
- This was in violation of the Cinematograph Act, which does not give courts any power to certify or modify films.

The cancellation of telecom licenses in the 2G case

- The Supreme Court ordered the cancellation of 122 telecom licenses and spectrum awarded to eight businesses after the CBI filed an FIR against employees of the Department of Telecom in the 2G scam case.
- The Supreme Court ruled that the allocation mechanism was faulty. It also told the administration that national resources would only be allocated through auctions.

Issues with Judicial Overreach

- It contradicts the spirit of the constitution because democracy is based on the division of powers among the organs.
- It creates a divide between the legislative and judicial branches of government.
- It erodes people's faith in government institutions, which is potentially disastrous for democracy.
- Unelected judges play a central role in day-to-day decision-making, resulting in the tyranny of the unelected.
- Allowing all PILs to be heard overburdens the judiciary, which could otherwise be used to resolve pending matters in the courts.

Difference between Judicial Activism and Judicial Overreach

- The boundary between judicial activism and judicial overreach is very thin, when activism exceeds that threshold and becomes judicial adventurism, it becomes judicial overreach.
- The impression of the individuals determines whether the action is activism or excess.
- The judiciary, on the other hand, has always claimed that due to legislative and executive overreach, they must intervene and issue the orders.

Judicial Restraint

Judicial Restraint is a theory of judicial interpretation that encourages judges to limit the exercise of their power. It is the antithesis of Judicial Activism and encourages the judiciary to respect the laws or rules in the Constitution.

Whereas, when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government and breaches the principle of separation of power, it is termed Judicial Overreach.

Some instances when the mechanism of Judicial Activism turned to Judicial Overreach are:

- ***The case of State of Rajasthan vs Union of India (1977)*** is a landmark judgement where the Court decided not to indulge into this matter as it involved political inquiry, thereby adhering to the principle of judicial restraint.
- ***In S.R. Bommai vs Union of India,*** the Supreme Court held that the case pertained to political inquiry and so, the Courts ought not to meddle.
- ***In Almitra H. Patel vs Union of India,*** the Supreme Court observed that it was not the duty of the court to direct the Municipality about the manner in which their tasks have to be performed unless there is a clear violation. The court is empowered to only direct the authorities to conduct their activities as is laid down by the law.
- ***Lodha Committee report on the Board of Control for Cricket in India:*** To bring law and order back into the BCCI, a committee was set up. The recommendations were treated as Judicial Overreach as BCCI is an independent body, not controlled by any state or central government. So, the Lodha committee had no authority to declare such recommendations.
- ***Christian Medical College, Vellore & Others v. Union of India and Others:*** The Supreme Court barred the states from conducting separate entrance exams for medical courses and ruled that undergraduate admissions to medical courses can only be done through the NEET.
- ***Swaraj Abhiyan-(I) v. Union of India & Others.:*** The Supreme Court instructed the Ministry of Agriculture of the Union of India to update and amend the Drought Management Manual. The apex court also guided the state to constitute a National Disaster Mitigation Fund within three months.

Source of Judicial Restraint

Through referring to the original intent of the makers of the Constitution:

- Judges look to the original intent of the makers of the Constitution.
- Judges refer to the intent of the legislatures that wrote the law and the text of the law in making decisions.
- Any changes to the original Constitution language can only be made by Constitutional Amendments.

Through Precedent:

- Precedent means past decisions in earlier cases.
- Judicially-restrained judges respect stare-decisis, the principle of upholding established precedent handed down by past judges.

Through leaving the legislature and executive to decide policies:

- Judicial Restraint is practised when the court leaves policy making to others.
- The courts generally refer to interpretations of the Constitution by the Parliament or any other Constitutional body.

Comparison between Judicial Activism and Judicial Restraint

Judicial Activism	Judicial Restraint
Judicial Philosophy of going beyond the traditional role of just checking the legality of the law. Judicial activism means interpretation of the constitution to advocate contemporary values and conditions.	Judicial Philosophy of showing restraint from striking down a law or stopping interfering in the working of the other organs of the government. Judicial restraint means limiting the powers of the judges to strike down a law.
Not defined in the Constitution	Not defined in the Constitution
When there is the scope of judicial intervention to correct things.	When there is scope to maintain separation of powers and other grievance redressal mechanisms are available.
The introduction of PIL, the courts taking up suo moto cases, Banning the sale of liquor on Highways	Expressing restraint from not involving in Speakers actions in deciding anti-defection law.

Judicial activism has a great role in formulating social policies on issues like protection of the rights of an individual, civil rights, public morality, and political unfairness.	Judicial restraint helps in preserving a balance among the three branches of government, judiciary, executive, and legislative.
❒ Golaknath Case 1967 ❒ Keshavananda Bharti Case 1973 ❒ The 2G Scam verdict cancelling telecom licenses	❒ State of Rajasthan vs Union of India 1977 ❒ SR Bommai vs Union of India 1980 ❒ Almitra H. Patel vs Union of India 1998

Each organ of our democracy must function within its own sphere and must not take over what is assigned to the others. Judicial activism must also function within the limits of the judicial process because the courts are the only forum for those wronged by administrative excesses and executive arbitrariness. Hence legislation enacted by Judiciary must be in the rare cases as mentioned above.

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33 Local Government

Panchayati Raj

The Central government cannot oversee the minute workings of all the smallest units in the country. Therefore, one of the salient features of a good representative government is the percolation of the self-rule mechanism to the grassroots level, leading to more effective decision-making and greater accountability. Keeping this in mind, our Constitution has provided for the creation of Panchayats, Municipalities and Cooperative Societies to manage the affairs of the villages and urban localities in India.

Gandhiji famously stated, "If India is not to perish, we have to begin with a lower rung of the ladder. If that was rotten, all work done at the top of the intermediate level was bound to fall ultimately." Gandhiji advocated the need for decentralisation and liberation of the villages from exploitation.

Panchayati Raj in Independent India

The task of Panchayati Raj system fell on the Indian government formed after Independence. It was clear that India a country of villages had to strengthen village Panchayats to strengthen democracy. Mahatma Gandhi who strongly believed in Grama Swaraj pleaded for the transfer of power to the rural masses. According to him the villages should govern themselves through elected Panchayats to become self-sufficient.

But surprisingly, the draft Constitution prepared in 1948 had no place for Panchayati Raj Institutions. Gandhi severely criticized this and called for immediate attention. It is thus, that Panchayat finds a place in the Directive Principles of the State Policy.

Article 40 of the Directive Principles of the State Policy states that 'the states shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them function as units of self-governments'. The most important aspect to strengthen grass root democracy was neglected by the Constitution makers as Directive Principle of State Policy is not legally binding on the governments.

The first organized effort to tackle the problem of rural India was made through Community Development Programme in 1952 and National Extension Service in 1953. The programme was based on an integrated approach to the various aspects of rural development.

The objectives were to promote self-help and self-reliance among the rural people, to generate a process of integrated social, economic and cultural change with the aim of transforming social and political life of the villagers. Community Development Programme was launched in 55 selected blocks.

The programme was based on an integrated approach to the various aspects of rural development. The programme made provisions for appointing Block Development Officers (BDO) and Village Level Workers (VLW). This programme was intended to bring socio economic development of the rural masses on democratic lines, but failed to take off along the expected lines due to the absence of an effective instrument for people's participation.

Important Committees regarding Panchayati Raj in India

Balwant Rai Mehta Committee (1957): The first was the Balwant rai Mehta Commission in 1957. The committee believed that community development would only be effective when the community was involved in the planning, decision, and implementation process. The committee suggested that the basic unit of democratic decentralization was to be at the block (samiti) level since the area of jurisdiction of the local body should neither be too large nor too small.

The block was large enough for efficiency and economy of administration, and small enough for sustaining a sense of involvement in the citizens. Further, the Zilla Parishad (ZP) should play an advisory role.

The committee laid down few fundamental principles:

- There should be three tier structures of local self-government bodies from village to the district level and these bodies should be linked together.
- There should be genuine transfer of power and responsibility to these bodies to enable them to discharge their responsibility
- Adequate resources should be transferred to these bodies to enable them to discharge their responsibilities.
- All welfare and developmental schemes and programmes at all three levels should be channelled through these bodies, and
- The three-tier system should facilitate further devolution and disposal of power and responsibility in future.
- The committee envisaged three tier system of Panchayats known as Gram Panchayat at village level (direct election), Panchayat Samiti at the block level and Zila Parishad at the district level (indirect election).
- District Collector to be the chairman of Zila Parishad and recommended encouragement of peoples' participation in community work, promotion of agriculture and animal husbandry, promoting the welfare of the weaker sections and women through the Panchayats.

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

The PRI structure was introduced in most parts of the country as a result of the Balwantrai Mehta Report. Rajasthan (1959) adopted the system first, followed by Andhra Pradesh in the same year. Some states even went ahead to create four-tier systems and Nyaya Panchayats, which served as judicial bodies.

However, it did not develop the requisite democratic momentum and failed to cater to the needs of rural development. Reasons for this were:

- Political and bureaucratic resistance at the state level to sharing of power and resources with the local level institutions,
- the takeover of these institutions by the rural elite who cornered a major share of the benefits of the various welfare schemes,
- the lack of capability at the local level, and
- the absence of political will of the grassroots leaders.

K. Santhanam Committee (1963): The K. Santhanam Committee in 1963 was appointed to look solely at the issue of PRI finances.

Its recommendations have influenced the thinking and the debate to date on this issue:

- The Panchayats should have special powers to levy special tax on land revenues, home tax, etc;
- all grants and subventions at the state level should be consolidated and untied; and
- A Panchayat Raj Finance Corporation should be set up which would look into the financial resources of PRIs at all three levels, provide loans and financial assistance to these grassroots level governments and also provide support for non-financial requirements of villages.

Ashok Mehta Committee (1977): In this backdrop in 1977, the Janata government appointed a Committee with Ashok Mehta as Chairman and was entrusted with the task of enquiring into the causes responsible for the poor performance of Panchayati Raj Institutions. It was also asked to suggest measures to strengthen Panchayati Raj Institutions.

The committee suggested two tier system of Panchayati Raj consisting of Zilla Parishads at the district level and Mandal Panchayats at the grass root level as against three tier system suggested by the Balwant rai Mehta Committee. The committee recommended constitutional protection to the Panchayati Raj Institutions and further decentralization of power at all levels.

A noteworthy feature of the report is that it recommended regular elections to these bodies and open participation of political parties.

The Ashok Mehta Committee suggested:

- The 3-tier model suggested by Balwant Rai Mehta committee to be replaced by the 2-tier model. The upper tier should be the Zila Parishad, which will be at the district level and the lower tier should be Mandal Panchayat, which would be at the block level, which should be a Panchayat of group of

villages covering a population of 15000 to 20000.

- The committee recommended that the base of the Panchayati Raj system should be a Mandal Panchayats. Each Mandal Panchayat should contain 15 members directly elected by the people. The head of the Mandal Panchayat should be elected among the members themselves.
- Zila Parishad should be the executive body and made responsible for planning at the district level. The Zila Parishad members should be elected as well as nominated. The MLA and MPs of the area should have the status of ex-officio chairman of the Zila Parishads. Development functions should be transferred to the Zila Parishad and all development staff should work under its control and supervision.
- There ought to be Nyaya Panchayat as separate bodies, different from that of development Panchayats and should be presided over by a well-qualified judge.
- Reservation of seats for the weaker sections
- Two seats for women
- Adequate financial resources for the Panchayats
- Requirement of Constitutional sanctions

To extend people's participation in developmental activities.

Due to the fall of the Janata government, the Ashok Mehta Committee recommendations were not implemented. Karnataka and West Bengal formulated new legislation on the basis of the recommendations of this Committee. Both the Committees overlooked the importance of Panchayats as units of self-government.

G.V.K. Rao Committee (1985): The G.V.K. Rao Committee was constituted in the year 1985. The committee was appointed just before the 7th five-year plan in order to give recommendations on the issues of growth and poverty alleviation. The committee was shouldered with the task of:

- Look into the existing infrastructure for rural development and lay down the key functions on revenue resources of the Panchayati Raj institutions.
- What steps the government should take in order to promote growth and for poverty alleviation.
- To recommend and revitalise the Panchayati Raj institutions.
    - Power to safeguard and preserve the traditions and the customs of the people including their cultural identity, community resources and customary mode of dispute resolution.
    - Mandatory recommendation by Gram Panchayat before any areas is granted for mining lease.
    - The right to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.

The G.V.K. Rao Committee gave following recommendations:

- The Zila Parishad should be the basic unit for the policy planning and for the programme implementation. It should also be the pivotal body for this scheme of democratic decentralisation.
- The state planning functions should be transferred to the Zila Parishad for effective decentralised planning.

L.M. Singhvi Committee (1986): The committee was constituted in 1986, a year after the GVK Rao Committee. The committee was set up in the prime ministership of Rajiv Gandhi and under the chairmanship of L.M. Singhvi. The Gram Sabha (village assembly) was considered the base of decentralized democracy. The PRIs were to be viewed as institutions of self- government which would facilitate the participation of the people in the process of planning and development.

According to the L.M. Singhvi committee, the decline of the Panchayati Raj institutions was because of three reasons:

- Absence of clear concept
- absence of political will
- lack of research, evaluation and political planning.

Few of the important recommendations by the committee were:

- The Panchayati Raj institutions should be recognised, protected and preserved constitutionally.
- Free and fair elections in the Panchayati Raj institutions.
- There should be optional and compulsory levies interested in the Panchayats. The government may also disburse money to the Panchayats in the time of needs.
- Establishment of judicial tribunals in the state, which would address the election controversies in

the Panchayati Raj institutions.

- Local self- government should be constitutionally recognized, protected and preserved by the inclusion of a new chapter in the Constitution.

Sarkaria Commission:

- Constitutional status for PRIs was opposed by the Sarkaria Commission. But the idea gained momentum in the late 1980s especially because of the endorsement by the late Prime Minister Rajiv Gandhi who introduced the 64th Constitutional Amendment Bill in 1989.
- Rajiv Gandhi's commitment to the PRI route to rural development seems to have emerged through a series of workshops he had as Prime Minister with District Collectors, where he got a sense of the insensitivity of District Administration and of wastage of funds for rural development.
- The 64th Amendment Bill caused much anxiety among opposition parties because they perceived it to support the partisan agenda of Rajiv Gandhi and it was defeated in the Rajya Sabha.

Thungon Committee (1988): In 1988, a sub-committee of the Consultative Committee of Parliament was constituted under the chairmanship of P.K. Thungon to examine the political and administrative structure in the district for the purpose of district planning. This committee suggested for the strengthening of the Panchayati Raj system.

Recommendations of Thungon Committee:

- Constitutional recognition must be granted for Panchayati Raj.
- Suggested a 3-tier system with village, block and district levels.
- Zila Parishad plays an important role and acts as a planning and development agency in the district.
- Panchayati Raj must have a fixed tenure of 5 years.
- The maximum time for supersession of a body must not be greater than 6 months.
- A Planning and coordination committee at the state level with the Presidents of Zila Panchayat as members and minister of planning as the Chairman must be set up.
- The subjects for the Panchayats to administer must be incorporated in the constitution on schedule 7 lines.
- Reservations for women, Scheduled Caste and Scheduled Tribes.
- A Finance commission in each state to lay criteria and guidelines for financial devolution.
- The District Collector should be the CEO of the Zila Parishad.

Gadgil Committee (1988): The Committee on Policy and Programmes was constituted in 1988 by the Congress party under the chairmanship of V.N. Gadgil. This committee was asked to consider the question of "how the Panchayati Raj institutions could be made effective"

Recommendations of Gadgil Committee:

- The Panchayati Raj institutions should be given constitutional status.
- Panchayati Raj is a three-tiered structure with Panchayats at the village, block, and district levels.
- Panchayati Raj institutions should be given a five-year term.
- At all three levels, members of the Panchayats should be directly elected.
- Women, SCs, and STs should have a reservation.
- The preparation and implementation of socio-economic development plans should be the duty of Panchayati Raj authorities. A list of subjects should be established in the constitution for this purpose.
- Taxation and duties should be levied, collected, and appropriated by Panchayati Raj entities.
- The creation of a State Finance Commission to oversee the distribution of funds to the Panchayats.
- Establishment of a State Election Commission to oversee the conduct of Panchayat elections.

73rd Amendment Act (1992)

Rajiv Gandhi the then Prime Minister of India, introduced the 64th Amendment bill on local government on the 15th May, 1989 in the Parliament, but it failed to get the required support. A second attempt was made in September 1990 to pass the bill in the Parliament. The bill however was not even taken up for consideration. In September 1991, a fresh bill on Panchayati Raj was introduced by the Congress government under P. V Narasimha Rao, the then Prime Minister. It was passed in 1992 as the 73rd Amendment Act 1992 with minor modifications and came into force on 24th April 1993.

Constitutional Provisions of 73rd Amendment Act

- Local governments were provided constitutional sanction through the 73rd Amendment Act of 1992 which was enforced on 24th April 1993.
- The Panchayats are elected for a tenure of 5 years.
- The 11th Schedule was added in the Constitution through this amendment which contained 29 subject matters of the Panchayats.
- This act also added Part IX to the Constitution which contained provisions from Articles 243 to 243O.
- This amendment brought the state governments under constitutional obligation to adopt the new system of Panchayati Raj in accordance with the provisions of the act.

Objectives of the 73rd Constitutional Amendment Act, 1992

- The main objective of the 73rd Constitutional Amendment Act, 1992 was to provide constitutional status to the Panchayats.
- It aimed at democratic decentralisation of power and resources among the central government and local bodies such as PRIs. This will create more engagement of the public in governance.
- Article 40 of the Indian Constitution states that it is the duty of the government to establish village Panchayats and give them adequate power and authority so that they can function as a unit of self-government. The government came up with this amendment to provide an implementation of this Article.
- The Amendment was based upon the Gandhian principle that advocates for 3-tier governance where the third level of government can directly deal with the public and solve their issues and problems at the grass-root level.

Essential features of the 73rd Constitutional Amendment Act, 1992

Gram Sabha

- Gram Sabha is defined under Article 243(b) which states that a Gram Sabha is a body that consists of persons registered on the electoral rolls relating to the village that falls under the area of Panchayat at a village level. It is the foundation of the Panchayati Raj Institution. Article 243A of the Indian Constitution empowers the Gram Sabha to perform the functions at its village level as is provided by the law or State Legislature.

Three-tier system

- Article 243B of the Indian Constitution provides for a three-tier system in the Panchayati Raj Institution where Panchayats shall be constituted at the village, intermediate, and district levels in every state.
- Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

Composition of the Panchayats

- According to Article 243C, the composition of the Panchayats shall be as decided by the State legislature. The number of seats at any level of a Panchayat shall be according to the population of that territory.
- All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area.
- Further, the chairperson of Panchayats at the intermediate and district levels shall be elected indirectly–by and from amongst the elected members thereof. However, the chairperson of a Panchayat at the village level shall be elected in such manner as the state legislature determines.

Reservation of seats

- Article 243D, provides for the provision of reservation of seats which specifies the reservation of seats for Scheduled Castes and Scheduled Tribes according to the proportion of their population.
- The Article also provides for one-third of the total seats to be reserved for women that belong to the Scheduled Castes or Scheduled Tribes. This Article empowers the State Legislature to make any provision relating to the reservation of backward class.

Duration of Panchayats

- Article 243E, specifies the duration of Panchayats to be for a term of 5 years if it does not get dissolved before the completion of its tenure.
- If the Panchayat gets dissolved then the other Panchayat which was constituted would function

till the remaining period of the dissolved Panchayat.

Disqualifications

- According to Article 243F, a person shall be disqualified for being chosen as or for being a member of Panchayat if he is so disqualified,
  - under any law for the time being in force for the purpose of elections to the legislature of the state concerned, or
  - under any law made by the state legislature.
- However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years. Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.

Duties and power of the Panchayats

- Article 243G, puts State Legislature under an obligation to make laws so as to provide such power and authorities to the Panchayats so that they can function as a unit of self-government.
- It is the duty of the Panchayats to prepare a plan for economic development and social justice for the people. The Article provides authority to the state government to give power and authority to the Panchayats on all the 29 subjects prescribed under the Eleventh schedule for local planning and implementing schemes, i.e., implementing NREGA which is one of the largest employment generating schemes.
- Panchayats implement the schemes made by the central and state governments for the betterment of people at the ground level. Panchayats have the authority to increase employment facilities and work upon the development of the area.

Powers to impose taxes by, and Funds of, the Panchayats

- Under Article 243H, the State Legislature by law may authorise the Panchayats to levy and collect tax, duties, tolls, or fees.
- The Panchayats may be assigned with the tax, duties, fees, or tolls that are collected by the state government to carry out specific work.
- The Panchayats are provided with a grant-in-aid from the Consolidated Fund of the State.
- The State Legislature may also constitute a fund for crediting and withdrawal purposes by or for the Panchayats

Finance Commission

- Under Article 243I, the Finance Commission is constituted by the Governor of the State to review the financial position of the Panchayats, to recommend the principles for the distribution of taxes between the State and Panchayats.
- The Finance Commission also determines the taxes, duties, tolls, and fees that will be assigned or appropriated to the Panchayats.

Audit of accounts

- Under Article 243J, the State Legislature is empowered to make provisions for the Panchayats to maintain and audit the accounts of Panchayats.

Manner of election

- According to Article 243K, the election of members of Panchayats of village, intermediate, and district levels shall be done through direct election by the people. The elections of chairman of the intermediate and district level Panchayat will be elected indirectly by the elected members of the Panchayats.
- State Election Commission is constituted in every state for the superintendence, maintenance, control, and preparation of electoral rolls. The Commission also handles the elections of Panchayats.

Application to Union Territories

- According to Article 243L, the provisions of this Part are applicable to the Union territories. But the President may direct that they would apply to a Union territory subject to such exceptions and modifications as he may specify.

Exempted States and Areas

- Under this Article 243M, the act does not apply to the states of Nagaland, Meghalaya and Mizoram and certain other areas. These areas include,
  - the scheduled areas and the tribal areas in the states
  - the hill areas of Manipur for which district councils exist; and
  - Darjeeling district of West Bengal for which Darjeeling Gorkha Hill Council exists
- However, the Parliament may extend the provisions of this Part to the scheduled areas and tribal areas subject to such exceptions and modifications as it may specify.
- Under this provision, the Parliament has enacted

the "Provisions of the Panchayats (Extension to the Scheduled Areas Act", 1996, popularly known as the PESA Act or the Extension Act.

Continuance of Existing Laws and Panchayats

- According to Article 243N, all the state laws relating to Panchayats shall continue to be in force until the expiry of one year from the commencement of this act.
- In other words, the states have to adopt the new Panchayati Raj system based on this act within the maximum period of one year from 24 April, 1993, which was the date of the commencement of this act.
- However, all the Panchayats existing immediately before the commencement of act shall continue till the expiry of their term, unless dissolved by the state legislature sooner.
- Consequently, majority of states passed the Panchayati Raj acts in 1993 and 1994 to adopt the new system in accordance with the 73rd Constitutional Amendment Act of 1992.

Bar to Interference by Courts in Electoral Matters

- Under Article 243O, the act bars the interference by courts in the electoral matters of Panchayats.
- It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court.
- It further lays down that no election to any Panchayat is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

Provisions of Panchayats shall be applicable to the Union Territories in the same way as in case of the states but the President by a public notification may make any modifications in the applications of any part.

The provisions of part IX are not applicable to:

- Entire states of Nagaland, Meghalaya and Mizoram
- Hill areas in the State of Manipur for which District Councils are in place.
- The district level provisions shall not apply to the hill areas of the District of Darjeeling in the State of West Bengal which affect the Darjeeling Gorkha Hill Council.

The reservation provisions are not applicable to Arunachal Pradesh.

Provisions under 73rd Amendment Act (1992)

The provisions mentioned in the 73rd amendment act can be grouped into two i.e.,

- Mandatory Provision
- Discretionary Provision

Mandatory provisions of the act

- Organization of Gram Sabha in villages
- Panchayat is an establishment at three levels, i.e., Village, Intermediate, and District level.
- Direct election to all the seats of the Panchayats.
- Indirect election to the post of Chairman at the intermediate and district level.
- Voting rights of the chairperson and other members of a Panchayat elected directly or indirectly.
- The minimum age to contest a Panchayat election is decided to be 21 years.
- Reservation of seats for Scheduled Caste-Scheduled Tribes (according to population) and women(1/3rd).
- The tenure of the Panchayats has been fixed for five years.
- Establishment of State Finance Commission after every five years to review the financial position of Panchayats.
- Reservation of seats for Scheduled Caste & Scheduled Tribes (according to population) and Women (1/3rd seats) at all three levels.
- The tenure of the Panchayats has been fixed for five years and fresh elections will be held within six months in the event of supersession of any Panchayat.
- Establishment of a State Election Commission for conducting elections to the Panchayats.

Discretionary Provisions of the Act

- Allocating representation to MPs and MLAs in Panchayats at different levels within their constituency.
- To provide reservation of seats for backward classes in Panchayats at all levels.
- To grant power and authority to Panchayats so that they can function as institutions of self-governance.
- Granting financial power to Panchayats and authorizing them to levy, collect, and appropriate taxes, duties etc.

- Giving the Gram Sabha village-level powers and functions.
- Choosing the method for electing the village Panchayat's chairperson.
- Giving representation to the chairpersons of village Panchayats in intermediate Panchayats or, in the absence of intermediate Panchayats in a state, in district Panchayats.
- Representing the chairpersons of intermediate Panchayats in district Panchayats.
- Members of the Parliament (both Houses) and the state legislature (both Houses) are represented in Panchayats at various levels that fall within their constituencies.
- Reservation of seats (both members and chairpersons) in Panchayats at any level for backward classes.
- Granting Panchayats powers and authority to enable them to function as self-governing institutions (in brief, making them autonomous bodies).
- Devolution of powers and responsibilities to Panchayats to prepare plans for economic development and social justice, as well as to perform some or all of the 29 functions listed in the Constitution's Eleventh Schedule.
- Granting Panchayats financial powers, that is, allowing them to levy, collect, and appropriate taxes, duties, tolls, and fees.
- Taxes, duties, tolls, and fees levied and collected by the state government are assigned to a Panchayat.
- Making grants-in-aid to Panchayats from the state's consolidated fund.
- Providing for the establishment of funds for crediting all Panchayat funds.

11th Schedule

It contains the following 29 functional items placed within the purview of Panchayats:

1. Agriculture, including agricultural extension
2. Land improvement, implementation of land reforms, land consolidation and soil conservation
3. Minor irrigation, water management and watershed development
4. Animal husbandry, dairying and poultry
5. Fisheries
6. Social forestry and farm forestry
7. Minor Forest produce
8. Small-scale industries, including food processing industries
9. Khadi, village and cottage industries 10. Rural housing
11. Drinking water
12. Fuel and fodder
13. Roads, culverts, bridges, ferries, waterways and other means of communication
14. Rural electrification, including distribution of electricity
15. non-Conventional energy sources
16. Poverty alleviation programme
17. Education, including primary and secondary schools
18. Technical training and vocational education
19. Adult and non-formal education
20. Libraries
21. Cultural activities
22. Markets and fairs
23. Health and sanitation including hospitals, primary health centres and dispensaries
24. Family welfare
25. Women and child development
26. Social welfare, including welfare of the handicapped and mentally retarded
27. Welfare of the weaker sections, and in particular, of the scheduled castes and the scheduled tribes
28. Public distribution system
29. Maintenance of community assets

Panchayat Extension to Scheduled Areas

The provisions of Part IX of the constitution relating to the Panchayats are not applicable to the Fifth Schedule areas. However, the Parliament may extend these provisions to such areas, subject to such exceptions and modifications as it may specify. Under this provision, the Parliament has enacted the "Provisions of the Panchayats (Extension to the Scheduled Areas) Act", 1996, popularly known as the PESA Act or the Extension Act.

Based on Dilip Singh Bhuria Committee report, it was enacted on 24 December 1996 to extend the

provisions of Part IX of the Constitution to Scheduled Areas, with certain exceptions and modifications.

At present, ten states have Fifth Schedule Areas. These are: Andhra Pradesh, Telangana, Chhatisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. All the ten states have enacted requisite compliance legislations by amending the respective Panchayati Raj Acts.

The PESA Act conferred the absolute powers to Gram Sabha, whereas state legislature has given an advisory role to ensure the proper functioning of Panchayats and Gram Sabhas. The power delegated to Gram Sabha cannot be curtailed by a higher level, and there shall be independence throughout.

Section 4 (i) of PESA provides the right to Gram Sabhas to be consulted before land acquisition. The consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.

Features/provisions of the PESA Act, 1996 are -

- A State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.
- A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.
- Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.
- Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
- Every Gram Sabha shall –
  - approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level
  - be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.
- Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects.
- The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution;
  - Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;
  - Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes.
- The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level; Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat.
- The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level.
- Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level.
- The recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting license or mining lease for minor minerals in the Scheduled Areas.
- The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction.
- While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the

Gram Sabha are endowed specifically with –

- the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
- the ownership of minor forest produce
- the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;
- the power to manage village markets by whatever name called;
- the power to exercise control over money lending to the Scheduled Tribes;
- the power to exercise control over institutions and functionaries in all social sectors;
- the power to control over local plans and resources for such plans including tribal sub-plans.

- The State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government, shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha.
- The State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.
- At the expiry of one year from the date on which this Act receives the assent of the President, any provision of any law (relating to Panchayats in the Scheduled Areas) which is inconsistent with the provisions of this Act shall cease to be in force.
- But all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by state legislature.

Challenges of PESA

- ***Dilution of role of Tribal Advisory Councils:*** PESA comes under the Fifth Schedule, which mandates Tribal Advisory Councils to oversee tribal affairs and also gives extrajudicial, extra constitutional powers to the Governors of each State to intervene in matters where they see tribal autonomy being compromised.
- ***Non-Assertive Institution:*** The councils, with the Chief Minister as their chairperson, have evolved into a non-assertive institution amid the tactics of upper-class politics, and its representatives hardly speak against the State Governments' policies.
- The Governors, in order to have friendly relations with the Chief Ministers, have desisted from getting involved in tribal matters. Tribal activists have constantly complained that there is not even a single instance where the Governors have responded to their petitions for interventions in threatening crises, such as deepening clashes over land, mining or police excesses.
- ***Lack of coordination at Centre:*** Even if one were to expect proactive intervention from the Centre, PESA would get entangled in bureaucratic shackles. Two different ministries, the Ministry of Panchayati Raj and the Ministry of Tribal Affairs, have an overlapping influence on the implementation of PESA and they function almost without any coordination.
- ***Lack of operationalisation:*** In most of the state the enabling rules are not in place more than eight years after the adoption of the Act suggests that the state governments are reluctant to operationalise the PESA mandate.
- ***Poor Infrastructure:*** A large number of Gram Panchayats in the country do not have even full time Secretary. Around 25 percent of the Gram Panchayats do not have basic office buildings. The database for planning, monitoring etc., are lacking in most of the cases.
- ***Ignoring the spirit of PESA:*** The state legislations have omitted some of the fundamental principles without which the spirit of PESA can never be realized. For instance, the premise in PESA that state legislations on Panchayats shall be in consonance with customary laws and among other things traditional management practices of community resources is ignored by most of the state laws
- ***Ambiguous definitions:*** No legal definition of the terms like minor water bodies, minor minerals etc. exist in the statute books. The states in their conformity legislations have also not defined the term leading to ambiguity and scope of

interpretation by the bureaucracy.

In recent years, many reports 'The Report of Expert Group of the Planning Commission on Development Challenges in Extremist Affected Areas' (2008), 'The Sixth Report of the Second Administrative Reforms Commission' (2007), 'The Balchandra Mungekar Committee Report' (2009), etc. have clearly underlined the dismal situation of the implementation of PESA.

Forest Rights Act

Historical Background

- A large number of people especially the scheduled tribes have lived in and around forests for a long period in symbiotic relationship.
- This relationship has led to formalized or informal customary rules of use and extraction, often governed by ethical beliefs and practices that have ensured that forests are not too degraded.
- During the colonial time the focus shifted from the forests being used as a resource base for sustenance of local communities to a state resource for commercial interests and development of land for agriculture.
- Several Acts and policies such as the 3 Indian Forest Acts of 1865, 1894 and 1927 of Central Govt and some state forest Acts curtailed centuries-old, customary-use rights of local communities.
- This continued even after independence till much later until enactment of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Why are forest rights important for tribals?

- Aimed at undoing the "historic injustice" meted out to forest-dependent communities due to curtailment of their customary rights over forests, the FRA came into force in 2008.
- It is important as it recognises the community's right to use, manage and conserve forest resources, and to legally hold forest land that these communities have used for cultivation and residence.
- It also underlines the integral role that forest dwellers play in the sustainability of forests and in the conservation of biodiversity.
- It is of greater significance inside protected forests like national parks, sanctuaries and tiger reserves as traditional dwellers then become a part of management of the protected forests.

About Forest Rights Act 2006:

- The symbiotic relationship between forests and forest-dwelling communities found recognition in the National Forest Policy, 1988.
- The policy called for the need to associate tribal people in the protection, regeneration and development of forests.
- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, was enacted to protect the marginalised socio-economic class of citizens and balance the right to environment with their right to life and livelihood.

Provisions of the 2006 Act

- The Act recognizes that tribal and other traditional forest-dwelling communities would be hard put to provide documentary evidence for their claims.
- Rule 13 of the Act, therefore, stipulates that the Gram Sabha should consider more than one evidence in determining forest rights.
- The rule sanctions a wide range of evidence, including "statements by village elders", "community rights" and "physical attributes such as houses, huts and permanent improvements made to land such as levelling, bunds and check dams"

Features of the Act

- The act recognizes and vest the forest rights and occupation in Forest land in forest Dwelling Scheduled Tribes (FDST) and Other Traditional Forest Dwellers (OTFD)who have been residing in such forests for generations.
- The act also establishes the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance of FDST and OTFD.
- It strengthens the conservation regime of the forests while ensuring livelihood and food security of the FDST and OTFD.
- It seeks to rectify colonial injustice to the FDST and OTFD who are integral to the very survival and sustainability of the forest ecosystem.

- The act identifies four types of rights:
  - Title rights
    - It gives FDST and OTFD the right to ownership to land farmed by tribals or forest dwellers subject to a maximum of 4 hectares.
    - Ownership is only for land that is actually being cultivated by the concerned family and no new lands will be granted.
  - Use rights
    - The rights of the dwellers extend to extracting Minor Forest Produce, grazing areas, to pastoralist routes, etc.
  - Relief and development rights
    - To rehabilitation in case of illegal eviction or forced displacement and to basic amenities, subject to restrictions for forest protection
  - Forest management rights
    - It includes the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.

Significance of Forest Rights Act (FRA) 2006

The act is significant for the following reasons:

- Community rights and rights over common property resources (CPR) have been recognized for the first time
- Individual rights of the tribal and marginal communities have been highlighted by this act along with other rights too
- The concept of revenue villages has surfaced as the act talks about the conversion of all forest villages, old habitation, un-surveyed villages and other villages into these.
- It ensures the livelihood and food security of the Forest Dwellers Scheduled Tribes and Other Forest Dwellers and strengthens the conservation regime of the forest.
- Community Forest Resources are monitored and managed in a way that protects marginal communities' traditional linkages with these. It is known how these communities have always traditionally utilized the forest resource for sustainable development.
- This act in a way protects intellectual property rights and the traditional knowledge related to cultural diversity and biodiversity
- It expands the mandate of the 5th & 6th Schedules of the Constitution that protect the claims of indigenous communities over tracts of land or forests they inhabit.
- The displaced communities' rights are secured by the forest rights act 2006. The alienation of tribes was one of the factors behind the Naxal movement, which affects states like Chhattisgarh, Odisha and Jharkhand. The Act through identifying Individual Forest Rights and Community Forest Rights tries to provide inclusion to tribes.
- The rights of marginal and tribal communities over developmental activities are also recognized and secured by Forest Rights Act, 2006
- Forest rights can also be claimed by any member or community who has for at least three generations (75 years) prior to the 13th day of December, 2005 primarily resided in forest land for bona fide livelihood needs.
- The act will ensure that people get to manage their forest on their own which will regulate the exploitation of forest resources by officials, improve forest governance and better management of tribal rights.

Land and its management fall under the exclusive legislative and administrative jurisdiction of States as provided under the Constitution of India. The land reforms are monitored by the Ministry of Rural Development (MoRD) and Department of Land Resources (DoLR) which is the nodal Ministry at the Centre.

Criticism of Forest Rights Act (FRA) 2006

The act has been criticized on the following lines:

Administrative Apathy:

- As tribals are not a big vote bank in most states, governments find it convenient to subvert FRA or not bother about it at all in favour of monetary gains.

Lack of Awareness:

- Unawareness at the lower level of forest officials who

are supposed to help process forest rights claims is high and majority of the aggrieved population too remains in the dark regarding their rights.

- The forest bureaucracy has misinterpreted the FRA as an instrument to regularise encroachment instead of a welfare measure for tribals.

Dilution of Act:

- Certain sections of environmentalists raise the concern that FRA bends more in the favour of individual rights, giving lesser scope for community rights.
- Community Rights effectively gives the local people the control over forest resources which remains a significant portion of forest revenue making states wary of vesting forest rights to Gram Sabha.

Reluctance of the forest bureaucracy to give up control:

- The forest bureaucracy fears that it will lose the enormous power over land and people that it currently enjoys, while the corporates fear they may lose the cheap access to valuable natural resources.

Institutional Roadblock:

- Rough maps of community and individual claims are prepared by Gram Sabha which at times often lack technical knowhow and suffers from educational incapacity.

The 73rd Amendment Act is an attempt to restructure the Panchayati Raj to reach the grassroot level. The bill for the first time gave constitutional status to Panchayati Raj institutions and it became mandatory on all state governments to implement it. This Amendment brought about uniformity in structure, composition, powers and functions of Panchayats. It gave impetus to Panchayati Raj to promote social and economic development and improvement in living condition of rural India.

Municipalities / Urban Local Government

Historical background

The roots of municipal administration in India can be traced to 1687, when a Municipal Corporation was set up at Madras with a view to transfer the financial burden of local administration to the local City Council. Later, the Royal Charter of 1720 established a Mayor's Court in each of the three Presidency towns of Madras, Bombay and Calcutta.

In 1850, an Act was passed for the whole of British India permitting the formation of local committees to make better provisions for public health. Lord Mayo's resolution of 1870 made arrangements for strengthening the municipal institutions and increasing the association of Indians in these bodies.

Yet, it was Lord Ripon's Resolution of 18 May 1882 that was hailed as the Magna Carta of government and got Lord Ripon the title of "Father of local self-government in India."

The Government of India Act 1919 introduced the system of diarchy and the local self-government became a transferred subject under the charge of powers of local bodies, lowered the franchise, reduced the nominated element and extended the communal electorate to a larger number of municipalities.

Post-Independence in India

The Constitution of India, which came into force on 26 January 1950, directs the state through Article 40 to organize panchayats but does not give a corresponding duty to the state with regard to the creation of urban bodies.

The only reference to urban self-government was to be found in two entries:

- Entry 5 of List 11 of the Seventh Schedule and
- Entry 20 of the Concurrent List.

The Five-Year Plans also periodically highlighted the problems of the municipal bodies and the inability of these bodies to meet the growing demands of urbanisation.

In 1985, the National Commission on Urbanization was appointed by the Central government which gave its report in 1988. Commission was set up to study and give suggestions on all aspects of urban management.

Purpose for Urban Local Bodies

- Urban Local Bodies were set up to provide urban services efficiently, effectively and equitably.
- Urban Local governments also plan for economic and social development.
- They regulate the use of land and the construction of buildings.
- They regulate the supply of water for domestic, industrial and commercial purposes.
- They maintain public health, sanitation conservation and solid waste management.
- They administer various laws and regulations.

- They implement central government plans at the grassroots level.
- They are doing the job of reducing poverty.

The 65th Constitutional Amendment Bill, 1989

The 65th Constitutional Amendment Bill brought by the then Prime Minister, Rajiv Gandhi, sought to ensure municipal bodies being vested with necessary powers and removing their financial constraints to enable them to function effectively as units of local government.

Three types of Nagar Palikas were envisaged;

- Nagar panchayat for a population between 10,000 and 20,000;
- Municipal Council for urban areas with a population between 20,000 and 3,00,000 and
- Municipal Corporation for urban areas with a population exceeding 3,00,000.

It made provisions for elected Ward Committees, adequate representation for women and SC/ST in the urban bodies, conduct of elections by the Central Election Commission, setting up Finance Commissions in the states to ensure soundness of local body finances, audit of accounts by the Comptroller and Auditor General of India and creation of district level committees to coordinate the plans of Nagar Palikas and Panchayats.

It also envisaged granting of urban bodies with a constitutional status. Though passed in the Lok Sabha, the bill was defeated in the Rajya Sabha in October 1989.

74th Amendment Act

This Act has added a new Part IX-A to the Constitution of India. This part is entitled as 'The Municipalities' and consists of provisions from Articles 243-P to 243-ZG. In addition, the act has also added a new Twelfth Schedule to the Constitution. This schedule contains eighteen functional items of Municipalities.

It deals with Article 243-W. The act gave constitutional status to the municipalities. It has brought them under the purview of justiciable part of the Constitution. In other words, state governments are under constitutional obligation to adopt the new system of municipalities in accordance with the provisions of the act. The act aims at revitalising and strengthening the urban governments so that they function effectively as units of local government.

Provisions of Urban Local Bodies under 74th Constitutional Amendment Act

Three Types of Municipalities

- Under Article 243Q, act provides for the constitution of the following three types of municipalities in every state.
  - A Nagar panchayat (by whatever name called) for a transitional area.
  - A Municipal Council for a smaller urban area.
  - A Municipal Corporation for a larger urban area.
- But there is one exception. If there is an urban area where municipal services are being provided by an industrial establishment, then the Governor may specify that area to be an industrial township. In such a case, a municipality may not be constituted.
- The Governor has to specify a transitional area, a smaller urban area or a larger urban area, keeping in view the following factors:
  - Population of the area.
  - Density of the population therein.
  - Revenue generated for local administration.
  - Percentage of employment in non-agricultural activities.
  - Economic importance.
  - Such other factors as he may deem fit.

Composition

- Under Article 243R, all the members of a municipality shall be elected directly by the people of the municipal area. For this purpose, each municipal area shall be divided into territorial constituencies to be known as wards.
- The State Legislature may provide the manner of election of the chairperson of a municipality. It may also provide for the representation of the following persons in a municipality.
  - Persons having special knowledge or experience in municipal administration without the right to vote in the meetings of municipality.
  - The members of the Lok Sabha and the State Legislative Assembly representing constituencies that comprise wholly or partly the municipal area.
  - The members of the Rajya Sabha and the state legislative council registered as electors within the Municipal area.
  - The Chairpersons of committees (other than wards committees).

Wards Committees

- According to Article 243S, there shall be a wards committee, consisting of one or more wards, within the territorial area of a municipality having population of three lakh or more.
- The state legislature may make provision with respect to the composition and the territorial area of a wards committee and the manner in which the seats in a wards committee shall be filled.
- In addition to the ward's committees, the state legislature is also allowed to make any provision for the constitution of other committees. The Chairpersons of such committees may be made members of the municipality.

Reservation of Seats

- According to Article 243 T, act provides for the reservation of seats for the scheduled castes and the scheduled tribes in every municipality in proportion of their population to the total population in the municipal area.
- Further, it provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for woman belonging to the SCs and the STs). The state legislature may provide for the manner of reservation of offices of Chairpersons in the municipalities for SCs, STs and women.
- It may also make any provision for the reservation of seats in any municipality or offices of Chairpersons in municipalities in favour of backward classes.

Duration of Municipalities

- According to Article 243U, act provides for a five-year term of office for every municipality. However, it can be dissolved before the completion of its term.
- Further, the fresh elections to constitute a municipality shall be completed
  - before the expiry of its duration of five years; or
  - in case of dissolution, before the expiry of a period of six months from the date of its dissolution.
- But, where the remainder of the period (for which the dissolved municipality would have continued) is less than six months, it shall not be necessary to hold any election for constituting the new municipality for such period.
- Moreover, a municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued had it not been so dissolved.
- In other words, a municipality reconstituted after premature dissolution does not enjoy the full period of five years but remains in office only for the remainder of the period. The act also makes two more provisions with respect to dissolution:
  - a municipality must be given a reasonable opportunity of being heard before its dissolution; and
  - no amendment of any law for the time being in force shall cause dissolution of a municipality before the expiry of the five years term.

Disqualifications

- Under Article 243V, a person shall be disqualified for being chosen as or for being a member of a municipality if he is so disqualified
  - under any law for the time being in force for the purposes of elections to the legislature of the state concerned; or
  - under any law made by the state legislature.
- However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years.
- Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.

Powers and Functions

- Under Article 243W, state legislature may endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such a scheme may contain provisions for the devolution of powers and responsibilities upon municipalities at the appropriate level with respect to
  - the preparation of plans for economic development and social justice;
  - the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the eighteen matters listed in the Twelfth Schedule

Imposition of Taxes

- According to Article 243X, state legislature may
  - authorise a municipality to levy, collect and appropriate taxes, duties, tolls and fees;
  - assign to a municipality taxes, duties, tolls and fees levied and collected by state government;
  - provide for making grants-in-aid to the municipalities from the consolidated fund of the state; and
  - provide for constitution of funds for crediting all moneys of the municipalities.

Finance Commission

- Article 243Y deals with the Finance Commission who shall also review the financial position of the Municipalities and make recommendations to the Governor as to—
  - the principles which should govern—
    - the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective shares of such proceeds;
    - the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;
    - the grants-in-aid to the Municipalities from the Consolidated Fund of the State;
  - the measures needed to improve the financial position of the Municipalities;
  - any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.
- The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

Audit of accounts of Municipalities

- According to the Article 243Z, the Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

Elections to the Municipalities

- Article 243ZA deals with the election of the members of the Municipalities.
- The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the municipalities shall be vested in the state election commission.
- The State Legislature may make provision with respect to all matters relating to elections to the municipalities.

Application to Union territories.

- Under Article 243ZB, the provisions mentioned in this part are applicable to the Union Territories.
- But the President may direct that they would apply to a Union territory subject to such exceptions and modifications as he may specify.

Part not to apply to certain areas

- According to Article 243ZC, act does not apply to the scheduled areas and tribal areas in the state.
- It shall also not affect the functions and powers of the Darjeeling Gorkha Hill Council of the West Bengal.
- However, the Parliament may extend the provisions of this part to the scheduled areas and tribal areas subject to such exceptions and modifications as it may specify.

Committee for district planning

- According to Article 243ZD, every state shall constitute at the district level, a district planning committee to consolidate the plans prepared by panchayats and municipalities in the district, and to prepare a draft development plan for the district as a whole. The state legislature may make provisions with respect to the following:
  - The composition of such committees;
  - The manner of election of members of such committees;
  - The functions of such committees in relation to district planning; and
  - The manner of the election of the Chairpersons of such committees.
- The act lays down that four-fifths of the members of a district planning committee should be elected by the elected members of the district panchayat

and municipalities in the district from amongst themselves.

- The representation of these members in the committee should be in proportion to the ratio between the rural and urban populations in the district.
- The Chairperson of such committee shall forward the development plan to the state government. In preparing the draft development plan, a district planning committee shall (a)
  - Have regard to–
    - matters of common interest between the Panchayats and Municipalities including spatial planning, sharing of water other physical and natural resources, the integrated development of infrastructure and environmental conservation;
    - the extent and type of available resources whether financial otherwise; and
  - Consult such institutions and organisations as the Governor may specify.

Metropolitan Planning Committee

- Under Article 243 ZE, every metropolitan area shall have a metropolitan planning committee to prepare a draft development plan. The state legislature may make provisions with respect to the following:
  - The composition of such committees;
  - The manner of election of members of such committees;
  - The representation in such committees of the Central government, state government and other organisations;
  - The functions of such committees in relation to planning and coordination for the metropolitan area; and
  - The manner of election of Chairpersons of such committees.
- The act lays down that two-thirds of the members of a metropolitan planning committee should be elected by the elected members of the municipalities and Chairpersons of the Panchayats in the metropolitan area from amongst themselves.
- The representation of these members in the committee should be in proportion to the ratio between the population of the municipalities and the Panchayats in that metropolitan area.
- The Chairpersons of such committees shall forward the development plan to the state government. In preparing the draft development plan, a metropolitan planning committee shall
  - (a) Have regard to–
    - the plans prepared by the Municipalities and the Panchayats the Metropolitan area;
    - matters of common interest between the Municipalities and Panchayats, including co-ordinated spatial planning of the are sharing of water and other physical and natural resources, integrated development of infrastructure and environment conservation;
    - the overall objectives and priorities set by the Government India and the government of the state;
    - the extent and nature of investments likely to be made in Metropolitan area by agencies of the Government of India and the Government of the State and other available resources whether financial or otherwise; and
  - (b) consult such institutions and organisations as the Governor may specify.

Continuance of existing laws and Municipalities

- According to Article 243 ZF, all the state laws relating to municipalities shall continue to be in force until the expiry of one year from the commencement of this act.
- In other words, the states have to adopt the new system of municipalities based on this act within the maximum period of one year from 1 June, 1993, which is the date of commencement of this act.
- However, all municipalities existing immediately before the commencement of this act shall continue till the expiry of their term, unless dissolved by the State Legislature sooner.

Bar to interference by courts in electoral matters

- Article 243 ZG bars the interference by courts in the electoral matters of municipalities. It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court.

- It further lays down that no election to any municipality is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

Provisions under 74th Amendment Act (1992)

The provisions mentioned in the 74th amendment act can be grouped into two i.e.,

- Mandatory Provision
- Discretionary Provision

Mandatory Provision

- Constitution of Nagar panchayats, Municipal Councils and Municipal Corporations in small, big and very big urban areas respectively;
- Reservation of seats in urban local bodies for Scheduled Castes / Scheduled Tribes roughly in proportion to their population;
- Reservation of seats for women up to one-third seats;
- The State Election Commission, constituted in order to conduct elections in the Panchayati Raj bodies will also conduct elections to the urban local self-governing bodies;
- The State Finance Commission, constituted to deal with financial affairs of the Panchayati Raj bodies also looks into the financial affairs of the local urban self-governing bodies;
- Tenure of urban local self-governing bodies is fixed at five years and in case of earlier dissolution fresh elections are held within six months;

Discretionary Provision

- Giving voting rights to members of the Union and State Legislatures in these bodies;
- Providing reservation for backward classes;
- Giving financial powers in relation to taxes, duties, tolls and fees, etc;
- Making the municipal bodies autonomous and devolution of powers to these bodies to perform some or all of the functions enumerated in the Twelfth Schedule added to the Constitution through this Act and/or to prepare plans for economic development.

Sources of revenue for Urban Local Bodies:

- Collection from tax and non-tax sources as assigned to them.
- Devolution of shared taxes and duties as per recommendation of State Finance Commission.
- Grants-in-aid from the state government.
- Grants-in-aid from the Government of India under Centrally Sponsored Schemes.
- Share of State Govt. against Centrally Sponsored Schemes of Govt. of India.
- Award of Central Finance Commission Grant.

12th Schedule List

12th Schedule of the Indian Constitution deals with the provisions that specify the powers, authority and responsibilities of Municipalities. This schedule was added by the 74th Amendment Act of 1992. It has 18 matters.

- Urban planning including town planning.
- Regulation of land-use and construction of buildings.
- Planning for economic and social development.
- Roads and bridges.
- Water supply for domestic, industrial and commercial purposes.
- Public health, sanitation conservancy and solid waste management.
- Fire services.
- Urban forestry, protection of the environment and promotion of ecological aspects.
- Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- Slum improvement and upgradation.
- Urban poverty alleviation.
- Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- Promotion of cultural, educational and aesthetic aspects.
- Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
- Cattle pounds; prevention of cruelty to animals.
- Vital statistics include registration of births and deaths.
- Public amenities including street lighting, parking lots, bus stops and public conveniences.
- Regulation of slaughter houses and tanneries.

Types of Urban Government

Municipal Corporation

- It is created for the administration of big cities

- They are established by an act of state legislatures and in the case of Union Territories, it is by an act of Parliament
- The corporation has three organs- council, standing committees and commissioner
- The council is the deliberative body consisting of elected and few nominated representatives. They enact laws and policies. The council is headed by a mayor who is to preside over the council meetings. He is elected by the members amongst themselves. He has a renewable one-year term
- Standing committees are created to simplify the working of the council. They take decision in their respective fields for which they have been made responsible. Ex: Health, education, public works etc
- Municipal commissioner is responsible for implementing the policies and decisions taken by the council and the committees

Municipality

- It is established for administration of smaller towns and cities
- They are established by an act of state legislatures and in the case of Union Territories, it is by an act of Parliament
- It also has three authorities- council, standing committees and chief executive officer
- The council is the deliberative and legislative body. It is headed by a Chairperson.
- Unlike the mayor in a municipal corporation, Chairperson here has executive powers
- The CEO is responsible for day-to-day administration
- The standing committees are created to facilitate the working of the council. They deal with public works, taxation, health, finance and so on.

Notified Area Committee

- It is created for fast-developing areas that have not yet achieved the numbers to become a municipality
- It is notified by state government gazette
- Only those provisions which are specified in the gazette apply to this area
- It is entirely a nominated body

Town Area Committee

- It is setup for the administration of a small town
- It is created by a separate act of the state legislature
- It may be a wholly elected, wholly nominated or party elected and nominated as specified by the state government

Cantonment Board

- It is setup for the civic administration for civilian population living in cantonment areas
- It is setup under the provisions of the cantonment act, 2006
- It works under the administrative control of the Union defence ministry
- It consists of partly elected and partly nominated representatives
- The commanding officer of the station is the ex-officio Chairperson
- The board will also consist of an executive engineer, health officer, first class magistrate, chief executive officer
- The nominated members hold office as long as they are part of the station
- Elected members have a tenure of 5 years

Township

- It is established by a public sector enterprise to ensure civic administration of their workers in the region
- The township has no elected members
- It is an extension of bureaucratic structure of the PSE

Port trust

- It is established in port areas
- Functions of these bodies: to manage ports and to provide civic amenities
- It consists of both elected and nominated members

Special Purpose Agency

- These are setup to address specific issues which are usually the domain of municipalities
- They are also known as single-purpose or uni-purpose because of the singular role based on which they are created for
- They are established by an act of state legislature or as departments by an executive resolution
- They function as autonomous bodies

Significance of Urban Local Bodies:

- They provide urban services efficiently, effectively and equitably.
- They plan for economic and social development.
- They regulate land-use and construction of buildings.

- They regulate water supply for domestic, industrial and commercial purposes.
- They maintain the public health, sanitation conservancy and solid waste management.
- They administer various acts and regulations.
- They implement the schemes of the central government at the ground level.
- They perform the task of poverty alleviation.

Challenges associated with Urban Local Bodies:

- ***Delegation of powers:***
  - Most of the state governments have not devolved the power to the Urban Local Bodies so they have not been able to perform their tasks effectively.
- ***Ineffective leadership:***
  - Mayors and Councillors use their positions for their political carrier rather than being change agents bringing out desired urban reforms.
- ***Creation of autonomous agencies:***
  - Autonomous agencies such as urban development authorities and public corporations are accountable only to the state governments and not local governments.
- ***Lack of funds:***
  - Lack of devolution of funds as per the Finance Commission recommendations.
  - Revenue of the urban local bodies themselves are very limited and skewed.
  - One of the main sources of income for local bodies is property tax.
  - E.g.; In Kolkata city limits were expanded in 1984—from 100 wards the city was extended to 141 wards—the new areas have never been taxed till date.
- ***Corruption:***
  - Administrative machinery at the disposal of these local bodies is insufficient and ineffective.
  - The staff is underpaid which indulges in corrupt practices.
- ***Limited capacity:***
  - Even if the municipal bodies receive funds, they just don't have the capacity to function effectively.
  - Most of the funds given to the Urban Local Bodies are tied funds.
- ***Lack of coordination:***
  - Multiple agencies are at work in the city to cater to municipal needs but they rarely cooperate.

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34 Union Territories

Introduction

The concept of territories administered by the Centre dates back to before the country's independence. Certain areas were designated as scheduled districts in 1874. These were later known as Chief Commissioners provinces, and they were essentially administered by a Chief Commissioner who reported directly to the Governor General/Viceroy of India.

The States Reorganisation Act of 1956 established the Union Territories. The Constitution (Seventh Amendment) Act of 1956 introduced the notion of the Union Territories.

Administration of Union Territories

Part VIII (Articles 239 to 241) of the Constitution deals with the Union Territories. Even though all Union Territories belong to the same category, their administrative systems are not consistent. Every Union Territory is governed by the President of India, who appoints an Administrator to do so.

- An Administrator of a Union Territory, unlike a Governor, is an agent of the President rather than the head of State. The President can name an administrator; it could be a Lieutenant Governor, Chief Commissioner, or Administrator.
- In the cases of Delhi, Puducherry, the Andaman and Nicobar Islands, Jammu and Kashmir and Ladakh, it is currently Lieutenant Governor, and in the cases of Chandigarh, Dadra and Nagar Haveli-Daman and Diu, Ladakh and Lakshadweep, it is Administrator.
- The President can also appoint the Governor of a State to serve as the administrator of a Union Territory bordering on it. The Governor is to operate independently of his Council of Ministers in this role. The Governor of Punjab is concurrently the Administrator of Chandigarh.
- A Legislative Assembly and a Council of Ministers led by a Chief Minister have been established in the Union Territories of Puducherry (in 1963), Delhi (in 1992), and Jammu & Kashmir (in 2019). There are no comparable popular political institutions in the remaining five Union Territories.
- However, the establishment of such institutions in Union Territories does not negate the President's and Parliament supreme control over them. For the Union Territories, Parliament has the authority to enact legislation on any subject from the three lists (including the State List).
- Parliament's power extends even to Puducherry, Delhi and Jammu and Kashmir, all of which have their Legislatures. This means that even after establishing a local legislature for the Union Territories, Parliament's legislative power over subjects on the State List remains unaffected.
- The Legislative Assembly of Puducherry, on the other hand, has the power to enact legislation on any subject on the State and Concurrent Lists. Similarly, the legislative assembly of Delhi can make laws on any subject of the State List (except public order, police, and land) and the Concurrent List.
- Likewise, the Legislative Assembly of Jammu and Kashmir can make laws on any subject of the State List (except public order and police) and the Concurrent List.
- The President has the authority to issue regulations for the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli-Daman and Diu and Ladakh in order to maintain peace, progress, and good governance.
- The President can also legislate by rules in Puducherry, but only when the assembly is suspended or dissolved.
- A regulation issued by the President has the same force and effect as a law passed by Parliament, and it has the power to revoke or alter any law passed by Parliament that applies to these Union Territories.

- A High Court for a Union Territory can be established by Parliament, or it can be placed under the jurisdiction of the High Court of the neighbouring States.
- Delhi is the only Union Territory with its own High Court (since 1966).
- There are no separate provisions in the Constitution for the administration of acquired territories. However, the Constitutional provisions governing the administration of Union Territories also apply to the acquired territories.

Creation of Legislature or Council of Ministers for Union Territories

Article 239 A (1) of the Indian Constitution which states that a Parliament through law can enact a body that can function as a Legislature for the Union Territory of Puducherry consisting of:

- elected or partly elected or partly nominated persons,
- or can make a body consisting of the Council of Ministers,
- or can create both of these with the constitutional powers and functions vested to the Parliament.

Article 239 A (2) further States that irrespective of anything mentioned in the above-stated Clause (1), that has the effect of amending the Constitution or is any amendment to the Constitution by the way of Article 368, shall not be deemed to be an amendment or a change to the constitution. In other words, the changes made in the Constitution will not be considered as the amendment to the Constitution.

Special provision with respect to Delhi

Special provisions are enshrined for the creation of legislature or for the creation of a Council of Ministers under Article 239AA of the Constitution with regards to Delhi. It states that from the 69th Amendment Act, 1991, Delhi shall be called the National Capital Territory of Delhi and the Administrator then appointed shall be referred to as the Lieutenant Governor.

At present, the Government of Delhi is the authority governing the National Capital Territory of Delhi and its 11 districts. The body of the Government of Delhi consists of the judiciary, legislature, and executive headed by the Lieutenant Governor.

The State Government of Delhi is expressly prohibited from exercising authority over land, police, and public order under Article 239AA of the Constitution.

Any law relating to local bodies passed by the Delhi assembly must be submitted to the Urban Development Ministry for approval, and it must be in compliance with the Municipal Corporation Act 1957.

69th Constitutional Amendment Act of 1991 - Important Provisions

As per clause 3(a) of the Article 239AA, the Legislative Assembly of the capital can make laws with respect to any of the matters enumerated in the State or Concurrent lists under Schedule VII excluding the matters regarding land, police and law & order which were to be governed by the Centre through the Lieutenant Governor.

There shall be a Council of Ministers headed by the Chief Minister of the State which will 'aid and advise' the Lieutenant Governor on the matters set forth above as per clause (4) of the same Article.

Moreover, clause 4 of Article 239 AA, warrants the Lieutenant Governor to refer 'any matter' to the President of India for his/her decision if there is a clash of opinion between the Governor and the ministers (Council of Ministers headed by the Chief Minister of the State). The Lieutenant Governor, as a matter of law, is bound by the decision of the President given thereon.

Council of Ministers

Further, clause (4) of Article 239 AA talks about the Council of Ministers in relation to the National Capital Territory of Delhi.

- The strength of the assembly is fixed at 70 members, directly elected by the people.
- The elections are conducted by the Election Commission of India. The strength of the Council of Ministers is fixed at ten per cent of the total strength of the assembly, that is, seven–one Chief Minister and six other ministers. The Chief Minister shall be the head of such a body of the Council of Ministers.
- The Chief Minister is appointed by the President (not by the Lieutenant Governor). The other ministers are appointed by the President on the advice of the Chief Minister. The ministers hold office during the pleasure of the President. The Council of Ministers is collectively responsible to the assembly.
- The Chief Minister shall be assigned by the President and the other Ministers shall also be assigned by the President on the advice of the Chief Minister and shall hold their offices during the pleasure of

the President (Clause (5) of Article 239 AA).

- The Council of Ministers so elected shall remain responsible collectively to the legislative assembly (Clause (6) of Article 239 AA).
- The Chief Minister's duty includes aiding and advising the Lieutenant Governor in the execution of his functions until and unless the Lieutenant Governor is himself empowered to make laws at his discretion.
- If there is a dispute regarding the difference of opinion between the Lieutenant Governor and his Ministers then the dispute should be referred to the President whose decision would be final and binding.
- The assembly can make laws on all the matters of the State List and the Concurrent List except the three matters of the State List, that is, public order, police and land.
- Still, in urgent situations, where the Lieutenant Governor feels that waiting for the President's decision could have a worsening effect than in those situations, the Lieutenant Governor is empowered to take immediate action till the further orders of the President.

Controversy related to the National Capital Territory of Delhi (Amendment) Bill, 2021

- In Parliament, the Centre Government recently introduced the Government of National Capital Territory of Delhi (Amendment) Bill, 2021.
- The bill, according to the federal government, aims to change the statute governing the administration of the National Capital Territory of Delhi and give effect to the Supreme Court's interpretation of the city's governance structure.

Amendments proposed by National Capital Territory of Delhi (Amendment) Bill, 2021

- The term "Government" in the context of laws passed by the legislative assembly is now defined as the Lieutenant Governor of Delhi, rather than the elected government.
- Lieutenant Governor's authority by forcing the elected government to seek Lieutenant Governor's advice on certain issues. Furthermore, it is up to Lieutenant Governor to determine whether these "matters" should be defined in a generic or specified order.
- It limits the assembly's ability to make rules for its committees on day-to-day administration.

Effect of Amendments on the functioning of the Assembly

- Its standards of procedure and conduct of business have been firmly tethered to that of the Lok Sabha, depriving Delhi's elected MLAs of an effective say in how their Assembly should be run.
- The Amending Act prohibits the Assembly from making any rule enabling either itself or its committees to consider any issue concerned with "the day-to-day administration of the capital" or "conduct inquiries in relation to administrative decisions".
- The most significant impact of this shall be on the exercise of free speech in the Assembly and its committees.
- By restricting the Assembly's capacity to freely discuss issues in the capital, the amendment hampered the Assembly's ability to exercise its most basic legislative job of holding the executive to account.

Difference between the Lieutenant Governor of Delhi & Puducherry

Both Delhi and Puducherry have quite similar administrations and management. However, while talking about the functioning of the Lieutenant Governor in the context of both of these places there are few differences. The differences can be explained as below:

Lieutenant Governor of Delhi	Governor of Puducherry
The Lieutenant Governor of Delhi enjoys more power than the Governor of Puducherry.	The Governor of Puducherry has lesser power than the Lieutenant Governor of Delhi.
The Government of National Capital Territory of Delhi Act, 1991, and the Transaction of Business of the Government of National Capital Territory of Delhi Rules, 1993, guide the Lieutenant Governor of Delhi.	Governor of Puducherry is guided by the Government of Union Territories Act, 1963.
The Legislative Assembly of Delhi has the power to make laws on all subjects except law and order. In Delhi, the role of the Centre is more important in contrast with the role of the Lieutenant Governor who acts as the eyes and ears of the Centre.	The Legislative Assembly in Puducherry can legislate on any matter under the State Lists and the Concurrent Lists however it must not be in contravention to the law.

Power of President to make regulations for certain Union Territories

These powers of the President are discussed under Article 240 of the Constitution. The President may make regulations for the peace, progress and good government of the Union Territory of:

- Andaman & Nicobar Islands;
- Lakshadweep;
- Ladakh;
- Dadra and Nagar Haveli & Daman and Diu;
- Puducherry.

Still, there is a restriction to the powers of the President in this regard. The President shall only exercise his powers when the Legislature of the Union Territory is suspended or disbanded in relation to any law in accordance with Clause (1) of Article 239 A. The President shall also not exercise his power after the Legislature has been created i.e., from the date approved for the first meeting of the Legislature after its creation.

Clause (2) of Article 240, on the other hand, States that any law made for the Union Territory for the time being, in order to amend any Act made by the Parliament, when promulgated by the President shall have the same effect on the Union Territory as any Act of Parliament.

High Courts for Union Territories

According to Article 241 Clause (1), of the Constitution the Parliament may by law constitute a High Court for a Union Territory or make a court in the territory to be the High Court for any such purposes made by the Constitution.

Clause (2) of Article 241 further States that the provisions of Part V and Part VI shall apply to High Courts of Union Territories as mentioned in the above clause, in a similar manner as they apply to other High Courts under Article 214 unless any provision or specification as Parliament may by law provide.

Moving on to Clause (3), it States that every High Court that exercises jurisdiction on any Union Territory immediately before the formation of the Constitution will carry on to do so subject to the provisions of the Constitution or any law made by the Legislature. However, nothing prevents the Parliament from making any law to extend or to keep out the jurisdiction of the High Court of a State upon any Union Territory or any part thereof.

Comparing States and Union Territories

States	Union Territories
Their relationship with Centre is federal.	Their relationship with Centre is unitary.
They share a distribution of power with the Centre.	They are under the direct control and administration of the Centre.
They have autonomy.	They do not have any autonomy.
There is uniformity in their administrative set-up.	There is no uniformity in administrative set-up. their administrative set-up.
Their executive head is known as Governor.	Their executive head is known by various designations– Administrator or Lieutenant Governor or Chief Commissioner.
A Governor is a constitutional head of the State.	An Administrator is an agent of the President.
Parliament cannot make laws on the subjects of the State list in relation to the States except under extraordinary circumstances.	Parliament can make laws on any subject of the three lists the State list in relation to the States except under in relation to the Union Territories

35 Scheduled and Tribal Areas

Introduction

Article 244 deals with the administration of Scheduled Areas and Tribal areas. The provisions of the Fifth Schedule of the Constitution apply to the administration and control of the Scheduled Areas and scheduled tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.

Administration of Schedule Areas

The features of the Fifth Schedule are mentioned below:

- ***Declaration of Scheduled Areas:*** The Constitution empowers the President to declare any areas as scheduled area. The President can increase or decrease its area or alter its boundaries. He can cancel such designation after consultation with the Governor or can make fresh orders redefining the Schedule Areas.
- ***Executive Power of State and Centre:*** Subject to the provisions of this schedule, the executive power of State extends to the Scheduled Areas therein. The Governor of each State having Scheduled Areas annually, or whenever required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State. The executive power of the union extends to the giving of directions to the State as to the administration of such areas.
- ***Tribes Advisory Council:*** Each State having Scheduled Areas needs to establish Tribes' Advisory Council consisting of not more than twenty members of whom about three-fourth members should be the representatives of the scheduled tribes in the Legislative Assembly of the State.
- ***Law Applicable to Scheduled Areas:*** The Governor is empowered to direct that any particular act of Parliament or of the Legislature of the State does not apply to a scheduled area subject to such exceptions and modifications as he may specify in the notification.
  - Prohibit or restrict the transfer of land by or among members of the scheduled tribes in such area;
  - Regulate the allotment of land to members of the scheduled tribes in such area;
  - Regulate the carrying on of business as money-lender by persons who lend money to members of the scheduled tribes in such area.
- In doing so, Governor may repeal or amend any act of Parliament or the State Legislature or any existing law which is for the time being applicable to such area. All the above regulation requires the assent of the President.

Concern associated to Fifth Schedule Area

The Fifth Schedule promotes Scheduled Tribes' welfare and advancement, as well as the administration of Scheduled Areas. It gives the Governor of a State with Scheduled Areas extraordinary powers of governance. In practice, however, despite the recommendations of several groups, the extraordinary legislative and executive administrative powers have been rarely used.

- Conflict of Interest: State cabinet (highest decision-making body in the State) and the Tribal Advisory Council are headed by the same person, it would then be impossible for the Tribal Advisory Council to overturn a decision taken by the cabinet, even if it were not in the interest of tribal communities in Scheduled Areas.
- Environmental & Livelihood Concern: Loss of land remains the single biggest cause of deprivation of the livelihoods, lives and homelands of tribals across India. Scheduled Areas have the highest forest coverage and are rich in minerals.
- It has been observed that the corporate sector uses scheduled regions' business potential to press the State government for favourable choices and big earnings. It has an impact on tribal populations' environment and livelihood. The tribal populations have been disproportionately targeted, displacing them from their lands and livelihoods.

- Issue related to PESA: Panchayats (Extension to Scheduled Areas) Act, 1996 was seen as the logical next step in ensuring tribal welfare and accountability in the Fifth Schedule areas. However, it has not been implemented properly. Tribal communities have been gradually denied self-government and rights to their communities' natural resources, which were supposed to be provided under the law.

Tribal Areas

The Sixth Schedule deals with the administration and control of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.

Administration of Tribal Areas

The Sixth Schedule of the Constitution provides special provisions for the administration of the tribal areas in Assam, Meghalaya, Tripura and Mizoram. The provisions of the schedule are as follows:

- It provides for autonomous districts and autonomous regions.
- The Governor can increase, decrease, re-organise or alter the boundary of these districts.
- If there are different scheduled tribes in an autonomous district, the Governor may divide the area or areas inhabited by them into autonomous regions.
- Each autonomous district has a district council consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage. The elected members of the district council hold office for a term of five years and nominated member hold office at the pleasure of the Governor.
- The district and the regional councils can make laws on matters such as land, forests, canal water, Jhum cultivation, local administration, inheritance of property etc.
- The district and the regional councils may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas.
- The district council can establish, construct, or manage primary schools, dispensaries, markets, ferries, fisheries, roads, road transport and waterways in the district.
- A district fund for each autonomous district, and a regional fund for each autonomous region is constituted to which money received respectively by the district council
- The district and the regional councils have powers to assess and collect land revenue and to impose certain taxes.
- The District Council is empowered to make regulations for the control of money-lending and trading by non-tribals.
- Estimated receipts and expenditure pertaining to autonomous districts has to be shown separately in the annual financial Statement of the State.
- An act of Parliament or of the Legislature of the State does not apply to an autonomous districts and autonomous regions or apply with specified exceptions and modifications.
- If at any time the Governor is satisfied that an act or resolution of a district or a regional council is likely to endanger the safety of India, he may suspend such an act or resolution and take such steps.
- The Governor can appoint a commission to look into and report on the matters related to administration of the autonomous districts or regions.

States	Tribal Areas
Assam	1. The North Cachar Hills District 2. The Karbi Anglong District 3. The Bodoland Territorial Areas District
Meghalaya	1. Khasi Hills District 2. Jaintia Hills District 3. The Garo Hills District
Tripura	1. Tripura Tribal Areas District
Mizoram	1. The Chakma District 2. The Mara District 3. The Lai District

36 Jammu and Kashmir

Historical Background

In 1947, at the time of independence, the State of Jammu and Kashmir decided not to join either Pakistan or India. India welcomed this decision, but Pakistan attempted to annex the State militarily. The Maharaja sought Indian help to save his territory and people who were being killed and looted by the Pakistani militants. The then Prime Minister Jawaharlal Nehru accepted Jammu & Kashmir's accession to India. The Maharaja signed the "Instrument of Accession" with certain concessions for the autonomy of the State. This special status of the State was enshrined in Article 370 of the Indian Constitution.

Important Erstwhile Features – Special Status of Jammu and Kashmir by Article 370

- The State of Jammu and Kashmir had its own Constitution apart from Indian Constitution.
- This state followed 'dual citizenship'- Citizenship of Jammu and Kashmir and India.
- The residuary power of the state lied with the Legislature of the Jammu and Kashmir and not the Parliament of India.
- Except for defence, foreign affairs, finance and communications, the Parliament needed the state government's concurrence for applying all other laws.
- The state has its own Criminal code titled as Ranbir Penal Code.
- The national emergency declared in the ground of war or external aggression shall have an automatic extension to the State.
- The national emergency proclaimed on the grounds of armed rebellion, shall not have an automatic extension to Jammu and Kashmir.
- The Governor of the State was to be appointed only after consultation with the Chief Minister of that State.
- Financial Emergency under Article 360 of Indian Constitution cannot be imposed on the State.
- Directive Principle of Policy and Fundamental duties enshrined in Part IV was not applicable to Jammu and Kashmir.
- Apart from the President's rule, the Governor's rule could also be imposed on the State for a maximum period of six months.
- The preventive detention laws as mentioned in Article 22 of Indian Constitution do not have an automatic extension to the State.
- The name, boundary or territory of the State of Jammu and Kashmir cannot be changed by the Parliament without the concurrence of the State Legislature.
- The term of other Indian state Legislators is 5 years whereas, for Kashmir, it was 6 years.
- Article 19(i) (f) and 31 (2) of Indian constitution have not been abolished for this State and 'Right to property' still, stands guaranteed to the people of Jammu and Kashmir.

Article 35A

- It was added by a 1954 Presidential Order issued under Article 370, the constitutional provision that mediates the relationship between the Union of India and Kashmir.
- Article 35A of the Constitution provide Jammu and Kashmir Legislature authority to decide who all are 'permanent residents' of the State and confer on them special rights and privileges in public sector jobs, acquisition of property in the State, scholarships and other public aid and welfare.
- Article 35A also empowers the State's legislature to frame any law without attracting a challenge on grounds of violating the Right to Equality of people from other States or any other right under the Constitution.

Main provisions in Article 35A

- A person who is not a permanent resident of Jammu and Kashmir can't own property there.
- Resident of any other state of India cannot become a Permanent Resident of Jammu and Kashmir and therefore cannot cast vote there.
- It forbids Indian citizens from acquiring immovable properties and can't seek employment in the State.
- If a girl of Jammu and Kashmir marries a person who does not hold a permanent resident certificate of J&K, then she would lose her property right and their children also become ineligible to claim the property of their mother.
- This article discriminates with the citizens of India because of the enforcement of Article 35A. As, the people of India are denied with the Permanent Resident certificate of Jammu and Kashmir while the intruders from Pakistan were granted citizenship. Recently, Rohingya Muslims from Myanmar have been allowed to settle in Kashmir.
- It conflicts with fundamental rights under Article 14, 19 and 21 of the Constitution.
- Article 35A also adversely affects the economic development of the state.
- Meritorious students are denied scholarships and they cannot even seek redress in any court of law.
- Also, the issues regarding refugees who migrated to J&K during Partition are still not treated as "State subjects" under the Jammu and Kashmir Constitution.
- Article 35A was inserted unconstitutionally, bypassing Article 368 which empowers only Parliament to amend the Constitution.

The Jammu and Kashmir Reorganisation Act, 2019

'The Jammu and Kashmir Reorganisation Bill 2019' was that bill by which passes results abolition of Article 370 and Article 35A of the Indian Constitution.

The main features of this Act are:

- Reorganisation of the State of Jammu and Kashmir:
  - This Act gives provision for reorganisation of Jammu and Kashmir into two Union Territory, i.e., Union territory of Jammu and Kashmir (consists of Kargil and Leh districts) and Union territory of Ladakh (remaining territories of the state of Jammu and Kashmir except for Kargil and Leh districts).
- Lieutenant Governor:
  - These two Union territories will be administered by the President, through a Lieutenant Governor (appointed by the President).
- Legislative Assembly:
  - This Act provides the concept of new Legislative Assembly for the Union Territory of Jammu and Kashmir and says about the various characters of the same.
  - Total number of seats- 107 seats.
  - 24 seats out of 107 seats will remain vacant as their areas are occupied by Pakistan.
  - Seats of Assembly will be reserved for Scheduled Castes and Scheduled Tribes according to their population in Union Territories.
  - Lieutenant Governor can nominate any two members for the representation of women to Legislative Assembly if they are not sufficiently represented.
  - The Assembly term will be of five years and it is mandatory for Lieutenant Governor to summon the assembly at least once in six months.
  - The Legislative Assembly can make laws for any part of Union Territory of Jammu and Kashmir which is related to:
    - Matters mentioned in State list of the constitution, except "Police and Public Order".
    - Matters which are in Concurrent list applicable to Union Territory.
  - Parliament has the power to make laws for Union Territory of Jammu and Kashmir.
- Council of Ministers:
  - The Union Territory of Jammu and Kashmir has Council of Ministers of not more than 10% of members in the Legislative Assembly. The Council of Ministers will advise Lieutenant Governor in the matter of making laws. The Chief Minister has to communicate each and every decision of Council of Ministers to Lieutenant Governor.
- High Court:
  - There will be only one High Court for both

Union Territory. Union Territory of Jammu and Kashmir will have an Advocate General who will give legal advice to the Government of Union Territory.

- Legislative Council:
  - The Legislative Council of the State of Jammu and Kashmir will be abolished and all bills which are pending in Legislative Council will lapse.
- Advisory Committees:
  - The Central Government will appoint Advisory Committees for various purposes, such as-
    - Distribution of assets and liabilities of the State into two union territories.
    - Issue of generation and supply of electricity and water.
    - Issue of State Financial Corporation.
- The extent of laws:
  - 106 central laws of the Schedule lists will be applicable in both Union Territories from dated which is notified by the Central Government. These include:
    - The Aadhaar Act 2016;
    - The Indian Penal Code 1860;
    - Right to Education Act 2009; etc.

Reorganisation (Adaptation of State Laws) Order, 2020

The issues related to Article 370 and Article 35A were very sensitive and complex issues which were raised in India. It was a historical decision that Indian Government cancelled the special status which was granted under Article 370 to Jammu and Kashmir, which has been a matter of dispute among India, Pakistan and China since 1947.

Highlights of the Order

It amended 109 laws and repealed 29 laws of the erstwhile State and inserted the 'domicile' clause in the Jammu and Kashmir Civil Services (Decentralisation and Recruitment) Act, 2010.

- The clause for 'permanent resident of the State' under the 2010 Act, has been substituted by 'Domicile' of the Union Territory, according to which a person residing in J&K for at least 15 years will now be eligible to be a domicile of the Union Territory.
- If a person has studied for a period of 7 years and appeared in class 10th or 12th examination in an educational institution located in the Union Territory of Jammu & Kashmir will also be considered as the domicile of the Union Territory.
- Someone who is registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants).
- Children of Central government officials, All India Services, PSUs, autonomous body of Centre, Public Sector Banks, officials of statutory bodies, Central Universities, recognised research institutes of Centre who have served in Jammu & Kashmir for a total period of 10 years.
- Children of such residents of Jammu & Kashmir who reside outside Jammu & Kashmir in connection with their employment or business or other professional or vocational reasons but their parents fulfil any of the conditions provided.
- Tehsildar shall be the competent authority for issuing the domicile certificate, as opposed to Deputy Commissioner.
- Section 5-A states that the domiciles will be eligible for the purposes of appointment to any post carrying a pay scale of not more than Level 4.
- The Level 4 post comprises positions such as gardeners, barbers, office peons and waterman and the highest rank in the category is that of a junior assistant.
- The reservation for domiciles would not apply to Group A and Group B posts, and like other Union Territories, recruitment would be done by the Union Public Service Commission (UPSC).
- Centre has repealed the Jammu & Kashmir Civil Services (Special Provisions) Act.
- The order also amended the Jammu and Kashmir State Legislature Members' Pension Act,1984 which fixes the pension for former legislators and councillors.
- The notification scraps all pension benefits such as car, driver, accommodation, phones, electricity, medical facilities and rent-free accommodation to former Jammu & Kashmir Chief Ministers.

- The order has also made amendments to the Public Safety Act (PSA) 1978 by removing a clause that prohibited Jammu & Kashmir residents booked under the Act to be lodged in jails outside.
- It changes the criteria for appointing the PSA advisory board on the recommendation of a search committee headed by the Chief Secretary instead of the Chief Justice of the Jammu & Kashmir High Court.
- The advisory board has a crucial role to play in release of detenus under the PSA.
- It also bars sitting High Court judges to be made part of the board without the Chief Justice's consultation.
- The order also scraps a clause that deals with the power to regulate place and conditions of detention.

The Jammu and Kashmir Reorganisation (Amendment) Bill, 2021

The Jammu and Kashmir Reorganisation (Amendment) Bill, 2021 was introduced in Rajya Sabha. It amends the Jammu and Kashmir Reorganisation Act, 2019. The Act provides for the bifurcation of the state of Jammu and Kashmir (J&K) into the Union Territory of J&K and Union Territory of Ladakh. The Bill repeals the Jammu and Kashmir Reorganisation (Amendment) Ordinance, 2021.

Key features of the Bill include:

Application of provisions on elected legislatures:

The Act provides that Article 239A of the Constitution, which is applicable to the union territory of Puducherry, shall also apply to the union territory of J&K. Article 239A provides for the constitution of a union territory of Puducherry with:

(i) a Legislature, which may be elected, or partly nominated and partly elected, or

(ii) a Council of Minister.

The Bill states that in addition to Article 239A, any other provision of the Constitution which refers to elected members of a legislative assembly of a state and is also applicable to the union territory of Puducherry, will apply to the union territory of Jammu & Kashmir.

Merging of administrative cadres:

- The Act specifies that the members of the Indian Administrative Service, the Indian Police Service and the Indian Forest Service serving in the state of Jammu & Kashmir would continue to serve in the two union territories, based on allocation decided by the central government. Further, in future, postings of officers in the two union territories would be from the Arunachal Goa Mizoram Union Territory (AGMUT) cadre. The AGMUT cadre covers the three states of Arunachal Pradesh, Mizoram and Goa, as well as all the Union Territories.
- The Bill amends these clauses to provide for the merger of the officers in the existing cadre of Jammu & Kashmir with the AGMUT cadre.

The state of Jammu and Kashmir is an integral part of India. The state has been given some autonomy under Article 370 in the view of federalism and its unique history of the state joining the Union of India. Article 370 is not the issue of integration but that of granting autonomy or federalism. In order to overcome all the other legal challenges, the Indian Government rendered Article 370 as 'inoperative' and it still has its place under the Constitution of India.

37 Special Provisions for some States

Introduction

The Part XXI of the Indian Constitution consists of Articles on 'Temporary, Transitional and Special Provisions. Apart from Article 370, Articles 371, 371A, 371B, 371C, 371D, 371E, 371F, 371G, 371H, and 371J defines the special provisions given to some States of the Indian Union. However, in 2019, the Union Government has nullified the Special Status granted to the Jammu and Kashmir by the Indian Constitution. But the special provisions (Articles 371) granted to as many as 11 States continue to exist as a part of the Constitution. All these provisions take into account the special circumstances of the individual States and mention all the safeguards in relation to those circumstances. Recent developments indicate that States like Andhra Pradesh, Bihar, Goa, Odisha, and Rajasthan have been demanding the Special Category Status from the Government.

Historical Background

The Fifth Finance Commission provided certain disadvantaged States with preferential treatment like Central assistance, tax breaks, development of educational institutions, special development boards, etc. Dr. Gadgil Mukherjee was then Deputy Chairman of the Planning Commission. In the beginning, only three States; Assam, Nagaland, and Jammu and Kashmir were granted with the special status but later on from 1974 to 1979; Himachal Pradesh, Manipur, Meghalaya, Sikkim, and Tripura were also added under the Special Category Status. Arunachal Pradesh and Mizoram were added in 1990 and Uttarakhand in 2001.

Difference between Article 370 and Article 371:

Article 370 provided with special powers and status to the State of Jammu and Kashmir. It empowered the Jammu and Kashmir to form its own Constitution other than the Indian Constitution. The residents of the State had a dual citizenship and their own national flag. RTI, RTE, CAG, and the majority of Indian laws were not applicable there. Article 370 was abrogated in 2019 whereas Article 371 still continues to exist in the Indian Constitution.

Benchmarks for Special Category Status:

In the past, the Special Category Status was granted by the National Development Council composed of the Prime Minister, Union Ministers, Chief Ministers, and members of the Planning Commission. The criteria for the special status are as follows:

- Hilly and difficult terrain.
- Low population density.
- Presence of a sizable tribal population.
- Strategic location along international borders.
- Economic and infrastructural backwardness.
- Non-viable nature of State finances.

Importance of Special Category Status:

Normal Central Assistance favours the Special Category States (Currently, 11 States) enjoy 30% of the total assistance and the rest 70% is divided among the remaining States. The nature of assistance is also different for the Special Category Status. Normal Central Assistance (NCA) is divided into 90% grants and 10% loans for these States whereas it is 30% grants and 70% loans for the States which are not under the Special Category.

Some of the major Benefits of Special Category Status:

- 90% of the State expenditure on all the schemes sponsored by the Centre and external aid is bore by the Central Government and the remaining 10% is provided as a loan to the State on 0% interest.
- For Central funds, preferential treatment is given to the States.
- To attract industries, concession on the excise duty is provided to the States.
- The Centre's gross budget of around 30% goes to the Special Category States.
- Benefits of debt relief schemes and debt swapping can also be availed by the States.

- These States are exempted from income tax, corporate tax, etc.
- Unspent money is carried forward to the next financial year.

Special Provisions for States:

Special Provisions for Maharashtra and Gujarat

- Under Article 371, the Governor has special responsibility for the formation of separate development boards for "Vidarbha, Marathwada, and the rest of Maharashtra", "Saurashtra, Kutch, and the rest of Gujarat".
- Provision is also there that a report on the working of these boards must be put before State Legislative Assembly every year. There should be an equal allocation of funds for the developmental expenditure of the above-mentioned areas.
- Apart from it, equal and adequate facilities for technical education and vocational training as well as adequate opportunities for employment shall be provided under the State Government.

Special Provisions for Nagaland

- These provisions are incorporated in Article 371A by the 13th Amendment Act, 1962.
- According to these provisions, without the agreement of the State Legislative Assembly, the Parliament is not allowed to legislate on the matters related to the Naga religion or social customary practices, the Naga law, civil and criminal justice including the decisions which are taken in accordance with the Naga customary law, ownership and transfer of land and its resources.
- This provision was inserted by a 16-Point Agreement between the Centre and the Naga People's Convention in 1960 which led to the creation of Nagaland in 1963.

Special Provision for Assam

- Under Article 371B by 22nd Amendment Act, 1969, the President is empowered to provide for the constitution and functions of a committee of the Assembly which will consist of members elected from the State's tribal areas.

Special Provisions for Manipur

- As per the provisions comprised in Article 371C by 27th Amendment Act, 1971,
- The President is authorized to provide for the creation of a committee of the Manipur Legislative Assembly consisting of the members elected from the Hill Areas of the State.
- The President can also direct that the Governor shall have special responsibility to secure the proper functioning of that committee.
- The Governor should submit an annual report to the President regarding the administration of the Hill Areas.
- The Central Government can give directions to the State Government as to the administration of the Hill Areas.

Special Provisions for Andhra Pradesh and Telangana

These provisions are included in Article 371D by 32nd Amendment Act, 1973. With respect to these provisions,

- The President is empowered to provide for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and education and different provisions can be made for various parts of the State.
- For the above purpose, the President may require the State Government to organise civil posts in local cadres for different parts of the State and provide for direct recruitment to posts in any local cadre. He may specify parts of the State which shall be regarded as the local area for admission to any educational institution. He may also specify the extent and manner of preference or reservation given in the matter of direct recruitment to posts in any such cadre or admission to any such educational institution.
- The President may provide for the establishment of an Administrative Tribunal in the State to deal with certain disputes and grievances relating to appointment, allotment or promotion to civil posts in the State. The tribunal is to function outside the purview of the State High Court.
- No court (other than the Supreme Court) is to exercise any jurisdiction in respect of any matter subject to the jurisdiction of the tribunal. The President may abolish the tribunal when he is satisfied that its continued existence is not necessary.
- Article 371-E empowers the Parliament to provide for the establishment of a Central University in the State of Andhra Pradesh.

Special Provisions for Sikkim

- The 36th Constitutional Amendment Act of 1975 made Sikkim a full-fledged State of the Indian Union. It included a new Article 371-F containing special provisions with respect to Sikkim. These are as follows:
  - The Sikkim Legislative Assembly is to consist of not less than 30 members.
  - One seat is allotted to Sikkim in the Lok Sabha and Sikkim forms one Parliamentary constituency.
  - For the purpose of protecting the rights and interests of the different sections of the Sikkim population, the Parliament is empowered to provide for the:
    - number of seats in the Sikkim Legislative Assembly which may filled by candidates belonging to such sections; and
    - delimitation of the Assembly constituencies from which candida belonging to such sections alone may stand for election to Assembly.
  - The Governor shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of the different sections of the Sikkim population. In the discharge of this responsibility, the Governor shall act in his discretion, subject to the directions issued by the President.
  - The President can extend (with restrictions or modifications) to Sikkim any law which is in force in a State of the Indian Union.

Special Provisions for Mizoram

- These provisions are contained in Article 371G which came into existence under 53rd Amendment Act, 1986.
- According to these provisions, without the agreement of the State Legislative Assembly, the Parliament is not allowed to legislate on the matters related to the Mizo religion or social customary practices, the Mizo law, civil and criminal justice including the decisions which are taken in accordance with the Mizo customary law, ownership, and transfer of land and its resources.
- The Mizoram Legislative Assembly is to consist of not less than 40 members.

Special Provisions for Arunachal Pradesh

- are encompassed under Article 371 H, 55th Amendment Act, 1986.
- As per these provisions, the Governor has a special responsibility in maintaining law and order. He can take individual action after consulting the Council of Ministers.
- In the discharge of this responsibility, the Governor, after consulting the Council of Ministers, exercises his individual judgement and his decision is final.
- This special responsibility of the Governor shall cease when the President so directs.
- The Arunachal Pradesh Legislative Assembly is to consist of not less than 30 members.

Special Provision for Goa

- Article 371-I, 56th Amendment Act, 1987 provides for 30 members as the minimum requirement for the Legislative Assembly of Goa.

Special Provisions for Karnataka

- Under Article 371J by 98th Amendment Act, 2012, the Governor has special responsibility for the formation of separate development boards for the Hyderabad-Karnataka region.
- Provision is also there that a report on the working of these boards must be put before State Legislative Assembly every year.
- There should be an equal allocation of funds for the developmental expenditure of the above-mentioned areas.
- Apart from it, reservation of seats in educational and vocational training institutions, as well as the reservation in State Government posts in the region, shall be provided for the persons belonging to the Hyderabad-Karnataka region.

Often these special provisions provided by the Constitution is given as an example for 'asymmetry' in Indian federalism.

Asymmetrical Federalism:

"Asymmetric Federalism" is understood to mean federalism based on unequal powers and relationships in political, administrative and fiscal arrangements spheres between the units constituting a federation.

Asymmetry in the arrangements in a federation can be viewed in both vertical (between Centre and States) and horizontal (among the States) senses

Evidences of this 'asymmetry' in India

- ***A strong Union:*** Residuary powers vested with it, it is an indestructible Union with destructible States constituting it, Emergency provisions give the Union overriding powers over the States to tackle any adverse exigency, power to initiate a constitutional amendment lies with the Union, President's Rule, Governor's office, etc.
- ***Special provisions for some States:*** Article 371 of the Constitution makes some special provisions for States or regions of States that are socio-economically backward, have internal security challenges, difficult geographical conditions, predominance of tribal populations with distinct identity and cultures, etc.
- Allocation of Parliamentary seats to the States is not uniform but on the basis of population.
- The Sixth Schedule envisage special provisions for and autonomy to tribal areas in four north-eastern States.
- Special Category Status (SCS) given to 11 States as a means of financially assisting States at a relative disadvantage due to various factors.

Reason for adoption of asymmetric federalism

This scheme of 'asymmetrical federalism' has been adopted by India due to its unique socio-economic and political circumstances:

- ***Political:*** in the interests of the nation's unity and integrity, resentment of some historically backward or indigenous population dominated States have to be addressed so that they do not give rise to separatist tendencies; a stable government at the Centre requires cooperation from all the States. This led to greater autonomy for States included in sixth schedule, special powers to J&K under article 370(now scrapped), union territories in India, greater powers to centre vis-à-vis State to ensure uniformity and unity etc.
- ***Social:*** Social development has not been uniform, in the country; the southern States have mostly been ahead than their counterparts (as revealed by their higher literacy, better maternal and child health, etc.), hence special provisions, packages and developmental focus were necessitated in favour of the States lagging behind. Ex: Protection to certain tribal areas in the country.
- ***Economic:*** industrial and economic growth has been geographically skewed in India which has also necessitated asymmetrical federalism, Ex: Special category provisions given to some States, higher share of Central government in Centrally Sponsored Schemes.

Specific socio-economic and political circumstances warrant the 'asymmetrical' federal structure of Indian polity. It is important to fulfil the aspiration of social and economic democracy and to promote egalitarian development throughout the country. It also serves to keep regional resentments under check which if neglected can lead to separatist tendencies as manifested in the demands for Statehood. Thus, national unity and integrity is also contingent on this scheme of federalism.

Importance of asymmetric federalism in India:

- ***Secure rights:*** These special provisions in the Constitution help in protecting fundamental rights, and compensate for initial inequalities in the social system.
- ***Social justice:*** Allowance for separate laws to govern different religious groups, and provisions for various kinds of affirmative action for extremely disadvantaged groups help in ensuring justice to them.
- ***Ensure unity in diversity:*** These provisions respect and preserve diversity of the country by protecting vulnerable group through special powers. This ensures unity in diversity.
- ***Satisfy different needs:*** It act as a solution to satisfy different needs of various federal units, as the result of an ethnic, linguistic or cultural difference. Asymmetric federalism has helped in reducing dissatisfaction among various States
- ***Reduce radicalisation:*** Special powers given to the State of Jammu and Kashmir helps in reducing radicalisation. The State of Jammu and Kashmir was given special power because the State though includes several diverse populations, but the majority of the population of the State is Muslim, and the State was also near the new country "Pakistan' which is a major 'Muslim' country.
- ***Better representation in democracy:*** It has helped in providing representation to minority areas and areas with less population providing them justice.

38 Constitutional & Non-Constitutional Bodies

INTRODUCTION

India is a democratic country that is run by the combination of Constitutional and Non-Constitutional Bodies in India.A Constitutional body is a body which is established by the Constitution of India. Such Constitutional bodies can only be created or changed after a Constitutional Amendment bill is passed and not by a regular government bill or a private bill.

The powers and authorities for the Constitutional bodies are derived from the Indian Constitution. These bodies are considered more prestigious, powerful and supreme than any other organisations or institutions present in India.Thus, if any change is to be made in the powers of functions related to such bodies a Constitutional amendment is required.

In India, the Constitutional bodies hold permanent or semi-permanent position within the machinery of the government. These bodies are responsible to carry out executive functions for the proper administration of the Government.The Indian Constitution empowers the President of India to make such Constitutional appointments. Constitutional bodies in India are established in order to assist the government to operate efficiently and effectively.

- Eg. Election Commission, Union Public Service Commission, State Public Service Commission, Finance Commission.

ELECTION COMMISSION

The Election commission of India is a permanent, autonomous, quasi-judicial and constitutional body created under Article 324 in part XV of the constitution. It is the supreme body vested with powers of supervision, control and direction over all aspects of electoral governance in the country.

Background

Since its establishment in 1950 and till 15th October 1989, the Election Commission had functioned as a single member body consisting of the Chief Election Commissioner.

But on 16th October 1989, the President of India appointed two more election commissioners to cope up with the increased work of the election commission, this was done due to the fact that the voting age had been reduced to 18 years from 21 years.

And in October 1993, the President of India appointed two more election commissioner and since then, to this day, the Election Commission has been functioning as a multi-member body consisting of three election commissioners.

Constitutional Provisions:

Part XV (Article 324-329) of the Indian Constitution deals with elections and establishes a commission for these matters.

- ***Article 324:*** Superintendence, direction and control of elections to be vested in an Election Commission.
- ***Article 325:*** No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll-on grounds of religion, race, caste or sex.
- ***Article 326:*** Elections to the House of the People and to the Legislative Assemblies of States to be based on adult suffrage.
- ***Article 327:*** Power of Parliament to make provision with respect to elections to Legislatures.
- ***Article 328:*** Power of Legislature of a State to make provision with respect to elections to such Legislature.
- ***Article 329:*** Bar to interference by courts in electoral matters.

What is the Election commission?

- The Election Commission is an independent and permanent body which is established by the Constitution of India to ensure free and fair elections in the entire nation.
- Article 324 of the Constitution of India provides for the power of superintendence, direction, and

control of the elections for the Parliament, State Legislatures, the office of the President of India and the office of the Vice-President of India, is vested in the Election Commission's jurisdiction. Hence, the election commission is a body which is common to both the Central Government as well as the State Governments.

- The Election Commission is not at all concerned with the elections of Panchayats and Municipalities in the states, for these elections, there is a separate body which is called as the State Election Commission

Mission and the Vision of the Election Commission

The Mission of the Election Commission: The Election Commission of India has to maintain its independence, integrity, and autonomy and it must also ensure ease of accessibility, inclusiveness, and ethical participation. It must also adopt the highest standards of professionalism for free, fair, and transparent elections in India to strengthen the trust which the people have in the electoral democracy and governance.

The Vision of the Election Commission: The Election Commission of India has to be an Institution of excellence by intensifying active involvement through participation and deepening as well as strengthening the situation of Democracy in India.

Composition of the Election Commission

As per Article 324, the Constitution of India has made many provisions with respect to the composition of the election commission, these are,

- The Election commission will consist of the Chief Election Commissioner and any number of other Election Commissioners, if any, as per the President of India's assent.
- The appointments of the chief election commissioner and any other election commissioner will be done by the President of India himself.
- When another Election Commissioners is appointed then in such cases, the Chief Election Commissioner will have the authority to act as the Chairman of the Election Commission.
- The President of India can also appoint regional commissioners as he deems necessary to assist the Election Commission, this can be done after consulting with the Election Commission.

Tenure:

- They hold the office for a period of 6 years or till they attain the age of 65 years, whichever happens first and they can also resign at any time or can be removed before the expiry of their tenure.
- The tenure and the conditions of the work to be done by the Election Commissioners and the regional commissioners will be determined by the President of India.
- The Chief Election Commissioner and the two other Election Commissioner have equal powers and they also receive equal salary and allowances, these are similar to those of a Judge of the Supreme Court.

Powers of Election Commission of India

The powers of Election Commission of India are:

- Determining the Electoral Constituencies' territorial areas throughout the country on the basis of the Delimitation Commission Act of Parliament.
- Preparing and periodically revising electoral rolls and registering all eligible voters.
- Notifying the schedules and dates of elections and scrutinising nomination papers.
- Granting recognition to the various political parties and allocating them election symbols.
- Acting as a court to settle disputes concerning the granting of recognition to political parties and allocating election symbols to the parties.
- Appointing officers for inquiring into disputes concerning electoral arrangements.
- Determining the code of conduct to be followed by the political parties and candidates during elections.
- Preparing a program for publicising the policies of all the political parties on various media like TV and radio during elections.
- Advising the President on matters concerning the disqualification of MPs.
- Advising the Governor on matters concerning the disqualification of MLAs.
- Cancelling polls in case of booth capturing, rigging, violence and other irregularities.
- Requesting the Governor or the President for requisitioning the staff required for conducting elections.
- Supervising the machinery of elections throughout the country for ensuring the conduct of free and fair elections.

- Advising the President on whether elections can be held in a state that is under the President's rule, in order to extend the period of emergency after 1 year.
- Registering political parties and granting them the status of national or state parties (depending on their poll performance).

The Commission is aided in its function by Deputy Election Commissioners. The Deputy Election Commissioners are taken from the civil services and they are appointed by the Commission. They have a fixed tenure. They are aided by the Secretaries, Deputy Secretaries, Joint Secretaries and Under-Secretaries posted in the Commission's Secretariat.

Functions of Election Commission of India

The functions of Election Commission are as follows:

- To direct and control the entire process of conducting elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.
- To decide the election schedules for the conduct of periodic and timely elections, whether general or bye-elections
- To decide on the location of polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters
- To prepare electoral roll and issues Electronic Photo Identity Card (EPIC)
- To grant recognition to political parties & allot election symbols to them along with settling disputes related to it
- To sets limits of campaign expenditure per candidate to all the political parties, and also monitors the same
- To advise in the matter of post-election disqualification of sitting members of Parliament and State Legislatures.
- To issue the Model Code of Conduct in the election for political parties and candidates so that no one indulges in unfair practice or there is no arbitrary abuse of powers by those in power.

Independence of Election Commission

Article 324 of the Constitution of India has made many provisions which safeguard and ensures that the Election Commission is independent and impartial in its functioning, these are the following provisions,

- The Chief Election Commissioner has been provided with the stable tenure and he cannot be removed from his office except in the manner and grounds on which a Supreme Court's Judge is removed from his office. He can be removed by the President of India on the basis of a resolution passed for such an outcome by both the Houses of the Parliament with a special majority (2/3rd of the members presents and voting) which is either on the grounds of misbehaviour or incapacity to work.
- The conditions of the Chief Election Commissioner's service cannot change to his disadvantage after his appointment is done.
- Any other Commissioner (Election Commissioner or Regional Commissioner) cannot be removed from his office unless it is done on the recommendations of the Chief Election Commissioner himself.

Flaws in the Election Commission

- The Constitution of India has not specified the qualifications of the members of Election Commission.
- The Constitution of India has not specified the term of the tenure of the members of the Election Commission.
- The Constitution of India has not restricted the retiring Election Commissioners from any further appointments by the Government of India.

Challenges

- the years influence of money and criminal elements in politics has increased along with violence and electoral malpractices resulting in criminalization of politics. The Election Commission of India has been unable to arrest this deterioration.
- There has been rampant abuse of power by the state government who at times make large-scale transfers on the eve of elections and posts pliable officials in key positions, using official vehicles and buildings for electioneering, flouting the ECI's model code of conduct.
- The Election Commission of India is not adequately equipped to regulate the political parties. The Election Commission of India has no power in enforcing inner-party democracy and regulation of party finances.

- In the recent years, an impression is gaining ground that the Election Commission is becoming less and less independent of the Executive which has impacted the image of the institution.
- One of the major institutional drawbacks is non- transparency in election of Chief Election Commissioner and other two commissioners and is based on the choice of presiding Government.
- There have been allegations of EVMs malfunctioning, getting hacked and not registering votes which corrodes general masses trust from the institution.

Union Public Service Commission

Introduction

Articles 315 to 323 in Part XIV of the Constitution deals with provisions relating to the Union Public Service Commission as well as the State Public Service Commission. These Constitutional Provisions include guidelines regarding the appointment, composition, removal, functions, and duties, etc. of the Public Service Commissions

The UPSC is a constitutional body. It is a central agency which is authorized to conduct various examinations in India and the list of exams is given below.

- Civil Services Exam
- Indian Forest Service Exam
- Engineering Services Examination
- Combined Defence Services Examination
- National Defence Academy Examination
- Naval Academy Examination
- Combined Medical Services Examination
- Special Class Railway Apprentice
- Indian Economic Service/Indian Statistical Service Examination
- Combined Geoscientist and Geologist Examination
- Central Armed Police Force (Assistant Commandant) Examination

Composition of Union Public Service Commission

- The UPSC consist of a Chairman and other members.
- The Commission consists of 9 to 11 members including the Chairman (though the number is not defined anywhere, and it changes from time to time and decided by the President).
- The current sanctioned strength of the Commission is 11 (i.e., one Chairman and ten members).

Appointment and Eligibility of members

- Article 316 of the Indian Constitution provides for provisions regarding the appointment of the Chairman and the members of the UPSC and SPSC
- The Chairman and other members of Union Public Service Commission are appointed by the President.
- Although no specific qualification is mentioned in the Constitution, but it mandates that 50% of the members of UPSC should be the ones who have held government office for at least 10 years.
- The President is empowered by the Constitution of India to determine the conditions of service of the Chairman and other members of the Union Public Service Commission at the time of their appointment.
- The person to be appointed as the members of the Union Public Service Commission should not hold any office of profit under the Central or the State Government.

Appointment of Chairman and Acting Chairman

- In case, the office of the Chairman becomes vacant, the President shall appoint another member of the Commission as the acting Chairman to perform the functions of the Chairman in his/her absence, if any of the following conditions prevail:
  - The office of the Chairman of the Commission becomes vacant;
  - The Chairman of the Commission, due to absence or for any other reason, is unable to perform the duties of his office.
- The Acting Chairman will perform the functions of the Chairman until the Chairman returns to its office.

Tenure of the Members and Chairman

- For the Union Public Service Commission, every member can hold office for six years or till the time he attains the age of 65 years, whichever is earlier
- A member of any Commission can submit his resignation, at any time, to the President of India.

- The members of UPSC can be removed at any time by the President on various grounds.

Removal of Members of UPSC (Article 317)

The President has powers to remove any member or Chairman of the Commission on the following grounds: -

- If the member of the Commission has become insolvent or bankrupt.
- If any member of the Commission is engaged in paid employment other than his office.
- If the President feels that the member is unfit to continue his office due to the reason of infirmity of mind or body.
- The President may also remove any member of the Commission, including the Chairman, on the grounds of misbehaviour.

Note: But in case of misbehaviour the President has to consult the matter with the Supreme Court for its advice and opinion. Any advice rendered by the Supreme Court shall be binding on the President, and the President is bound to consider the advice.

- The Chairman of the Commission enjoys special privileges that he can be removed only by the President in the manner prescribed in the Constitution and not otherwise.

Independence of UPSC

- The members of the Union Public Service Commission enjoy security of tenure. They cannot be removed from the office on any other ground than specified in the Constitution.
- According to Article 322, the expenses of the Union Public Service Commission and State Public Service Commission, including salaries, allowances, and pensions, payable to any of the members or staff of the Commission, shall be charged on the Consolidated Fund of India and the Consolidated Fund of the State respectively.
- The Chairman of Commission after removal or retirement is not eligible for any other government job. Whereas other members of the Commission are also not eligible to hold any Central or State government office but can become Chairman of the Union Public Service Commission or State Public Service Commission.

Functions of UPSC

Under Article 320 of the Constitution of India, the Commission is, inter-alia, required to be consulted on all matters relating to recruitment to civil services and posts. The functions of the Commission under Article 320 of the Constitution are:

- It conducts examinations for appointments to the services of the union, which includes All India Services, central services and public services of the union territories.
- assists states in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required, if requested by any two or more states to do so.
- It is consulted on the following matters:
  - All matters relating to methods of recruitment to civil services and for civil posts.
  - The principles to be followed in making appointments to civil services and posts and in making transfers and promotions from one service to another and on the suitability of the candidates for such appointments, transfers and promotions.
  - All disciplinary matters affecting a person serving under the Government of India in a civil capacity, including memorials or petitions relating to such matters.
  - Any claim of costs incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his official duty.
  - Any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India and any question as to the amount of any such award.
  - Any matter related to personnel management referred to it by the President.
  - It presents annually to the President a report as to the work done by the Commission
- However, the Parliament can confer additional functions to the UPSC relating to the services of the Union. It can also extend the function of the UPSC by placing the personnel system of any local authority or other body corporate constituted by law or of any public institution under it.

- The annual report of the UPSC regarding its performance is submitted to the President. The President then gets this report laid before both the Houses of the Parliament, together with a memorandum explaining the cases where the advice of the Commission was not accepted and the reason for such non acceptance.

Limitations of UPSC

The following matters are kept outside the functional jurisdiction of the UPSC. In other words, the UPSC is not consulted on the following matters:

- While making reservations of appointments or posts in favour of any backward class of citizens.
- While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.
- With regard to the selections for Chairmanship or membership of Commissions or tribunals, posts of the highest diplomatic nature and a bulk of group C and group D services.
- With regard to the selection for temporary or officiating appointment to a post if the person appointed is not likely to hold the post for more than a year.

The President can exclude posts, services and matters from the purview of the UPSC. The Constitution states that the President, in respect to the all-India services and Central services and posts may make regulations specifying the matters in which, it shall not be necessary for UPSC to be consulted. But all such regulations made by the President shall be laid before each House of Parliament for at least 14 days. The Parliament can amend or repeal them.

State Public Service Commission

Introduction

The Government of India Act, 1935 provided for the establishment of a state public service Commission at the provincial level. Later, it was given constitutional status by the constitution of India.

Parallel to the Union Public Service Commission in the centre, the State Public Service Commission works at the state level. The same set of Articles (315 to 323 in Part XIV) of the Constitution also deals with the composition, appointment, and removal of members, power and functions, and independence of a State Public Service Commission.

Composition State Public Service Commission (SPSC)

- A State Public Service Commission (SPSC) comprises of a Chairman and other members appointed by the Governor of the state. One half of the appointed members of the Commission should have held office for at least ten years either under the Government of India or under the Government of a state.
- The Constitution has not specified the strength of the Commission.
- The Governor is empowered to determine the number of members as well as staff of the Commission and their conditions of service.

Appointment of Chairman and Acting Chairman

- The Governor can appoint one of the members of the SPSC as an acting Chairman if:
  - The office of the Chairman of the Commission becomes vacant; or
  - The Chairman of the Commission is unable to perform the duties of his office due to absence or for any other reason.
- Such member functions as an Acting Chairman till a person appointed as Chairman enters on the duties of the office or till the Chairman resumes his duties, as the case may be.

Tenure of the Members and Chairman

- For the State Public Service Commission, every member can hold office for six years or till the time he attains the age of 62 years, whichever is earlier
- A member of any Commission can submit his resignation, at any time, to the Governor.
- The members of SPSC can be removed at any time by the President on various grounds.

Removal of Members of SPSC (Article 317)

The President has powers to remove any member or Chairman of the Commission on the following grounds (though appointed by the Governor): -

- If the member of the Commission has become insolvent or bankrupt.
- If any member of the Commission is engaged in paid employment other than his office.
- If the President feels that the member is unfit to

continue his office due to the reason of infirmity of mind or body.

- The President may also remove any member of the Commission, including the Chairman, on the grounds of misbehaviour.

Independence of SPSC

The Constitution mandates for the following provisions to safeguard and ensure the independent and impartial functioning of the State Public Service Commission:

- The Chairman or a member of the SPSC can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. Thus, they enjoy the security of tenure.
- Article 318 mandates that the conditions of service of the Chairman or the members of SPSC are determined by the Governor. But these conditions of service cannot be varied to their disadvantage after their appointment.
- The entire expenses including the salaries, allowances, and pensions of the Chairman and members of the SPSC are charged on the Consolidated Fund of State and are not subject to the vote of the legislative assembly of the state.
- Article 319 states that the Chairman of SPSC can be made the Chairman of either UPSC or any other SPSC.
- Article 319 also states that a member of SPSC is eligible to be appointed as the Chairman or a member of the UPSC or as the Chairman of the same SPSC or member or Chairman of any other SPSC.
- The Chairman or a member of SPSC is not eligible for reappointment to that office for a second term.

Functions and Power of SPSC (Article 320 and 321)

The duties and functions of the SPSC are follows:

- It conducts examinations for appointments to the services of the state.
- It is consulted on the matters below:
  - All matters relating to methods of recruitment to civil services and for civil posts.
  - The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers.
  - All disciplinary matters affecting a person serving under the Government of India in a civil capacity, including memorials or petitions relating to such matters.
  - Any claim of costs incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his official duty.
  - Any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India and any question as to the amount of any such award.
  - Any matter related to personnel management.
  - It presents annually to the Governor a report as to the work done by the Commission.
- The State Legislature can confer additional functions to the SPSC relating to the services of the State. It can also extend the function of the SPSC by placing the personnel system of any local authority or other body corporate constituted by law or of any public institution under it.
- The annual report of the SPSC regarding its performance is submitted to the Governor. The Governor then gets this report laid before the state legislature, together with a memorandum explaining the cases where the advice of the Commission was not accepted and the reason for such non acceptance.

Limitation of State Public Service Commission

SPSC isn't consulted in the following matters:

- Appointment for posts taking consideration to claims of backward caste, SC and ST.
- Governor can exclude posts, services, matters from purview of SPSC. With respect to state services Governor can make regulations specifying matters where consultation of SPSC isn't necessary but such regulations have to be approved by State Legislature within 14 days. Creation of State Vigilance Commission has affected its role in consultation on disciplinary matters.

Summary of SPSC in tabular format:

Composition	Chairman and other members (Number of other members is not fixed. It is determined by the Governor of the state)
Appointment by	Governor
Qualification	The qualification of the Chairman and other members is not specified in the constitution. However, there is a condition that one-half of the members of the Commission should be such persons who have held office for at least ten years either under the government of India or under the Government of a state
Term	6 years or until they attain the age of 62 years (Initially, the retirement age was 60 years. It was extended to 62 years by the 41st Constitutional Amendment Act, 1976)
Resign to	Governor
Annual Report is submitted to	Governor, who then tables it before the State Legislature for the discussion.
Removal of Chairman and members	By President (Although they are appointed by the Governor, only President can remove them from their post)
Conditions for removal of the Chairman or other members of SPSC by President	❒ If he is adjudged as insolvent ❒ If he engages in any paid employment outside the duties of his office ❒ If he, in the opinion of the President, is unfit to continue in office. ❒ The President can also remove the Chairman or other members on the grounds of misbehaviour. In this case, the President has to refer the matter to the Supreme Court.
Reappointment after retirement	**Chairman:** The Chairman of the State PSC cannot be reappointed for the next term in the same PSC. However, he can be appointed as the Chairman or member of UPSC or Chairman of other PSC or JPSC **Member:** A member cannot be reappointed for the next term in the same PSC. However, he can be appointed as the Chairman of that PSC or Chairman or member of other PSC/ JPSC or UPSC.

Difference between UPSC and SPSC

Though many provisions regarding powers and functions of UPSC and SPSC overlap, there are still certain differences that distinguish both of them. The following table discusses the difference between UPSC and SPSC

Provisions	*UPSC*	*SPSC*
No. of members	Decided by the President of India.	Decided by the Governor of State.
Appointment of Chairman and members	Appointed by the President.	Appointed by the Governor.
Conditions of Service	Decided by the President of India.	Decided by the Governor of State.
Age of retirement	Until 65 years of age.	Until 62 years of age.
Appointment of Acting Chairman	Appointed by the President.	Appointed by the Governor.
Suspension for misbehaviour	Suspended by the President.	Suspended by the Governor.
Expenses	Charged on Consolidated Fund of India.	Charged on the Consolidated Fund of State.
Further employment of Chairman	No further employment.	Chairman or member of U.P.S.C or Chairman of any other SPSC
Further employment of Members	Chairman of UPSC or any SPSC	Chairman or member of UPSC or as Chairman of the same SPSC or member or Chairman of any other SPSC
Conducting the Examination	All India Examinations and National level examinations.	State-level Recruitment examinations.
Submission of report	Submitted to the President.	Submitted to the Governor.
Providing advice	Advises the President and the central government.	Advises the Governor and the State legislature.

Position of the UPSC/ SPSC in India

- radical change has taken place in the constitutional law relating to Services by the 42nd Constitution Amendment Act, 1976, which inserted into the Constitution Art, 323A.
- To take out the Constitution and adjudication of disputes relating to the recruitment the Administrative and conditions of service of the public services of the Union and of the States from the hands of the Civil Courts and the High Courts

and to place it before an Administrative Tribunal for the Union or of a State.

- This provision of the Constitution was to come into effect only if it was implemented by a law made by Parliament. That law has been enacted by Parliament in 1985 and brought into force on October 2, 1985, by setting up a Central Administrative Tribunal.
- According to this Administrative Tribunal Act, 1985 (as amended in 1900). the Central Administrative Tribunal will adjudicate disputes and complaints with respect to the 'recruitment and conditions of service of persons appointed to public services in connection with the affairs of the Union', except for-
  - Members of the Defence Forces.
  - Officers and servants of the Supreme Court or of any High Court
  - Members of the secretarial staff of Parliament or of any Legislature of any State or Union Territory.
- Excluding the above categories, any public servant of the Union who is aggrieved, in the matter of his appointment, removal or reduction in rank or the like, shall have to be contented with administrative justice by a Tribunal instead of by a Court of law. The only Court to which the aggrieved person might run, as a last resort, is the Supreme Court.
- The decisions of the Administrative Tribunal can, therefore be challenged only before the Supreme Court and the High Court shall not be competent to interfere. But subsequently, the position turned out to be otherwise as the Supreme Court declared the "exclusion of Jurisdiction" clauses in all the legislations enacted in pursuance of these Articles, unconstitutional to the extent they excluded the jurisdiction of the High Courts and the Supreme Court.

Joint State Public Service Commission

The abbreviation JSPSC stands for Joint State Public Service Commission. The Government of India Act, 1935 for the first time provided for the Joint State Public Service Commission for recruitment in two or more Provinces.

This type of Commissions is formed when two or more States request for the assistance of Union Public Service Commission in conducting a joint exam for recruitment to services in all these states. Constitution of India has made provisions regarding the establishment of the Joint State Public Service Commission for two or more states.

For example, Haryana had a JSPSC for a short period at the time of bifurcation of Punjab and Haryana. While the UPSC and the SPSC are directly created by the Constitution, JSPSC is created by the act of Parliament at the request of the concerned state legislatures, and thus it is a Statutory body. The following are the features of a JSPSC:

- Chairman and member of JSPSC are appointed by the President.
- The tenure of the members of JSPSC is of six-year or until they attain an age of 62 years, whichever is earlier.
- They can be removed or suspended by President and they can directly submit their resignation to the President.
- The terms and conditions of their office are determined by the President.
- The number of members in the Commission is decided by the President.
- JSPSC presents its annual performance report to each of the concerned State Governors, who place the report further before their respective State Legislatures.
- UPSC can also serve the needs of a state on the request of the state Governors and with the approval of the President.

Finance Commission

Introduction

Finance Commission is a constitutional body for the purpose of allocation of certain revenue resources between the Union and the State Governments. It was created to define the financial relations between the Centre and the states. It was formed in 1951. The President of India is mandated by Article 280 of the Constitution to appoint a Finance Commission every five years or sooner.

In November 2017, the President of India appointed the 15th Finance Commission, under the chairmanship of N.K. Singh. It will make suggestions for a five-year period, from 2021-22 to 2025-26.

Article 280 of the Indian Constitution

- President after two years of the commencement of Indian Constitution and thereafter every 5 years, has to constitute a Finance Commission of India.
- It shall be the duty of the Commission to make recommendations to the President in relation to the:
  - the distribution between the Union and the States of the net proceeds of taxes which are to be, or maybe, divided between them and the allocation between the States of the respective shares of such proceeds;
  - the principles which should govern the grants in aid of the revenues of the States out of the Consolidated Fund of India;
  - any other matter referred to the Commission by the President in the interests of sound finance
- The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them

Note: President can also constitute Finance Commission before the expiry of five years as he considers necessary

Article 281 of the Indian Constitution

- It is related to the recommendations of the Finance Commission:
- The President has to lay the recommendation made by Finance Commission and its explanatory memorandum before each house of Parliament

Composition

The Finance Commission consists of the following members:

- Chairman
  - He is the leading member of the Commission and directs its activities. He ought to have previous experience in public affairs.
- Members
  - number of members, apart from the Chairman are four.

The qualifications of the Commission members, as well as their criteria, are statutorily determined by Parliament.

Appointment and Qualification of the Chairman and Members

Appointment

According to Article 280 of the Constitution, the President appoints the Finance Commission. The Chairman of the Commission is chosen from among talented experts in public affairs, and the four other different individuals are chosen from among individuals who have the required qualifications.

Qualification

- Are or have been, or the right fit for the appointment of Judges of any High Court; or
- Have an exceptional mastery of Government funds and records; or
- Have expansive learning of monetary issues and organizational arrangement; or
- Have an intensive comprehension of financial matters.

Grounds for disqualification of the Chairman and Members

If any member of the Finance Commission is found to be:

- of an unstable mind,
- involved in a heinous crime,
- If a conflict of interest arises,
- Such a member is disqualified.

Functions of Finance Commission

The Finance Commission makes recommendations to the President of India on the following issues:

- The net tax proceeds distribution to be divided between the Centre and the states, and the allocation of the same between states.
- The principles governing the grants-in-aid to the states by the Centre out of the consolidated fund of India.
- The steps required to extend the consolidated fund of a state to boost the resources of the panchayats and the municipalities of the state on the basis of the recommendations made by the state Finance Commission.
- Any other matter referred to it by the President in the interests of sound finance.

- The Commission decides the basis for sharing the divisible taxes by the centre and the states and the principles that govern the grants-in-aid to the states every five years.
- Any matter in the interest of sound finance may be referred to the Commission by the President.
- The Commission's recommendations along with an explanatory memorandum with regard to the actions done by the government on them are laid before the Houses of the Parliament.
- The Finance Commission evaluates the rise in the Consolidated Fund of a state in order to affix the resources of the state Panchayats and Municipalities.
- The Finance Commission has sufficient powers to exercise its functions within its activity domain.
- As per the Code of Civil Procedure 1908, the Finance Commission has all the powers of a Civil Court. It can call witnesses, ask for the production of a public document or record from any office or court.

Advisory Role of Finance Commission

- The government is not required to abide by the Finance Commission's recommendations because they are solely advisory in nature. The Government must put its suggestions for giving money to the states into action.
- In other words, "It is nowhere stipulated in the Constitution that the Commission's recommendations shall be binding upon the Government of India or that it would amount to a legal right favouring the recipient States to receive the money proposed to be provided to them by the Commission."

15th Finance Commission

The Finance Commission (FC) is a constitutional body, that determines the method and formula for distributing the tax proceeds between the Centre and states, and among the states as per the constitutional arrangement and present requirements. The 15th Finance Commission was constituted by the President of India in November 2017, under the chairmanship of NK Singh. Its recommendations will cover a period of five years from the year 2021-22 to 2025-26

15th FCI Report 2021-26

The important points about the latest report of the 15th Finance Commission of India that was tabled on 1st February 2021 are listed down below:

Maintaining vertical devolution at 41 per cent:

- The commission has suggested that while maintaining the vertical devolution at the same rate suggested in the report 2020-21; it would help in maintaining predictability and stabilizing the resources, especially during COVID times.

On GST:

- GST accounts for 35 per cent of the gross tax revenue of the Union.
- GST accounts for around 44 per cent of own tax revenue of the States.

On Gross Tax Revenue:

- There is a drop of 1.7 percentage points in the gross tax revenue after excluding GST cess collection in comparison to 2016-17 figures. The impact of this drop could be seen in the tax devolution to states.
- Gross Tax Revenue Assessment 2021-26: It is expected to be 135.2 lakh crore, out of which the divisible pool is estimated to be 103 lakh crores.

On Horizontal Devolution:

The criteria and the weights assigned for horizontal devolution are:

- Population – 15%
- Area – 15%
- Forest & Ecology – 10%
- Income Distance – 45%
- Tax and Fiscal Efforts – 2.5%
- Demographic Performance – 12.5%
- The commission has assigned a 12.5 per cent weight to the demographic performance criterion in the horizontal devolution. The commission has also re-introduced tax effort criterion to reward fiscal performance.

On Revenue Deficit Grants (RDG):

- It has recommended total revenue deficit grants of around Rs 2.94 crore over the award period for seventeen States.
    - ***Local Governments:*** Rs. 4,36,361 crore is the total grant given to the local governments for the period of 2021-26. Out of the total grant; Rs.450 crore is dedicated to the shared municipal services.

- ***Grants to Rural Local Bodies:*** Total sum of Rs. 2,36,805 crore is a grant for the rural local bodies.
- ***Grants to Urban Local Bodies:*** Rs.1,21,055 crore is the total grant for the urban local bodies.

- Grants for Health to be Channelised through Local Governments – Rs. 70,051 crore stands for the health grant to the local governments.

On Health:

- The commission has suggested increasing the state expenditure on health by 8 percent by 2022.
- The commission suggested prioritizing the creation of All India Health Services/All India Medical Services on the pattern of the UPSC Civil Services.
- National Medical Council is suggested to develop small courses on wellness clinic, basic surgical procedures, anaesthesia, obstetrics and gynaecology, eye, ENT etc. for MBBS doctors.
- AYUSH to be encouraged as an elective subject for medicine undergraduates.
- The Allied and Healthcare Professions Bill should be passed at the earliest.

On Higher Education:

- The XV Finance Commission has recommended two subtypes of higher education grants:
  - Promotion of online education – Rs. 5,078 crore is a total sum of grant for the promotion of online education.
  - Development of professional courses in regional languages: The commission's recommendation is in line with the New Education Policy 2020, Rs. 1,065 crores have been allocated for the development of these courses from 2021-26.
  - Two colleges in each state should convert their learning material and pedagogy into the recognized regional language.

On Defence

- Recommendation to create a non-lapsable pool for the defence and internal security sector under the Public Accounts of India.

On Disaster Risk Management:

- The fifteenth Finance Commission recommended maintaining the contribution of states to the State Disaster Risk Fund (SDRF) to be 25 per cent except by the North Eastern States (10 per cent.) It has seen no changes since 13th Finance Commission recommended the same arrangement.
- Creation of Mitigation Funds both at central and state levels.

Goods and Service Tax Council

Introduction

Goods and Service Tax is one of the biggest tax reforms in India. It is an indirect tax that is levied on the manufacture, sale, and consumption of goods and services at the national level. After its implementation, various indirect taxes such as value added tax, Central excise duty, entertainment tax, luxury tax, etc were abolished. The main reason behind introducing GST was to unify all the indirect taxes and have one indirect tax system. In simple terms, it means "one nation one tax".

The GST council is the key decision-making body that will take all important decisions regarding the GST. The GST Council dictates tax rate, tax exemption, the due date of forms, tax laws, and tax deadlines, keeping in mind special rates and provisions for some states. The predominant responsibility of the GST Council is to ensure to have one uniform tax rate for goods and services across the nation.

Constitutional Provisions

Article 279A empowered the President of India to constitute a Council named Goods and Services Tax Council (GST Council) within 60 days after the commencement of the 101st Constitution Amendment Act, 2016.

Objective

It shall seek to ensure a uniform system of GST to avoid any conflict or confusion, and the development of a harmonized national market for goods and services.

Composition of GST Council

The members of the council will be as follows:

- The Union Finance Minister of India will serve as the chairperson of this council.
- The respective states will nominate the State Finance Ministers/ or any other Minister as a member of the council.

- The Union Minister of State in charge of revenue or finance will also be a member of this council.
- The representatives of the states shall choose amongst themselves one "Vice-President".

Quorum

The council shall meet from which one-half of its members will constitute a quorum, which will have the power to make decisions.

Functions of the Goods and Services Tax Council

The Council is required to make recommendations to the centre and the states on the following matters:

- The taxes, cesses, and surcharges levied by the centre, the states, and the local bodies would be merged in GST.
- The goods and services that may be subjected to GST or exempted from GST.
- Model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-state trade or commerce, and the principles that govern the place of supply.
- The threshold limit of turnover below which goods and services may be exempted from GST.
- The rates include floor rates with bands of GST.
- Any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster.
- Special provision with respect to the states of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh, and Uttarakhand.
- Any other matter relating to GST, as the Council may decide.
- In addition, the council shall also recommend the date on which the GST may be levied on petroleum crude, high-speed diesel, petrol, natural gas, and aviation turbine fuel.
- For a period of five years following the implementation of GST, the Council must consider compensating the states for any revenue losses. The Parliament sets the compensation in accordance with this recommendation. As a result, in 2017, the law was passed by the Parliament.

  The procedure to determine the functioning of the GST council shall be determined by the council itself. No decision of the council would be termed invalid merely because of any vacancy or defect in the constitution of the council, or because of any defect in the appointment of the member, or if there is any irregularity in the procedure that would likely affect the merits of the case.

Process of decision-making

The decision shall be taken by at least three-fourth majority out of which:

- The vote of the Central Government will have one-third of the weightage.
- The vote of all the State Governments shall account for two-third of weightage.

Dispute Resolution Mechanism

Any dispute arising either between:

- The centre on one hand and a state on the other, or
- The centre and one or state on one hand and one or more state on the other hand,
- Two or more states.

  Shall be adjudicated by the GST council.

Process of Ratification

Article 368 of the Indian Constitution has been amended to include Article 279 A within its ambit. It basically implies that to bring any amendments or modifications to Article 279 A, ratification by a two-thirds majority of both the houses and half of the state legislatures will be required.

National Commission for Scheduled Caste

Introduction

Caste-based discrimination has been prevalent in India for ages. Putting relevance on the same with the aim to control, and thereby erase such prejudice, Dr. B.R. Ambedkar, also being the Chairman of the Drafting Committee, along with other members of the Constituent Assembly, wanted to mandate protection to backward classes by means of the Constitution.

Articles 338 mandates the establishment of the national commissions for Scheduled Castes with the aim of improving their living conditions, availability of resources, safeguarding their interests, agricultural

practices thereby accelerating socio-economic growth.

Evolution of the Commission

The events which contributed towards the formation of the National Commission for the Scheduled Castes have been presented hereunder;

- Originally, Article 338 of the Constitution provided for the appointment of a Special Officer for Scheduled Castes (SCs) and Scheduled Tribes (STs) to investigate all matters relating to the constitutional safeguards for the SCs and STs and to report to the President on their working. He was designated as the Commissioner for SCs and STs and assigned the said duty.
- ***1978:*** By means of a resolution, the Government had set up a non-statutory, multi-member Commission for Scheduled Castes and Scheduled Tribes along with which the Office of Commissioner continued to exist as well.
- ***1987:*** The previously established Commission in 1978 came to be known as the National Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs).
- ***1990:*** By the 65th Constitutional Amendment, a multi-member National Commission for Scheduled Castes and Scheduled Tribes replaced the Commissioner for Scheduled Castes (SCs) and Scheduled Tribes (STs)
- ***2003:*** By the 89th Constitutional Amendment, the National Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs) got divided into two separate bodies, namely, National Commission for Scheduled Castes (under Article 338) and National Commission for Scheduled Tribes (under Article 338-A).
- ***2004:*** The National Commission for SCs came into existence with a Chairperson, a Vice-Chairperson, and three other members.

  There have been 6 National Commissions for SCs that have been constituted between 2004 to 2021 namely;
- The first National Commission for Scheduled Castes (NCSC) was on 24th February 2004.
- The second National Commission for Scheduled Castes (NCSC) on 25th May 2007.
- The third National Commission for Scheduled Castes (NCSC) on 15th October 2010.
- The fourth National Commission for Scheduled Castes (NCSC) on 22nd October 2013.
- The fifth National Commission for Scheduled Castes (NCSC) on 1st June 2017.
- The sixth National Commission for Scheduled Castes (NCSC) on 24th February 2021 with Shri Vijay Sampla as the Chairperson, Shri Arun Halder as the Vice-Chairman, Shri Subhash Ramnath Pardhi, and Dr. Anju Bala as the members.

Composition:

It consists of:

- Chairperson.
- Vice-chairperson.
- Three other members.

It is to be noted that the President by warrant under his hand and seal appoints, and determines the tenure, service conditions of the Chairperson, Vice-Chairman, and the members of the Commission. Their term is of 3 years.

Functions of the Commission

- Monitoring and investigating all issues concerning the safeguards provided for the Scheduled Castes under the Constitution.
- Enquiring into complaints relating to the deprivation of the rights and safeguards of the Scheduled Castes.
- Taking part in and advising the Central or State Governments with respect to the planning of socio-economic development of the Scheduled Castes.
- Regular reporting to the President of the country on the implementation of these safeguards.
- Recommending steps to be taken to further the socio-economic development and other welfare activities of the Scheduled Castes.
- Any other function with respect to the welfare, protection, development and advancement of the Scheduled Caste community.
- The Commission is also required to discharge similar functions with regard to the Anglo-Indian Community as it does with respect to the Scheduled Castes.

Till 2018, the commission was also required to discharge similar functions with regard to the other

backward classes (OBCs). It was relieved from this responsibility by 102nd Amendment Act, 2018.

Powers of the Commission

National Commission for Scheduled Castes being constitutional bodies have the power to regulate their own procedures. Followed by which National Commission for Scheduled Castes have been vested with all the powers of a civil court. Taking a cue from the same, the powers of the National Commission for Scheduled Castes have been presented hereunder;

- The National Commission for Scheduled Castes is vested with the power to discover and produce documents that concern the development of the tribal communities;
- The Commission has the power to receive evidence on affidavits as well;
- With civil court powers being vested on the Commission, it has the authority to issue a summons for examination of documents, or witnesses;
- Both the Central and the State governments can seek advice from the Commissions whenever necessary for the purpose of policy-making.
- Along with the above-mentioned powers, there can be add-on powers that will be determined by the President of the nation.

National Commission for Scheduled Tribes

Introduction

The National Commission for Scheduled Tribes is a constitutional body that was established by the Constitution (89th Amendment) Act, 2003. The Commission is an authority working for the economic development of Scheduled Tribes in India. The NCST is dealt with Article 338A.

Earlier, there was only one commission, which was for both the scheduled tribes and scheduled castes. In 2004, after the 89th Constitutional Amendment Act, the NCST was established by bifurcating the National Commission for Scheduled Castes and Scheduled Tribes into the NCST and the National Commission for Scheduled Castes.

This amendment replaced the National Commission for Scheduled Castes and Scheduled Tribes with two distinct commissions which are:

- National Commission for Scheduled Castes (NCSC)
- National Commission for Scheduled Tribes (NCST)

Definition of Scheduled Tribes:

According to Article 366(25) of the Constitution, Scheduled Tribes are those communities that are scheduled in accordance with Article 342 of the Constitution. Also, Article 342 of the Constitution says that: The Scheduled Tribes are the tribes or tribal communities or part of or groups within these tribes and tribal communities which have been declared as such by the President through a public notification.

Scheduled Tribes in India

According to the 2011 Census, the Scheduled Tribes account for 104 million representing 8.6% of the country's population. These Scheduled Tribes are spread throughout the country largely in forest and hilly regions.

The essential characteristics of these communities are: -

- Primitive Traits
- Geographical isolation
- Distinct culture
- Shyness to contact with the community at large
- Economically backwards

As in the case of the SCs, the Plan objective of empowering the tribals is being achieved through a three-pronged strategy of social empowerment, economic empowerment, and social justice. Working in the same line the NCST till the present date has been constituted three times which was the result of the 89th Amendment Act,2003, namely;

- The first commission was formed on 19th February 2004.
- The second commission commenced on 14th June 2007.
- The third commission was formed on 21st July 2010.

Dr. Rameshwar Oraon has been re-appointed as the Chairperson of the Commission for the 2nd time followed by this, Shri Ravi Thakur was designated to the Vice-Chairperson position. But the members who were appointed, due to their sudden demise, have left the two members' seats vacant for the current commission.

Composition of National Commission for Scheduled Tribes

National Commission for Scheduled Tribes consists of:

- Chairperson.
- Vice-chairperson.
- Three other members.

It is to be noted that the President by warrant under his hand and seal appoints, and determines the tenure, service conditions of the Chairperson, Vice-Chairman, and the members of the Commission. Their term is of 3 years.

Functions of the National Commission for Scheduled Tribes

The functions of the National Commission for Scheduled Tribes are laid down hereunder;

- The National Commission for Scheduled Tribes carries out an evaluation of the progress in the planning process for social, and economic up-gradation of the Scheduled Tribe Community.
- Just like the National Commission for Scheduled Caste, the National Commission for Scheduled Tribes also has been vested with the responsibility of inquiring into complaints brought before it that concern the impoverishment of the rights available for the Scheduled Tribes, and to investigate the working of the constitutional safeguards provided for this community.
- The Commission must keep track of the status of the development of the Scheduled Tribes at both Union and provincial levels.
- The Commission is obligated by the President's orders and therefore, has to perform all such functions which the President specifies.

Along with these functions, there are certain measures that are to be adopted by the Commission in respect to ownership rights of the tribes in association with forest areas;

- The Commission must ensure that certain measures need to be taken to protect the rights of the Scheduled Tribes with regard to natural resources.
- For the tribal groups who have been displaced due to unavoidable circumstances, then it is the responsibility of the Commission to take steps to improve the standards of living for them thereby facilitating them with minimum necessities for living.
- Prevention of alienation of the tribal groups, and those who have already been alienated is the sole responsibility of the Commission, and therefore, measures should be adopted to ensure the same.
- The Commission should be in charge of protecting the forests by means of undertaking social afforestation and involving the tribal communities to take an active part in the same for better functioning of the social, and environmental policies undertaken. These policies should also work towards erasing shifting cultivation practiced by several tribal communities which is responsible for degrading both the land and the environment.
- The provisions of Panchayats (Extension to Scheduled Areas) Act,1996, must be implemented so as to provide adequate benefit to the Scheduled Tribes.

A check on the above-mentioned functions of the Commissions is carried out by the President of India after the Commissions submits their reports which must be accompanied by a memorandum whose purpose is to explain the actions adopted on the Commission's recommendations. The report is further forwarded to the State Government, and the Governor by the President, after which the governor places the same before the State Legislature.

Powers of the Commission

National Commission for Scheduled Tribes being constitutional bodies have the power to regulate their own procedures. Followed by which National Commission for Scheduled Tribes have been vested with all the powers of a civil court. Taking a cue from the same, the powers of the National Commission for Scheduled Tribes have been presented hereunder;

- The National Commission for Scheduled Tribes is vested with the power to discover and produce documents that concern the development of the tribal communities;
- The Commission has the power to receive evidence on affidavits as well;

- With civil court powers being vested on the Commission, it has the authority to issue a summons for examination of documents, or witnesses;
- Both the Central and the State governments can seek advice from the Commissions whenever necessary for the purpose of policy-making.
- Along with the above-mentioned powers, there can be add-on powers that will be determined by the President of the nation.

National Commission for Backward Classes

Introduction

National Commission for Backward classes (NCBC), 1993, recognized as a constitutional body under the 123rd Amendment Bill, 2017 and 102nd Amendment Act, 2018 which inserted 338B in the Constitution of India. NCBC comes under the Ministry of Social Justice and Empowerment. This Commission was formed as an initiative for investigating the conditions and difficulties of the socially and educationally backward classes and thus making appropriate recommendations

Background

- The first backward class commission was pointed on January 29, 1953, known as Kaka Kalelkar Commission. The central government was not satisfied with the approach adopted by the commission in determining the criteria for identifying the backward classes.
- On January 1, 1979, the President appointed another Backward Class Commission known as The Mandal Commission with Shri B.P. Mandal as its chairperson.
- In 1987, an executive body was instituted as a national commission for Scheduled Castes and Scheduled Tribes after that in 1990, 65th amendment was introduced which added Article 338 in the Constitution and made a national commission for Scheduled Castes & Scheduled Tribes as a constitutional body.
- In Indra Sawhney case of 1992, Supreme Court had directed the government to create a permanent body to entertain, examine and recommend the inclusion and exclusion of various Backward Classes for the purpose of benefits and protection.
- In pursuant to these directions' Parliament passed National Commission for Backward Classes Act in 1993 and constituted the NCBC.
- 123rd Constitution Amendment bill of 2017 was introduced in Parliament to safeguard the interests of backward classes more effectively.
- Parliament has also passed a separate bill to repeal the National Commission for Backward Classes Act, 1993, thus 1993 act became irrelevant after passing the bill.
- The bill got the President assent in August 2018 and provided the constitutional status to NCBC.

Composition of NCBC

- The Commission include five members:
  - A Chairperson who is or has been a judge of the Supreme Court or of a High Court.
  - Vice-chairperson.
  - Three other members.
- Among the members, there should be:
  - At least two persons, who have special knowledge in matters relating to backward classes,
  - At least 1 woman,
  - A social scientist,
  - A Member-Secretary, who is or has been an officer of the Central Government in the rank of a Secretary to the Government of India.
- Their term is of Three years.
- President by warrant under his hand and seal appoints, and determines the tenure, service conditions of the Chairperson, Vice-Chairman, and the members of the Commission.

Powers and Functions

- The Commission investigates and monitors all matters relating to the safeguards provided for the socially and educationally backward classes under the Constitution or under any other law to evaluate the working of such safeguards.
- It participates and advises on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State.
- It annually presents the reports based on the working of the safeguards to the President. The President laid such reports before each House of Parliament.

- If any of those reports relate to any matter which is concerned with the State Government, a copy of that report is forwarded to the State Government.
- Where any such report or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the State Government.
- NCBC has to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.
- It has all the powers of a civil court while trying a suit.

Salient features of the 102nd Constitutional Amendment Act

It inserted two new articles –

- Article 338 B and
- 342 A.
- It also made certain changes in Article 366.

Article 338 B – empowers NCBC to examine complaints and welfare measures regarding socially and educationally backward classes.

Article 342 A – empowers the President to specify/ assign socially and educationally backward classes in different states and union territories. He can do this with the advice of the Governor of the respective state. But a parliamentary law is required for amending (inclusion/ removal) the list of backward classes.

- In addition to reservations, the 102nd Amendment Act recognizes that BCs also need development in addition to reservations. There is provision in the act for development of Socially and Educationally Backward Classes (SEdBCs) and the new NCBC's role in the development process.
- With the power of the civil court, the new NCBC may effectively address the problems of the backward classes. NCBC is now on par with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes, according to the Act.
- The addition of at least two people with special understanding of backward classes, as well as one woman, to the NCBC, is a positive step toward making the commission more democratic and effective in advancing the interests of SEdBCs.
- The new NCBC is entrusted with the additional function of grievance redress of backward classes.
- Article 342(A) introduces greater transparency as it made mandatory to take the concurrence of Parliament for adding or deleting any community in the backward list.
- Apart from list-inclusion and reservation, it requires comprehensive and holistic development.

Special Officer for Linguistic Minorities

Introduction

Article 350 B deals with the provision for Special Officer for Linguistic Minorities.

It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

Definition of Linguistic minority:

A linguistic minority is a class of people whose mother tongue is different from that of the majority in the state or part of a state. The Constitution provides for the protection of the interests of Linguistic Minorities.

About 36.3 million of India's 1.2 billion strong population (as per the Census of 2011) speak an "absolute minority language", a language which in every of India's 28 States forms a minority.

Constitutional Provisions

State's Reorganization Commission (1953-55), made a recommendation regarding Special Officer for Linguistic Minorities. Accordingly, the Seventh Constitutional Amendment Act of 1956 inserted a new Article 350- B in Part XVII of the Constitution. This article contains the following provisions:

- There should be a Special Officer for Linguistic Minorities. He is to be appointed by the President of India.
- It would be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution.

- He would report to the President upon those matters at such intervals as the President may direct. The President should place all such reports before each House of Parliament and send to the Governments of the states concerned.
- His seat is at Allahabad.
- He has three regional offices at Belgaum (Karnataka), Chennai (Tamil Nadu) and Kolkata (West Bengal). Each is headed by an Assistant Commissioner.
- He is assisted by Deputy Commissioners and Assistant Commissioner.
- He maintains liaison with the State Governments and Union Territories through nodal officers appointed by them.
- The commissioner falls under the ministry of Minority Affairs at central level.
- He submits the annual reports or other reports to the President through the Union Minority Affairs Minister.

It must be noted here that the Constitution does not specify the qualifications, tenure, salaries and allowances, service conditions and procedure for removal of the Special Officer for Linguistic Minorities

Objectives of the Special Officer for Linguistic Minorities

- The objective behind the functions of the Commissioner is to provide and ensure equal opportunities, and platforms to the linguistic minorities for their development and overall national integration.
- The Commissioner must spread awareness amongst the linguistic minorities about the safeguards that are available to them by means of the Indian Constitution.
- The Commissioner must make it certain that effective implementation of the safeguards provided for the linguistic minorities in the Indian Constitution will take place, as have been agreed by the States / Union Territories.
- The Commissioner must be responsible to handle the representations appointed for grievance redress in relation to shielding the linguistic minorities.

Function of the Officer:

- To investigate all matters related to safeguards provided to linguistic minorities.
- To submit to the president the reports on status of implementation of constitutionally and nationally agreed safeguards to linguistic minorities.
- To monitor the implementation of safeguards through questionnaires, visits, conferences, seminars, meetings, etc.
- To take up all the matters pertaining to the grievances arising out of the non-implementation of the Constitutionally and Nationally Agreed Scheme of Safeguards provided to linguistic minorities that come to its notice or are brought to its knowledge by the linguistic minority individuals, groups, associations or organisations at the highest political and administrative levels of the state governments and union territory administrations and recommends remedial actions to be taken.
- To promote and preserve linguistic minority groups, the Ministry of Minority Affairs has requested the State Governments / Union Territories to give wide publicity to the constitutional safeguards provided to linguistic minorities and to take necessary administrative measures.
- The State Governments and Union Territories Administrations were urged to accord priority to the implementation of the scheme of safeguards for linguistic minorities.
- The Commissioner launched a 10-point programme to lend fresh impetus to Governmental efforts towards the preservation of the language and culture of linguistic minorities.

Comptroller and Auditor General

Described as by the Dr Bhimrao Ambedkar, the Comptroller and Auditor General of India (CAG) is an independent authority established of the Indian Constitution. CAG of India or the "Guardian of the Public Purse" is essentially vested with the responsibility of inspecting and auditing all the expenditure and receipts of both the Central and the State Governments as well as of those organizations or bodies which are significantly funded by the Government.

Article 148: Appointment and Term

- The President of India appoints the CAG by a warrant under his hand and seal.
- Before taking over the office, the CAG makes

and subscribes before the President an oath or affirmation:

- to bear true faith and allegiance to the Constitution of India;
- to uphold the sovereignty and integrity of India;
- to duly and faithfully and to the best of his ability, knowledge and judgment perform the duties of his office without fear or favour, affection or ill-will;
- to uphold the Constitution and the laws.

- The CAG holds office for a period of six years or up to the age of 65 years, whichever is earlier.
- The salary and other conditions of the CAG's services shall be specified in the of the Constitution until determined by the Parliament.
- His salary and rights shall not be varied to his disadvantage after his appointment to the office.
- Moreover, the determination of the service of persons working in the IAAD (Indian Audit and Accounts Department) as well as the administrative powers of the CAG shall be done by the President upon consultation with the CAG and shall be prescribed in rules.
- The administrative expenses of the CAG which incorporate salaries, allowances and pensions are charged from the Consolidated Fund of the Constitution.

Removal of the Comptroller and Auditor General

- CAG can be removed from his office by the President on the grounds of proven misbehaviour or incapacity on an address by Parliament in the manner provided in Article 124 (4) of the Indian Constitution.
- He/she can resign any time from his office by addressing the resignation letter to the President and can also be removed by the President on the same grounds and in the same manner as a Judge of the Supreme Court.
- A Presidential order passed after an address by the Parliament supported by a total membership majority of the House and two-thirds of members present and voting.
- However, this can only be executed after sufficient proceedings of investigation and proof.
- After the retirement or resignation from his office, he is no longer eligible for any jobs or offices under the Central or State Governments.
- That is, he can be removed by the President on the basis of a resolution passed to the effect by both the Houses of Parliament with the special majority, either on the ground of proven misbehaviour or incapacity.

Independence

To safeguard and ensure the independence of CAG, the Constitution has made the following provisions:

- He/she is provided with the security of tenure and can be removed by the President, only in accordance with the procedure mentioned in the Constitution. That is, even though CAG is appointed by the President, he/she does not hold office till the pleasure of the President.
- The CAG is not eligible for further office, either under the Government of India or of any state, after he/she ceases to hold the office.
- The Parliament determines the salary and other service conditions of the CAG. His/her salary is equal to that of a judge of the Supreme Court.
- Neither the CAG's salary nor the rights in respect of leave of absence, pension, or the age of retirement can be altered to his/her disadvantage after the appointment.
- ❐ The conditions of service of persons serving in the Indian Audit and Accounts Department as well as the administrative powers of the CAG are prescribed by the President after consultation with the CAG.
- ❐ The administrative expenses including all salaries, allowances, and pensions of persons serving in the office of the CAG, are charged upon the Consolidated Fund of India, which means they are not subject to the vote of Parliament.
- ❐ Also, CAG cannot be represented by any minister in both the houses of the Parliament and no minister can be called upon to take any responsibility for any actions done by the CAG.

Duties and Powers

- ❐ Article 149 of the Constitution authorizes the Parliament to prescribe the duties and powers of the CAG in relation to the accounts of the Union and

of the states and of any other authority or body.

- In accordance with that, the CAG's (Duties, Powers and Conditions of Service) act, 1971 was enacted by the Parliament.
- The duties and functions of the CAG as laid down by the Parliament and the Constitution are:
  - To audit the accounts related to all expenditure from the Consolidated Fund of India, Consolidated Fund of each state, and Consolidated Fund of each union territory with a Legislative Assembly.
  - To audit all expenditure from the Contingency Fund of India and the Public Account of India and also the contingency fund of each state and the public account of each state.
  - To audit all trading, manufacturing, profit and loss accounts, balance sheets, and other subsidiary accounts kept by any department of the Central Government and State Governments.
  - To audit the receipts and expenditure of the Centre and each state.
  - To audit the receipts and expenditure of all bodies and authorities substantially financed from the Central or state revenues, Government companies, other corporations, and bodies, when so required by related laws.
  - To audit all transactions of the Central and state governments related to debt, sinking funds, deposits, advances, suspense accounts, and remittance business. He also audits receipts, stock accounts, and others, with approval of the President, or when required by the President.
  - To audit the accounts of any other authority (For example, the audit of local bodies) when requested by the President or Governor.
- ***Article 150-*** To advise the President with regard to the prescription of the form in which the accounts of the Centre and the states shall be kept.
- ***Article 151-*** To submit his audit reports relating to the accounts of the Centre to the President, who shall, in turn, place them before both the Houses of Parliament and also to submit audit reports relating to the accounts of a State to the Governor, who shall, in turn, place them before the state legislature.
- ***Article 279-*** To ascertain and certify the net proceeds (the proceeds of a tax or a duty minus the cost of collection) of any tax or duty and the CAG's certification will be final.
- Act as a guide, friend, and philosopher of the Public Accounts Committee of the Parliament.
- To compile and maintain the accounts of State Governments (audit, that is, departmentalization of accounts).

Main audit reports of CAG

The audit reports of the CAG can be classified into the following four headings as discussed below:

- ***CAG Local Bodies Audit Reports:*** The CAG Local Bodies Audit Report is prepared by the State Accountant Generals of every state of Union of India and is sent to CAG for approval. After this procedure is completed, the local bodies Audit Reports are subsequently categorized into two groups, namely "Tabled in the Legislature" and "Issued to the State Government".
- ***CAG State Audit Reports:*** After the Accountant General audits the expenditures and accounts of a state from the Consolidated Fund of that state, the Comptroller and Auditor General then submits the findings of the report to the state legislature. The norm that is followed is the presentation of the reports during the budget season wherein the audit findings of the previous financial year are presented. At the state level, in a way similar to the Central level, the audit is conducted in two streams, which are Performance Audit and Regularity Audit. Nonetheless, in the majority of the cases, the reports of both of these audits are presented simultaneously.
- ***CAG Union Audit Reports:*** The Union Audit Report is prepared by Comptroller and Auditor General of India and is primarily focused on presenting the findings of the transactional and performance audit in the following areas:
  - Civil Audit

- Audit of Autonomous Bodies
- Defence Services
- Railways
- Government Receipts
- Central Commercial

The CAG Union Audit Report incorporates the audit performed under two categories namely, Performance Audit and Regularity (Compliance) Audit.

- ***CAG Audit of Government - owned Corporations:*** The Comptroller and Auditor General of India are also vested with the power of auditing the corporations owned by the government, central or state, and also conducting the supplementary audit of those firms in which the Union Government have more than 51% equity shares.

Comptroller and Auditor General and Corporations

The role of CAG in the auditing of public corporations is limited and his/her relationship with the public corporations falls into the following three categories:

- Some corporations are audited totally and directly by the CAG such as the Damodar Valley Corporation, Oil and Natural Gas Commission, Air India, Indian Airlines Corporation, and others.
- Some corporations are audited by private professional auditors, appointed by the Central Government in consultation with the CAG. The CAG can also conduct a supplementary audit, if necessary. Examples are Central Warehousing Corporation, Industrial Finance Corporation, and others.
- Some corporations are totally subjected to private audits (audit is done exclusively by private professional auditors and the CAG does not have any role) and submit their annual reports and accounts directly to the Parliament. The Life Insurance Corporation of India, Reserve Bank of India, State Bank of India, Food Corporation of India, and others belong to this category. (The role of the CAG in the auditing of Government companies is also limited which are audited by private auditors, appointed by the Government on the advice of the CAG)

Role of Comptroller and Auditor General

- The role of CAG is to uphold the Constitution of India and the laws of Parliament in the field of financial administration.
- The audit reports of the CAG secure the accountability in the sphere of financial administration of the executive, that is council of ministers, to the Parliament.
- The audit report on appropriation accounts, audit report on financial accounts, and audit report on public undertakings are the three audit reports submitted by CAG to the President, which the President lays before both the Houses of Parliament.
- The Public Accounts Committee examines the CAG's reports and points out its findings to the Parliament.
- The CAG is responsible only to the Parliament because he acts as an agent of the Parliament and conducts audits of expenditure on behalf of the Parliament.
- The CAG has more freedom with regard to the audit of expenditure than with regard to the audit of receipts, stores, and stock.
- The CAG can look into the wisdom, faithfulness, and economy of government expenditure and comment on the wastefulness and extravagance of such expenditure through propriety audit. But the propriety audit is discretionary in nature.

Problems faced by CAG

- Since the CAG has no control over the issue of money from the Consolidated Fund and many departments are authorized to draw money by issuing cheques without specific authority from the CAG, he/she is just fulfilling the role of an Auditor-General only and not that of a Comptroller.
- ***Lack of decentralization of duties:*** Audit reports of the state governments being made in regional languages creates an added problem of translation and of understanding the original reports. It overburdens the duties of the office, making the auditory system less efficient and audits hardly being presented on time.
- ***Appointment procedure of the CAG:*** The appointment procedure of the CAG is dubious such that the involvement of the executive in the CAG's appointment is hugely problematic as he/she is supposed to audit the executive.

Recent Issues

- Recently, one of the former CAG's has said the Central Government has held back a report that he had submitted to the President of India, to end what

he called "a nightmare of accounts that militates against good governance". He submitted the report under Article 150 of the Indian Constitution to the President in April 2020 and it is still not in the public domain.

- Audit Reports got delayed in the Parliamentary sessions of 2019 and 2020 which showed the inefficiency as well as lack of manpower in the office of CAG.
- In January 2021, the CAG announced that the office would begin evaluating procurement and availability of drugs and paramedics, as well as review the vaccine distribution scheme for issues related to transparency. But no report has been yet released. Thus, a meaningful and timely audit appears likely to be a utopian dream.

Despite having such importance in the parliamentary setup of a democracy like India, the institution of the Comptroller and Auditor General of India has, time and again, suffered due to the less general public awareness about the significance of this authority. A major fallacy that exists in modern-day polity is the less popularity of many CAG reports and the fact that not all of these reports are deliberated upon in the Parliament.

To expedite the efficiency of the Comptroller and Auditor General of India as a constitutional officer charged with the responsibility of maintaining and upholding the accountability and liability of the ones in power, it is important to popularize the audit reports released by the CAG and open up opportunities for more general public discussion about them. Controversies like the Commonwealth Games, 2G Spectrum and Rafale Deal brought forth the importance of CAG reports in a democracy like India and helped ignite public discourse.

Attorney General of India

The Constitution (Article 76) has provided for the office of the Attorney General for India. He is the highest law officer in the country

Appointment and Eligibility

- The Attorney General is appointed by the President on the advice of the Executive.
- He/she must be a person who is qualified to be appointed as a Judge of the Supreme Court.
- In other words, he/she must be a citizen of India and must have been a Judge of some High Court for five years or an advocate of some High Court for ten years, or an eminent jurist, in the opinion of the President.
- The term of office of the Attorney General is not fixed by the Constitution.
- Further, the Constitution does not contain the procedure and grounds for his/her removal.
- Thus, he/she holds office during the pleasure of the President which means that he may be removed by the President at any time.
- He/she may also quit his office by submitting his resignation to the President.
- The remuneration of the Attorney General is not fixed by the Constitution and receives such remuneration as the President may determine.

Duties and Functions

- To advise the Government of India upon such legal matters, which are referred by the President.
- To perform such other duties of a legal character that are assigned to him/her by the President.
- To discharge the functions conferred by the Constitution or any other law.
- Apart from these, the President has assigned the following duties to the Attorney General:
- To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
- To represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.
- To appear (when required by the Government of India) in any High Court in any case in which the Government of India is concerned.

Rights of Attorney General

- In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India.
- Also, he/she has the right to speak and to take part in the proceedings of both the Houses of

Parliament or their joint sitting and any committee of the Parliament of which he/she may be named a member, but without a right to vote.

- He/she enjoys all the privileges and immunities that are available to a Member of Parliament.
- He/she should not advise or hold a brief against the Government of India.
- He/she should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India.
- He/she should not defend accused persons in criminal prosecutions without the permission of the Government of India.

Limitations placed on the Attorney General

- He/she should not accept an appointment as a director in any company or corporation without the permission of the Government of India.
- He/she should not advise any ministry or department of Government of India or any statutory organization 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.
- However, the Attorney General is not a full-time counsel for the Government and does not fall in the category of government servants.
- Further, he/she is not debarred from private legal practice.
- The Attorney General is not a member of the Central Cabinet. There is a separate law minister in the Central cabinet to look after legal matters at the government level.
- The Delhi High Court has ruled that the office of the Attorney General of India (AGI) does not come under the ambit of the Right to Information (RTI) Act as it is not a public authority.

Solicitor General of India

In addition to the Attorney General, there are other law officers of the Government of India. They are the solicitor general of India and additional solicitor general of India. They assist the Attorney General in the fulfilment of his official responsibilities.

It should be noted here that only the office of the Attorney General is created by the Constitution. In other words, Article 76 does not mention about the Solicitor General and Additional Solicitor General.

The Attorney General is not a member of the Central Cabinet. There is a separate law minister in the Central cabinet to look after legal matters at the government level.

Advocate General

Introduction

Under the Constitution of India, Article 165 has provided for the office of the Advocate General for the states. He is the highest law officer in the state. Thus, he corresponds to the Attorney General of India.

Appointment of Advocate General of the State:

The Advocate General is appointed by the Governor. He must be a person who is qualified to be appointed a judge of a high court. The person who is eligible to hold the office of advocate general in India must meet the following criteria:

- He must be an Indian Citizen
- He should be eligible to be appointed as the judge of the High Court; i.e., he must meet one of the following eligibility criteria:
  - An advocate having experience of more than 5 years.
  - A civil servant with an experience of more than 10 years along with an experience as a servant in Zila Court for at least 3 years.
  - A pleader over 10 years in any high court
- He shouldn't be more than 62 years of age, as is the age of qualification for a High Court Judge.

In other words, he must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years.

Term of office of Advocate General of the State:

- The term of office of the Advocate General is not fixed by the Constitution.
- The Constitution does not contain the procedure and grounds for his removal.
- He holds office during the pleasure of the Governor. This means that he may be removed by the Governor at any time.

- He may also quit his office by submitting his resignation to the Governor. Conventionally, he resigns when the Government (Council of Ministers) resigns or is replaced, as he is appointed on its advice.

The remuneration of the advocate general is not fixed by the Constitution. He receives such remuneration as the Governor may determine.

Duties and functions of Advocate General of the State: As the chief law officer of the Government in the state, the duties of the Advocate General include the following:

- To give advice to the government of the state upon such legal matters which are referred to him by the Governor.
- To perform such other duties of a legal character that is assigned to him by the Governor.
- To discharge the functions conferred on him by the Constitution or any other law.
- In the performance of his official duties, the advocate general is entitled to appear before any court of law within the state. Further, he has the right to speak and to take part in the proceedings of both the Houses of the state legislature or any committee of the state legislature of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a member of the state legislature.

Rights of Advocate General of the State

Following are the rights of the Advocate General:

- In the performance of his official duties, he has the right of audience in any court in the State.
- He has the right to speak or to take part in the proceedings of state legislature, but without a right to vote.
- He has the right to speak or to take part in the meeting of any committee of the state legislature of which he is named as a member, but without a right to vote.
- He enjoys all the privileges and immunities that are available to a member of the state legislature.

Articles related to Advocate-General of the state under Constitution of India:

- ***Article 165:*** Advocate-General of the State.
- ***Article 177:*** Rights of Advocate-General as respects the Houses of State Legislature and its Committee.
- ***Article 194:*** Powers, privileges and immunities of Advocate General.

Non-Constitutional Body

A Non-Constitutional body is an organization or institution which is not mentioned in the constitution of India. Unlike a constitutional body, a non-constitutional body does not derive its powers from the Indian constitution. Usually, a non-constitutional body derives its powers from corresponding laws passed by the Indian Parliament. There are also non-constitutional bodies that derive power based on Indian government orders called executive resolution. Based on how the body derives its power, non-constitutional bodies can be broadly classified into two:

- Statutory Bodies – They get the power from a statute i.e., an act enacted by the legislature.
  - Eg: National Investigation Agency, National Human Rights Commission, Lokpal, and Lokayukta, etc.
- Non-Statutory Bodies – They usually get the power from an executive order.
  - Eg: NITI Aayog, National Development Council, etc

Statutory Bodies can be further classified into two based on their roles and responsibilities. They are –

- Regulatory Bodies – A regulatory body is a government agency that is accountable for exercising autonomous authority over some area of human activity in a regulatory or supervisory capacity. However, their regulatory interventions are outside executive observation.
  - Eg: Biodiversity Authority of India, Pension Fund Regulatory and Development Authority, etc.
- Quasi-Judicial Bodies – Quasi-Judicial bodies are non-judicial bodies like commissions or tribunals which can interpret the law. They are different from judicial bodies in that their field is limited compared to a court.

- Eg: National Green Tribunal, National Human Rights Commission, Central Information Commission.

NITI AAYOG

The NITI Aayog replaced the Planning Commission that had been running for 65 years. NITI Aayog works as a think tank and as an advisory body of the government. It provides advice to the government on matters related to strategic policy at the Centre and the States. Further, it also includes economic issues of domestic as well as international importance.

Evolution of the NITI Aayog

On 1st January 2015, the Union Government announced the establishment of the NITI Aayog. The resolution was passed by the Parliament to replace the Planning Commission of India with the NITI Aayog.

The Planning Commission of India used to perform two main duties-

- Implementation of the five-year plan.
- Providing Finances to the states.

The NITI Aayog does not provide finances to states, the function of allocating funds is now transferred to the Finance Ministry. It aims at constructing a strong state that will boost India to develop as a major economy in the world and to create a strong and dynamic nation.

The NITI Aayog's creation has two hubs known as:

- ***The Team India Hub:*** It leads the participation of the Central government with the States.
- ***The Knowledge and Innovation Hub:*** It helps in building the institution's think tank capabilities.

NITI Aayog is developing itself into a State-of-the-Art Resource Centre, which has all the essential skills, knowledge, and that will empower it to act with advanced research, speed, and innovation. It will bestow the government with crucial policy and help in managing unforeseen issues.

Composition of NITI Aayog

The composition of the NITI Aayog is as follows:

- ***Prime Minister of India:*** He is the Chairperson of NITI Aayog.
- ***Governing Council:*** Consists of Chief Ministers of all the States and Lieutenant Governors of Union Territories.
- ***Regional Councils:*** These are created to address particular issues and possibilities that affect more than one state. The regional councils are formed for a fixed term and the Prime Minister summons the council. It consists of the Chief Ministers of States and Lieutenant Governors of Union Territories. The Regional Council is chaired either by the Chairperson of the NITI Aayog or a person nominated by the Chairperson.
- ***Special invitees:*** The Prime Minister nominates the eminent professional and experts who have relevant domain knowledge.

The full-time organizational framework- it will include the

- Prime Minister as the Chairperson and
- Vice-Chairperson who is appointed by the Prime Minister.
- ***Members:***
  - Full-time members
- ***Part-time members:*** The Maximum number of members is 2 from leading research organizations, foremost universities, and other innovative organizations that are in an ex-officio capacity. The part-time members are selected on a rotational basis.
- ***Ex Officio members:*** Includes a maximum of 4 members of the Council of Ministers who are nominated by the Prime Minister.
- ***Chief Executive Officer:*** The Prime Minister will appoint the CEO for a fixed tenure. He will be in the rank of Secretary to the Government of India.

Objective of NITI Aayog

- To evolve a shared vision of national development priorities, sectors and strategies with the active involvement of States.
- To foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognizing that strong States make a strong nation.
- To develop mechanisms to formulate credible plans at the village level and aggregate these progressively

at higher levels of government.

- To ensure, on areas that are specifically referred to it, that the interests of national security are incorporated in economic strategy and policy.
- To pay special attention to the sections of our society that may be at risk of not benefiting adequately from economic progress.
- To design strategic and long-term policy and programme frameworks and initiatives, and monitor their progress and their efficacy. The lessons learned through monitoring and feedback will be used for making innovative improvements, including necessary mid-course corrections.
- To provide advice and encourage partnerships between key stakeholders and national and international like-minded think tanks, as well as educational and policy research institutions.
- To create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and other partners.
- To offer a platform for the resolution of inter-sectoral and inter departmental issues in order to accelerate the implementation of the development agenda.
- To maintain a state-of-the-art resource centre, be a repository of research on good governance and best practices in sustainable and equitable development as well as help their dissemination to stake-holders.
- To actively monitor and evaluate the implementation of programmes and initiatives, including the identification of the needed resources so as to strengthen the probability of success and scope of delivery.
- To focus on technology upgradation and capacity building for implementation of programmes and initiatives.
- To undertake other activities as may be necessary in order to further the execution of the national development agenda, and the objectives mentioned above.

Features of NITI Aayog

- NITI Aayog is developing itself as a state-of-the-art resource centre with the necessary knowledge and skills that will enable it to act with speed, promote research and innovation, provide strategic policy vision for the government, and deal with contingent issues.
- It is supported by an attached office, Development Monitoring and Evaluation Organisation (DMEO), a flagship initiative, Atal Innovation Mission (AIM) and an autonomous body, National Institute of Labour Economics Research and Development (NILERD).
- NITI Aayog's entire gamut of activities can be divided into four main heads:
  - Policy and Programme Framework
  - Cooperative Federalism
  - Monitoring and Evaluation
  - Think Tank, and Knowledge and Innovation Hub

Seven pillars of effective governance envisaged by NITI Aayog

The NITI Aayog is based on the 7 pillars of effective Governance. They are:

- ***Pro-people:*** It fulfils the aspirations of society as well as individuals
- ***Pro-activity:*** In anticipation of and response to citizen needs
- ***Participation:*** Involvement of the citizenry
- ***Empowering:*** Empowering, especially women in all aspects
- ***Inclusion of all:*** Inclusion of all people irrespective of caste, creed, and gender
- ***Equality:*** Providing equal opportunity to all especially for youth
- ***Transparency:*** Making the government visible and responsive

Aims of NITI Aayog

- To provide a critical strategic and directional input in the development process of India.
- To serve as a think tank of both Centre and State-level Government. Also, to provide relevant technical and strategic advice on key policy matters.
- Try to replace the centre-to-state, one-way flow of policy with an amicably settled policy with a continued and genuine partnership of state frames.
- It seeks to put an end to the slow and tardy policy implementation. This is possible through better state-to-state and inter-Ministry coordination.

- To help in evolving a shared vision of development of national priorities and foster cooperative federalism. That is to work with the view that: strong states = strong nations.
- To develop mechanisms at the village level to formulate credible plans, to ensure that special attention is paid to those sections of society which carry the risk of not being benefited from the overall economic progress of the country.
- To evaluate and monitor the implementation of programs and also focus to upgrade the technology and building capacity.
- The NITI Aayog tries to accomplish the following opportunities:
  - To create a productive administration paradigm where the Government is an enabler rather than being a provider of the first and last resort.
  - To attain progress from food security, by focussing on agricultural production and the actual returns that farmers receive from their produce.
  - To ensure that India is an active participant in global deliberations and debates.
  - To ensure that the economically active middle-class is actively engaged and is utilized to its full potential.
  - Leveraging India's pool of scientific, entrepreneurial and intellectual human capital.
  - To incorporate the geopolitical and geo-economic strength of the NRI Community.
  - To use urbanization as an opportunity for creating a secure habitat via modern technology.
  - To use technology in reducing potential and ambiguity for misadventures in governance.
  - To leverage the demographic dividend of India and realize the potential of young men and women, which is done by imparting education, skill development, eliminating gender bias, and providing employment opportunities.
  - To eliminate poverty and to offer Indians a better chance to live a life with dignity and respect.
  - To redress inequalities that are based on gender bias, caste, and economic disparities.
  - To integrate villages into the development process of the country.
  - To provide policy support to more than 50 million businesses that are a major source of employment generation.
  - To safeguard our ecological and environmental assets.

NITI AYOG has changed the fundamental nature of planning in India.

Change in policy making: While designing strategic and long-term policies and programs for the Government of India, NITI Aayog also provides relevant technical advice to the Centre and States. Example: Medical Education Reform

Bottom- up approach: This enables to achieve sustainable development goals with cooperative federalism by fostering the involvement of State Governments of India in the economic policy-making process using a bottom-up approach. Example:

New innovations: At the core of NITI Aayog's creation are two hubs – Team India Hub and the Knowledge and Innovation Hub. The Team India Hub leads the engagement of states with the Central government, while the Knowledge and Innovation Hub builds NITI's think-tank capabilities. Example: Atal Innovation Mission (AIM)

Strategic programs: To design strategic and long-term policy and programme frameworks and initiatives, and monitor their progress and their efficacy. The lessons learnt through monitoring and feedback will be used for making innovative improvements, including necessary mid-course corrections. Example: Education and Water Management

Coordination among different departments: It offers a platform for resolution of inter-sector and inter-departmental issues in order to accelerate the implementation of the development agenda. Example: Atal Mission for Rejuvenation and Urban Transformation

Use of advanced technology: NITI Aayog has taken initiative on Blockchain usages in E-governance and has conceptualized the tech stack as 'IndiaChain'. IndiaChain is the name given to NITI Aayog's ambitious project to develop a nation-wide blockchain network.

Digitization: It focuses on technology upgradation and capacity building for implementation of programmes and initiatives. Example: Digital India.

Indices Measuring States' Performance in Health, Education and Water Management: 'Name and shame' has helped improve states' business rankings.

Interference of Technocrats: Introduction of individuals with technical training and occupations who perceive many important societal problems as being solvable with the applied use of technology and related applications. Example: Swachh Bharat Abhiyan, National Mission for Clean Ganga.

Criticism of NITI Aayog

- A deeply unequal society cannot be transformed into a modern economy by the NITI Aayog, that ensures the welfare of all the citizens, irrespective of their social identity.
- NITI Aayog has no role in influencing private or public investment.
- NITI Aayog does not seem to influence policy-making with long-term consequences. For example, demonetization and Goods and Services Tax.
- If NITI Aayog is a think-tank, it should be maintaining a respectable intellectual distance from the government. Instead, what we see is uncritical praise of the Government-sponsored schemes and programs.
- NITI Aayog has not been able to answer some specific questions, like why 90% of the workers are still working in an unorganized sector and more informalisation is taking place in an organized sector.
- Women's labour force participation rate is also decreasing when our neighbours like Bangladesh are registering an increase in women's labour participation.
- Though things are working in the NITI Aayog, but not with the pace that is required, which should not be the case.
- To make it relevant, NITI Aayog has been bestowed with too many powers but bestowing too many powers in a single body is not a good idea for governance.
- The work of NITI Aayog includes to keep listening to the demands of the states and fulfil their needs which NITI Aayog has not been able to do till now.
- The intention behind setting up NITI Aayog was to encourage participation in the economic policy and public involvement, it has done neither.
- The Prime Minister himself is of the view that the NITI Aayog has not been able to do enough in promoting initiatives like Swachh Bharat Mission, Make in India, and Smart City projects in the states.
- It does not have the power to analyse the performance of various government scheme

Co-operative Federalism by NITI Aayog

Cooperative Federalism in India reflects an ideology of a stable relationship between the centre and other units. It guides all the governing bodies to come forward and cooperate to resolve common social, political, economic and civic problems.

NITI Aayog has been constituted to actualise the important goal of cooperative federalism and to enable good governance in India. On the premise that strong states make a strong nation, NITI Aayog acts as the quintessential platform for the Government of India by bringing States together as 'Team India' to work towards the national development agenda.

In view of this, a number of steps have been taken by NITI Aayog to foster cooperative federalism through structured support initiatives and engagement with the States/UTs on a continuous basis. These includes:

- meetings between the Prime Minister/Cabinet Ministers and all Chief Ministers;
- subgroups of Chief Ministers on subjects of national importance;
- sharing of best practices;
- policy support and capacity development of State/UT functionaries;
- launching of the Aspirational Districts Programme for development of backward districts;
- theme-based extensive engagements in various sectors;
- framing model laws for land leasing and agriculture marketing reforms; and
- area-specific interventions for the North-Eastern and Himalayan States and island development.
- providing relevant technical advice to the Centre, States and UTs
- Centre-state partnership model Development Support Services to States and Union Territories (DSSS);

- and the Sustainable Action for Transforming Human Capital (SATH) programme.

Erstwhile Planning Commission

The erstwhile Planning Commission was established in March 1950 by an executive resolution of the Government of India, (i.e., the Union Cabinet) on the recommendation of the Advisory Planning Board constituted in 1946, under the chairmanship of K.C. Neogi. Thus, the erstwhile Planning Commission was neither a constitutional body nor a statutory body.

In India, it was the supreme organ of planning for social and economic development.

Functions

The functions of the erstwhile Planning Commission included the following:

- To make an assessment of material, capital and human resources of the country, and investigate the possibilities of augmenting them.
- To formulate a plan for the most effective and balanced utilisation of the country's resources.
- To determine priorities and to define the stages in which the plan should be carried out.
- To indicate the factors that retard economic development.
- To determine the nature of the machinery required for successful implementation of the plan in each stage.
- To appraise, from time to time, the progress achieved in execution of the plan and to recommend necessary adjustments.
- To make appropriate recommendations for facilitating the discharge of its duties, or on a matter referred to it for advice by Central or state governments.

The Allocation of Business Rules had assigned the following matters (in addition to the above) to the erstwhile Planning Commission:

- Public Co-operation in National Development
- Specific programmes for area development notified from time to time
- Perspective Planning
- Institute of Applied Manpower Research
- Unique Identification Authority of India (UIDAI)
- All matters relating to National Rainfed Area Authority (NRAA) Earlier, the National Informatics Centre was also under the erstwhile Planning Commission. Later, it was brought under the Ministry of Information Technology.

It should be noted that the erstwhile Planning Commission was only a staff agency–an advisory body and had no executive responsibility. It was not responsible for taking and implementing decisions. This responsibility rested with the Central and State Governments.

Composition

The following points can be noted in context of the composition (membership) of the erstwhile Planning Commission:

- The Prime Minister of India was the Chairman of the Commission. He presided over the meetings of the commission.
- The commission had a Deputy Chairman. He was the de facto executive head (i.e., full-time functional head) of the commission. He was responsible for the formulation and submission of the draft of Five-Year Plan to the Central cabinet. He was appointed by the Central cabinet for a fixed tenure and enjoyed the rank of a cabinet minister. Though he was not a member of cabinet, he was invited to attend all its meetings (without a right to vote).
- Some Central Ministers were appointed as part-time members of the commission. In any case, the finance minister and planning minister were the ex-officio (by virtue of) members of the commission.
- The commission had four to seven fulltime expert members. They enjoyed the rank of a minister of state.
- The commission had a member-secretary. He was usually a senior member of IAS. The state governments were not represented in the commission in any way.

Thus, the erstwhile Planning Commission was wholly a Centre-constituted body.

National Development Council

On the 1st of January, 2016, it was reported that the Modi government is also going to abolish the National Development Council (NDC) and transfer its powers to the Governing Council of the NITI Aayog. However, till now, such a resolution has not been passed.

The National Development Council (NDC) was established in August 1952 by an executive resolution of the Government of India on the recommendation of the First Five Year Plan (draft outline). Like the erstwhile Planning Commission, it is neither a constitutional body nor a statutory body.

Composition

The NDC is composed of the following members.

- The Prime Minister of India (as its chairman/head).
- All Union Cabinet Ministers (since 1967).17
- The Chief Ministers of all the states.
- The Chief Ministers/administrators of all union territories.
- Members of the Planning Commission (now NITI Aayog).
- The secretary of the Planning Commission (now NITI Aayog) acts as the secretary to the NDC.

It (NDC) is also provided with administrative and other assistance for its work by the Planning Commission (now NITI Aayog).

Objectives

The NDC was established with the following objectives.

- To secure cooperation of states in the execution of the Plan.
- To strengthen and mobilise the efforts and resources of the nation in support of the Plan.
- To promote common economic policies in all vital spheres.
- To ensure balanced and rapid development of all parts of the country.

Functions

To realise the above objectives, the NDC is assigned with the following functions:

- To prescribe guidelines for preparation of the national Plan.
- To consider the national Plan as prepared by the Planning Commission (now NITI Aayog).
- To make an assessment of the resources required for implementing the Plan and to suggest measures for augmenting them.
- To consider important questions of social and economic policy affecting national development.
- To review the working of the national Plan from time to time.
- To recommend measures for achievement of the aims and targets set out in the national Plan.

The Draft Five-Year Plan prepared by the Planning Commission (now NITI Aayog) is first submitted to the Union Cabinet. After its approval, it is placed before the NDC, for its acceptance. Then, the Plan is presented to the Parliament. With its approval, it emerges as the official Plan and published in the official gazette. Therefore, the NDC is the highest body, below the Parliament, responsible for policy matters with regard to planning for social and economic development.

However, it is listed as an advisory body to the Planning Commission (now NITI Aayog) and its recommendations are not binding. It makes its recommendations to the Central and state governments and should meet at least twice every year.

Comparison between NITI Aayog and Planning Commission

NITI Aayog	*Planning Commission*
It serves as an advisory Think Tank.	It served as extra-constitutional body.
It draws membership from a wider expertise.	It had limited expertise.
It serves in spirit of Cooperative Federalism as states are equal partners.	States participated as spectators in annual plan meetings.
Secretaries to be known as CEO appointed by Prime- Minister.	Secretaries were appointed through usual process.
It focuses upon 'Bottom-Up' approach of Planning.	It followed a 'Top-Down' approach.
It does not possess mandate to impose policies.	Imposed policies on states and tied allocation of funds with projects it approved.
It does not have powers to allocate funds, which are vested in Finance Minister.	It had powers to allocate funds to ministries and state governments.

Human Rights Commission

The Protection of Human Rights Act of 1993 provides for the creation of National Human Rights Commission at central level and State Human Rights Commission at the state level.

National Human Rights Commission

The National Human Rights Commission was established through an Act of Parliament in the year 1992 by the

Protection of Human Rights Act, 1993 for protection and promotion of Human Rights in India. This is the most important development in India. This development is the result of an ordinance that was promulgated by the President.

What is the National Human Rights Commission (NHRC)?

The National Human Rights Commission (NHRC) established in 1993, is an independent statutory body as per the provisions of the Protection of Human Rights Act of 1993 which was amended in 2006.

- Human Rights are an indispensable part of society and Human Rights in India are watched by NHRC.
- NHRC acts as a watchdog of human rights in the country.
- For 27 years it has served the needs of the people of India, to protect the 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants.
- They are guaranteed by the Constitution of India, embodied in the international covenants and are enforceable by the courts of India as well.

NHRC History

- In 1948, the UN adopted the UDHR (Universal Declaration of Human Rights).
- In 1991, the Paris Principles were established by the National Human Rights Institutions (NHRIs).
- In 1993, the UN adopted these Paris Principles at its General Assembly.
- In 1993, India enacted the Protection of Human Rights Act.
- The Commission was established on 12th October 1993 and sits at its headquarters, in New Delhi.
- The Protection of Human Rights Act also allowed state governments to establish the State Human Rights Commission.

Composition of the National Human Rights Commission

The National Human Rights Commission (NHRC) is composed of a Chair-person and eight other members. The Chairperson should be a retired Chief Justice of India.

Apart from above mentioned members, there are four other members. These are:

- There should be one Member who is, or has been, a Judge of the Supreme Court.
- There should be one Member who is, or has been, the Chief Justice of the High Court.
- Two other members should be there who have the knowledge or practical experience in matters related to human rights.

The ex-officio members of the Commission can be:

- The Chairpersons of the National Commission for Minorities,
- The Chairpersons of the National Commission for Women,
- The Chairperson of the National Commission for Scheduled Castes, and
- The Chairperson of the National Commission for Scheduled Tribe.

Appointment of the Members

On the recommendation of a committee, the President of India appoints the Chairperson and the members of the National Human Rights Commission. The committee consists of the following members:

- Prime Minister of India [Chairperson]
- Home Minister of India
- Speaker of Lok Sabha
- Leader of Opposition [Lok Sabha]
- Leader of Opposition [Rajya Sabha]
- Deputy Chairperson of Rajya Sabha

Resignation

The Chairperson or other members may in writing submit his/her resignation to the President of India.

Removal

The Chairperson or other members can be removed from the office on the ground of proved misbehaviour or incapacity by the President of India but before doing so, the President is required to refer the matter to the Supreme Court, which will hold an enquiry into the matter. On the basis of the reply of the Supreme Court, the President is required to take the decision.

There are five grounds provided on which President may remove the Chairperson or any other member from his office. These are-

- If that person has been declared as insolvent,
- If that person engages during his term of office in any other paid employment outside the duties of his office,

- If that person is unfit to continue because of the infirmity of the mind or body,
- If that person is of unsound mind as declared by a competent Court,
- If that person has been declared as guilty of criminal offence and is sentenced to the imprisonment and if in the opinion of the President it involves moral turpitude.

Term of Office of Chairperson and Members

- Term of the office of Chairperson and members of the National Human Rights Commission is for a period of three years or until the Chairperson reaches 70 years of age, whichever is earlier the Chairperson can hold the office.
- For a period of three years, the members that are appointed can hold the office. These members are also eligible for re-appointment for another term provided, that member should cease to hold the office after attainment of 70 years of age.
- Under the Government of India or the State Government, the person who holds the office of the Chairperson or a member will be eligible for further employment as per recent amendment of 2019.

Functions of the NHRC

The NHRC, along with its basic motive of safeguarding the wellbeing and rights of every individual in the country, has certain niche functions, which are enumerated under Chapter III of the Act.

General Functions:

The NHRC amongst other facets of its existence, has the authority to undertake the following:

- Take suo motu cognizance, or intervene, in any matter presented before it, or in any other court after due permission of such court, involving the gross violation of human rights and/or the negligence in the prevention of such violation of rights.
- Visit any jails or other institutions to keep a check on the treatment of detainees, and make recommendations to the respective Government for the same.
- Review the Constitution of India and all other laws prevailing at the present time, and suggest methods of making the same at par with current human right standards
- Keep a check on and provide recommendations for unemployment in India, and measures to reduce the same.
- Ensure precise implementation of international human rights standards in accordance with international treaties
- Undertake and promote research, and spread awareness through myriad sources of multimedia, to ensure maximum knowledge of the field in maximum people in the country
- The members of the NHRC have the power to take up the office or duties of the Chairperson, in an event such Chairperson is incapacitated, or the members are directed to do so by the President of India.
- The NHRC can send recommendations to the concerned Government authority for the payments related to compensation of damages to victims in cases
- It can recommend the initiation of action against a guilty public servant, to the respected authorities
- It can recommend the grant of interim relief to a victim, to the concerned government authority

Powers related to Inquiries:

- In inquiring into complaints filed under the Act, the Commission is granted powers of a Civil Court in trying a suit as per the directions of the Code of Civil Procedure, 1908, in specific matters as prescribed to them, including but not limited to:
  - Summoning and examining witness under oath
  - Production of documents
  - Receiving affidavits as proofs
  - Issuing orders for examining witnesses and documents
- In addition to these powers, the NHRC has the power to legally bind an individual to furnish information that the Commission deems expedient in a case, and to enter into any premise where they have reason to believe certain documents may be found, which according to them is expedient to a case, and to seize and make copies thereof.
- Powers related to Investigation: The NHRC has the power to utilize agencies in undertaking investigations in relation to any inquiry filed with them, after due permission from the Central or State Government.

- To satisfy itself with the quality and authenticity of data received, the NHRC can also make any inquiry, and examine any witness as it requires, to fulfil such a need. Further, if the NHRC considers it necessary to examine any individual, and is of the opinion that the reputation of such individuals might serve as a bias either for or against them in a trial, it has the authority to give such individuals an opportunity to defend themselves, and to be heard in the proceedings.

Limitations of the NHRC

Although being a governmentally associated principal advocate for human rights in our country, the NHRC does have certain misgivings that limit the authority it seems to have.

- ***Insufficient powers for rendering relief:*** The recommendations given by the NHRC are not binding on any authority, be it legislative or executive. The Commission cannot penalize any authority or department for not following its orders or directions. The NHRC cannot actually give pragmatic and complete judgments to aggrieved parties, like courts, and is thus falling short in giving practical relief to the victims. Further, the time limit given to each inquiry is 1 [One] year from the date of its admission in the Commission. The NHRC can only entertain one case for a maximum period of 1 [One], which could affect the quality of justice.
- ***Lack of Jurisdiction:*** As a safeguard for human rights throughout India, the NHRC is failing at primarily reaching all the parts of the country. The State of Jammu and Kashmir is not within the jurisdiction of protection and review by the NHRC, which invalidates the country-wide scope of the Commission. Jammu and Kashmir, as evidently proved on regular occasions, is the epicentre of gross human rights violations, by government authorities, armed forces, law enforcement, etc., and the NHRC not being given the jurisdiction of this state clearly shows the back seat that the Commission has in the practical aspect of things. Further, the NHRC does not have means to mitigate human right violations between private parties, unless such parties come to the forefront.
- ***Armed Forces:*** The NHRC does not have the jurisdiction to question and ask information from the National Government, on matters relating to the working of the Armed Forces, this severely limits the scope of ensuring human rights in all sectors, as they have to rely solely on the Human Rights report submitted by the Centre in this regard.
- ***Shortcomings in Investigations:*** The NHRC does not have the means to carry out any investigations with its own agenda and mode, but has to redirect such a request to the Central or State Government so that they can appoint an Officer to undertake such an investigation. Further, the time limit placed on the investigation hampers the working of the NHRC, since they can only investigate a case for one year after its admission in the Commission. This affects the work and quality of investigation undertaken by the NHRC, and a great number of grievances may go unaddressed.
- ***Ceremonial Figure:*** The NHRC is considered to be a place for judges to go to, once they retire, or feel their tenure as judges ending soon, and is commonly treated as a post-retirement platform for judges, officers and bureaucrats. Further, the inadequacy of funds delegated to its functioning, also severely compromises its activities.
- ***Other Limitations:*** In addition to all the above-mentioned limitations, the majority of the Commission comprises judges of the Supreme Court and the High Court, which gives the NHRC a more judicial and legal touch. The lack of human right experts and civil liberty experts is concerning, and can cause problems in judgement of certain inquiries. Further, its functioning is bureaucratic, as most of the members in it are there due to their political clout.

State Human Rights Commission

The Protection of Human Rights Act of 1993 provides for the creation of State Human Rights Commission at the state level. A State Human Rights Commission can inquire into violation of human rights related to subjects covered under state list and concurrent list in the seventh schedule of the Indian constitution. In order to exercise the powers or to perform functions that are assigned to the State Commission, the State Government may constitute a body known as the Human Rights Commission of that state.

Composition of the State Human Rights Commission

State Human Rights Commission consists of three

members including a Chair-person according to the Human Rights Amendment Act, 2006. Retired Chief Justice of the High Court can be the Chairperson of the commission.

The other members include:

- A present Judge of the High Court or the District Court can be a member of the commission. The person should have a minimum experience of seven years as a District Judge.
- A person who has practical experience as well as knowledge related to the issues of human rights.

The Governor on the recommendation of the committee appoints the Chairperson and other members. If the state has a Legislative Council, then the Chairman and the leader of the opposition of Legislative Council will also be the members of the committee.

The committee consists of:

- Head – Chief Minister.
- Legislative Assembly speaker.
- The Home Minister of the State.
- Leader of the opposition from the legistative assembly.

The Chairperson and members hold office for a term of three years or until they attain the age of 70 years, whichever is earlier. They are eligible for re-appointment. After their tenure, the Chairperson and members are not eligible for further employment under a state government or the Central government.

Resignation

The Chairperson or other members may in writing submit his/her resignation to the Governor.

Removal

The Chairperson or other members can be removed from the office on the ground of proved misbehaviour or incapacity by the President of India but before doing so, the President is required to refer the matter to the Supreme Court, which will hold an enquiry into the matter. On the basis of the reply of the Supreme Court, the President is required to take the decision.

There are five grounds provided on which President may remove the Chairperson or any other member from his office. These are:

- If that person has been declared as insolvent,
- If that person engages during his term of office in any other paid employment outside the duties of his office,
- If that person is unfit to continue because of the infirmity of the mind or body,
- If that person is of unsound mind as declared by a competent Court,
- If that person has been declared as guilty of criminal offence and is sentenced to the imprisonment and if in the opinion of the President it involves moral turpitude.

Functions of the Commission:

According to the protection of Human Rights Act, 1993; below are the functions of State Human Rights Commission:

- Inquire suo motu or on a petition presented to it, by a victim, or any person on his be into complaint of violation of human rights or negligence in the prevention of such violation by a public servant.
- Intervene in any proceeding involving any allegation of violation of human rights before a Court with the approval of such Court.
- Visit any jail or any other institution under the control of the State Government where persons are detained to study the living conditions of the inmates and make recommendations thereon
- Review the safeguards provided by or under the constitution of any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- Undertake and promote research in the field of human rights.
- Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights.
- Encourage the efforts of non-Governmental organizations and institutions working in the field of human rights.
- Undertake such other functions as it may consider necessary for the promotion of human rights.

Working of the Commission

- The commission is vested with the power to regulate its own procedure.
- It has all the powers of a civil court and its proceedings have a judicial character.
- It may call for information or report from the state government or any other authority subordinate thereto.

It has the power to require any person subject to any privilege which may be claimed under any law for the time being in force, to furnish information on points or matters useful for, or relevant to the subject matter of inquiry. The commission can look into a matter within one year of its occurrence.

The Commission may take any of the following steps during or upon the completion of an inquiry:

- It may suggest that the victim's compensation or damages be paid by the state government or authority.
- It may suggest to the state government or authority that criminal charges or other actions be brought against the state government.
- It may suggest to the state government or authority that the victim be granted prompt interim relief.
- It may seek direction, order, or writs from the Supreme Court or a state high court.
- The state government receives the Commission's annual or special reports. These reports are presented to the state legislature, together with a memorandum of action taken on the Commission's recommendations and the reasons for rejecting any of them.

Criticism:

- State Human Rights Commission has limited powers and its functions are just advisory in nature. The commission does not have power to punish the violators of human rights. It cannot even award any relief including monetary relief to the victim.
- The recommendations of State Human Rights Commission are not binding on the State Government or authority, but it should be informed about the action taken on its recommendation within one month.

National Human Rights Commission (NHRC) – Key Differences

	Protection of Human Rights Act 1993	***Protection of Human Rights (Amendment) Act 2019***
Chairperson	The commission shall consist of a Chairperson of NHRC who has been a Chief Justice of the Supreme Court. Under the Act, the Chairperson of an SHRC is a person who has been a Chief Justice of a High Court.	Chief justice of the Supreme court or the Judge of the Supreme Court shall be the Chairperson of NHRC. The Bill amends this to provide that a person who has been Chief Justice or Judge of a High Court will be Chairperson of an SHRC.
Other Members	NHRC must consist of two members to be appointed from among the persons having knowledge of, or practical experience in the matters relating to Human Rights.	The bill amends this to allow three members to be appointed of which at least one will be a woman.
Ex-Officio Members	The Chairpersons for National Commission for Minorities, National Commission for Scheduled Castes and scheduled Tribes and National Commission for Women shall deem to be Member of the Commission.	The Bill provides for including the Chairpersons of the National Commission for Backward Classes, National Commission for the protection of Child Rights and the Chief Commissioners for Persons with Disabilities as the members of NHRC.
Term	The Act states that the Chairperson and members of the NHRC and SHRC will hold office for five years or till the age of seventy years, whichever is earlier.	The bill reduces the term of Office to 3 years or till the age of 70 years whichever is earlier.
Reappointment	The act allows for the reappointment of the member of NHRC for the term of five years	The bill removes the five-year limit of reappointment

Powers of Secretary-General	The act provides for a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise powers as may be delegated to them.	The Bill amends this and allowed the Secretary-General to exercise all the administrative and financial powers (except Judicial functions) subject to Chairperson's control.
Union Territories		The Bill provides that the central government may confer on an SHRC human rights functions being discharged by Union Territories. Functions relating to human rights in the case of Delhi will be dealt with by the NHRC.
The Protection of Human Rights (Amendment) Bill, 2019 has been passed in both Lok Sabha and Rajya Sabha in 2019.		

Central Information Commission

The Chief Information Commission (CIC) is the authorized body in India to act upon complaints received from individuals who have been unable to submit requests of information to a Central or State Public Information Officer due to either the officer not having been appointed, or the respective officer refused to entertain the application under the Right to Information Act (RTI Act). The Central Information Commission is not a constitutional body.

The CIC was constituted with effect from 12th October 2005 under the RTI Act 2005. Its jurisdiction extends to all central public authorities.

Objectives

- To empower the citizens
- To promote transparency and accountability
- To contain corruption
- To enhance people's participation in democratic process.

Composition

Members in CIC – The CIC is headed by the Chief Information Commissioner and not more than ten Information Commissioners are there for the assistance of CIC. The Chief Information Commissioner holds office for five years.

At present, the Commission has seven Information Commissioners apart from the Chief Information Commissioner.

Appointment of the commissioner in CIC – The commissioners are appointed by the President on the recommendation of a committee consisting of the

- Prime Minister as Chairperson,
- the Leader of Opposition in the Lok Sabha, and
- Union Cabinet Minister nominated by the Prime Minister.

Tenure

- The Chief Information Commissioner and an Information Commissioner shall hold office for such term as prescribed by the Central Government or until they attain the age of 65 years, whichever is earlier (RTI amendment 2019).
- Chief Information Commissioner are not eligible for reappointment.
- The Information Commissioner is eligible for appointment as Chief Information Commissioner but cannot hold office for more than a total of five years including his term as Information Commissioner.
- The salary, allowances and other service conditions of the Chief Information Commissioner and an Information Commissioner shall be such as prescribed by the Central Government (RTI amendment 2019)
- They cannot be varied to his disadvantage during service.

Qualification:

- Qualification for membership to commission are persons should person of eminence in public life with experience in field of law, science and technology, governance, social service, management, journalism, mass media or administration.
- They should not be MP / MLA's or connected to any

political party, doing some business/ profession or holding office of profit.

Removal

- Removal is done by President on grounds of bankruptcy, unsound mind, infirmity of body or mind, sentenced to imprisonment for a crime, or engages in paid employment.
- He can also be removed for proved misbehaviour or incapacity if Supreme Court inquiry finds him guilty.
- They can resign by writing to President.

Role of the Central Information Commission

- Order enquiry into any matter on reasonable grounds only (suo-moto power).
- Secure compliance of its decisions from any public authority.
- Receive and inquire into a complaint from any person:
  - Who has not received any response to his request for information within a specified time?
  - Who deems the information given to him/her incomplete, false or misleading, and any other matter related to securing the information?
  - Who has been unable to submit a request for information due to the non-appointment of an officer?
  - Who considers the fees so charged unreasonable
  - Who was refused the information requested?
- The commission has the power to examine any record under the control of the public authority. All such records have to be given to the Commission during the examination and nothing shall be withheld.
- During inquiries, the CIC has the powers of a civil court, such as the powers to:
  - Summon and enforce the attendance of persons, and compel them to give oral or written evidence on oath and produce documents or things
  - Require the discovery and inspection of documents
  - Receive evidence on affidavit
  - Requisition public records or copies from any office or court
  - Issue summons for the examination of documents or witnesses
  - Any other matter that may be prescribed
- The CIC also submits an annual report to the Government of India on the implementation of the provisions of the Act. This report is then placed before both the Houses of Parliament.
- The Commission has the power to secure compliance of its decisions from the public authority. This includes:
  - providing access to information in a particular form;
  - directing the public authority to appoint a Public Information Officer where none exists;
  - publishing information or categories of information;
  - making necessary changes to the practices relating to management, maintenance and destruction of records;
  - enhancing training provision for officials on the right to information;
  - seeking an annual report from the public authority on compliance with this Act;
  - requiring the public authority to compensate for any loss or other detriment suffered by the applicant;
  - imposing penalties under this Act; and
  - rejecting the application.

Benefits

- Citizen empowerment as their participation will increase in knowing about working.
- Better functioning of the Government.
- More accessibility to getting information with ease.
- Public records will be maintained efficiently.
- Efficiency of the Government's functioning will be known.
- Best example of Rights Approach.

Issues with CIC:

- No adequate authority:
  - The Act did not give adequate authority to the ICs to enforce their decisions.
- Inadequate Trained PIOs and First Appellate authority:
  - results in breaking the 30-day timeline for providing information as due to lack of proper training PIOs are not able to provide the information in time bound manner
- ***Impact of Covid-19:***
  - During the pandemic, most of the CICs offices were not working. Most even do not have their websites working.
- ***Delays and Backlogs:***
  - On average, the CIC takes 388 days (more than one year) to dispose of an appeal/complaint from the date it was filed before the commission.
  - A report released last year has pointed out that more than 2.2 lakh Right to information cases are pending at the Central and State Information Commissions (ICs).
- ***No Penalties:***
  - The report found that the Government officials hardly face any punishment for violating the law.
  - Penalties were imposed in only 2.2% of cases that were disposed of, despite previous analysis showing a rate of about 59% violations which should have triggered the process of penalty imposition
- ***Vacancy:***
  - Despite repeated directions from the court, there are still three vacancies in the CIC.
- ***Lack of Transparency:***
  - The criteria of selection, etc, nothing has been placed on record.
- Non-availability of User Guides for RTI implementation for information seekers:
  - Under Section 26 of the RTI Act, the appropriate Government is expected to publish and distribute user guides (within eighteen months of enactment of the Act) for information seekers.
  - However, it was highlighted in the information provider survey that Nodal Departments have not published these guides.
- ***Low awareness levels:***
  - People are not much aware about RTI, especially the lower strata of society. They are not able to enjoy their right of asking for information for their own betterment.
  - An awareness survey was held and as per the survey it was revealed that only 15 per cent of the respondents were aware of the RTI Act.
  - It was further observed that awareness level is low among the disadvantaged communities such as women, rural population, OBC/SC/ST categories, etc.
- ***Government's Plan:***
  - The Government is planning to do away with the equal footing of CIC and CEC, which only suggests that fair elections are more important than transparency of working.
  - The Government is also planning to reduce the 5-year tenure period to one which will majorly impact the independent nature of the institution.

Key Changes of Right to Information (Amendment) Bill, 2019

Provision	*RTI Act 2005*	*RTI (Amendment) Bill 2019*
Term (Section 13)	5 years or the age of 65 whichever is earlier	Now Centre Govt. will notify tenure. (Now 3 years as notified by Centre)
Salary	Following Equivalents in Salaries were to be paid: Under Section 13 of RTI Act 2005: CIC = Chief Election Commissioner (CEC) ICs = Election Commissioners (ECs) Under Section 16 of RTI Act 2005: State level CIC = ECs State Level ICs = Chief Secretary of State govt.	Now, the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government. (No power to State Governments)

Deduction in Salary (Section 27)	Salaries of CIC and ICs will be deducted by an amount equal to the pension or retirement benefits being received by them if any.	Bill has removed these provisions.
Appointment	Earlier by 3-member committee comprising PM, Leader of Opposition and One Minister nominated by PM. Similarly at State Level, 3 membered committee will comprise of CM, Leader of Opposition in State and any Minister in State.	Now, these powers have been delegated to the Central Government.

STATE INFORMATION COMMISSION

The Right to Information Act of 2005 provides for the creation of not only the Central Information Commission but also a State Information Commission at the state level. Accordingly, all the states have constituted the State Information Commissions through Official Gazette Notifications.

The State Information Commission is a high-powered independent body which inter-alia looks into the complaints made to it and decide the appeals. It entertains complaints and appeals pertaining to offices, financial institutions, public sector undertakings, etc., under the concerned state government.

Objectives

- To empower the citizens
- To promote transparency and accountability
- To contain corruption
- To enhance people's participation in democratic process.

Composition

The SIC is headed by the state Information Commissioner and not more than ten Information Commissioners are there for the assistance of SIC. The number of State Information Commissioners varies from one state to another state.

The Governor appoints the commissioners on the advice of a committee that includes

- Chief Minister as Chairperson,
- the Leader of the Opposition in the Legislative Assembly and
- a State Cabinet Minister nominated by the Chief Minister

Tenure

- The State Chief Information Commissioner and a State Information Commissioner shall hold office for such term as prescribed by the Central Government or until they attain the age of 65 years, whichever is earlier (RTI amendment 2019).
- State Chief Information Commissioner are not eligible for reappointment.
- The State Information Commissioner is eligible for appointment as State Chief Information Commissioner but cannot hold office for more than a total of five years including his term as State Information Commissioner.
- The salary, allowances and other service conditions of the State Chief Information Commissioner and a State Information Commissioner shall be such as prescribed by the Central Government (RTI amendment 2019)
- They cannot be varied to his disadvantage during service.

Qualification:

- Qualification for membership to commission are persons should person of eminence in public life with experience in field of law, science and technology, governance, social service, management, journalism, mass media or administration.
- They should not be MP / MLA's or connected to any political party, doing some business/ profession or holding office of profit.

Removal:

- Removal is done by Governor on grounds of bankruptcy, unsound mind, infirmity of body or mind, sentenced to imprisonment for a crime, or engages in paid employment.
- He can also be removed for proved misbehaviour or incapacity if Supreme Court inquiry finds him guilty. They can resign by writing to Governor.

Powers and Function

- It is the duty of the Commission to receive and inquire into a complaint from any person:
- who has not been able to submit an information request because of non-appointment of a Public Information Officer (PIO)
  - who has been refused information that was requested;
  - who has not received response to his information request within the specified time limits;
  - who thinks the fees charged are unreasonable;
  - who thinks information given is incomplete, misleading or false;
  - any other matter relating to obtaining information.
- The Commission can order inquiry into any matter if there are reasonable grounds (suo-moto power).
- While inquiring, the Commission has the powers of a civil court in respect of the following matters:
  - summoning and enforcing attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things;
  - requiring the discovery and inspection of documents;
  - receiving evidence on affidavit;
  - any public record from any court or office; issuing summons for examination of witnesses or documents; and
  - any other matter which may be prescribed.
- All public records must be given to the Commission during inquiry for examination.
- The Commission has the power to secure compliance of its decisions from the public authority. This includes:
  - access to information in a particular form;
  - directing the public authority to appoint a Public Information Officer where none exists;
  - publishing information or categories of information;
  - making necessary changes to the practices relating to management, maintenance and destruction of records;
  - enhancing training provision for officials on the right to information;
  - seeking an annual report from the public authority on compliance with this Act;
  - requiring the public authority to compensate for any loss or other detriment suffered by the applicant;
  - imposing penalties under this Act; and
  - rejecting the application.
- The State Information Commission submits an annual report to the State Government on the implementation of the provisions of this Act. The State Government places this report before the State
- When a public authority does not conform to the provisions of this Act, the Commission may recommend (to the authority) steps which ought to be taken for promoting such conformity.

CENTRAL VIGILANCE COMMISSION

The need to set up CVC

The Central Vigilance Commission was set up by the Government in February, 1964 on the recommendations of the Committee on Prevention of Corruption, headed by Shri K. Santhanam, to advise and guide Central Government agencies in the field of vigilance.

CVC is an apex Indian governmental body. It addresses governmental corruption. In 2003, the Parliament enacted a law conferring statutory status on the CVC. It

- has the status of an autonomous body
- is free of control from any executive authority
- charged with monitoring all vigilance activity under the Central Government of India
- advises various authorities in central Government organizations in planning, executing, reviewing and reforming their vigilance work.

The main purpose for which this important body had been established was to ensure all sorts of corruptions in government sector could be well prevented and addressed minutely.

Central Government of India formed CVC in the year

1964 as an important body that could take into account the measures and steps to prevent all the corruptions especially the governmental ones for a better system and governance.

The Government of India has authorized the Central Vigilance Commission as the "Designated Agency" to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action.

Present status of the CVC

The CVC Bill was passed by both the houses of Parliament in 2003 and the President gave its assent on September 11, 2003. Thus, the Central Vigilance Commission Act 2003 came into effect from that date.

Before Central Vigilance Commission can take up investigations into corruption cases against government officials, it has to be approved by the government. The Central Vigilance Commission also publishes list of corrupt officials and recommends punitive action against them.

Composition of CVC

The Commission shall consist of:

- A Central Vigilance Commissioner - Chairperson;
- Not more than two Vigilance Commissioners - Members;

CVC is headed by a Central Vigilance Commissioner who is assisted by two Vigilance Commissioners.

The Vigilance Commissioner shall act as Central Vigilance Commissioner in the following circumstances:

- If the office of Central Vigilance Commissioner is vacant due to his death, resignation or otherwise
- The Central Vigilance Commissioner is unable to discharge his functions due to him being absent on leave.

Appointment of Central Vigilance Commissioner and Vigilance Commissioner

The President of India appoints the Central Vigilance Commissioner and the Vigilance Commissioners on the recommendation of the Prime Minister, Home Minister and the leader of the opposition in the Lok Sabha.

The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—

- Who have knowledge and experience in the matters relating to vigilance, policy making and administration including police administration and have been or are in-
  - an All-India Service;
  - any civil service of the Union;
  - a civil post under the Union;
- Who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations.

A Secretary shall be appointed to the Commission on terms and conditions to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

Removal of Central Vigilance Commissioner and Vigilance Commissioner

Any Vigilance Commissioner can be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court has been referred the matter and an inquiry is conducted. The result of the inquiry is such that the Central Vigilance Commissioner or any Vigilance Commissioner needs to be removed.

The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.

The President may, by order, remove Central Vigilance Commissioner or any Vigilance Commissioner from office if such person

- is adjudged an insolvent;
- has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude;
- during his term of office engages in any paid employment outside the duties of his office;
- is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body;
- has acquired financial or other interest as is likely

to affect prejudicially his functions.

Functions and Powers

Functions and Powers mentioned under 2003 Act are as follows:

- Exercise superintendence over the functioning of the Delhi Special Police Establishment (CBI) insofar as it relates to the investigation of offences under the Prevention of Corruption Act, 1988; or an offence under the Criminal Procedure Code for certain categories of public servants.
- Give directions to the Delhi Special Police Establishment (CBI) for superintendence insofar as it relates to the investigation of offences under the Prevention of Corruption Act, 1988.
- To inquire or cause an inquiry or investigation to be made on a reference by the Central Government
- To inquire or cause an inquiry or investigation to be made into any complaint received against any official belonging to such category of officials specified in sub-section 2 of Section 8 of the CVC Act, 2003.
- Review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence under the Criminal Procedure Code.
- Review the progress of the applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988.
- Tender advice to the Central Government and its organizations on such matters as may be referred to it by them.
- Exercise superintendence over the vigilance administrations of the various Central Government Ministries, Departments and Organizations of the Central Government.
- Shall have all the powers of a Civil Court while conducting any inquiry.
- Respond to Central Government on mandatory consultation with the Commission before making any rules or regulations governing the vigilance or disciplinary matters relating to the persons appointed to the public services and posts in connection with the affairs of the Union or to members of the All-India Services.
- The Central Vigilance Commissioner (CVC) is the Chairperson and the Vigilance Commissioners (Members) of the Committee, on whose recommendations, the Central Government appoints the Director of Enforcement.
- The Committee concerned with the appointment of the Director of Enforcement is also empowered to recommend, after consultation with the Director of Enforcement appointment of officers to the posts of the level of Deputy Director and above in the Directorate of Enforcement.
- The Central Vigilance Commissioner (CVC) is also the Chairperson and the Vigilance Commissioners (Members) of the Committee empowered to recommend after consultation with Director (CBI), appointment of officers to the post of the level of SP and above except Director and also recommend the extension or curtailment of tenure of such officers in the DSPE (CBI).

Proceedings of CVC

- The Commission shall be deemed to be a civil court. Every proceeding before the Commission shall be deemed to be a judicial proceeding. Hence the Commission has the power to
  - summon and enforce the attendance of any person;
  - require discovery and production of any document;
  - receive evidence on affidavits;
  - requisition any public record or a copy from court;
  - issue commissions for examination of witnesses etc.
- The proceedings of the Commission shall be conducted at its headquarters.
- The Commission shall abide by the rules of procedure in regard to the transaction of the business as provided by regulations.
- If the Central Vigilance Commissioner is for any reason unable to attend any meeting of the Commission, the senior most Vigilance Commissioner present at the meeting, shall preside at the meeting.

- No act or proceeding of the Commission shall be invalid merely by reason of-
  - any vacancy in, or any defect in the constitution of, the Commission; or
  - defect in the appointment of a person acting as the Central Vigilance Commissioner or as a Vigilance Commissioner; or
  - any irregularity in the procedure of the Commission not affecting the merits of the case.

Jurisdiction

The jurisdiction of the CVC extends to the following:

- Members of All India Services serving in connection with the affairs of the Union and Group A officers of the Central Government.
- Officers of the rank of Scale V and above in the Public Sector Banks.
- Officers in Grade D and above in Reserve Bank of India, NABARD and SIDBI.
- Chief Executives and Executives on the Board and other officers of E-8 and above in Schedule 'A' and 'B' Public Sector Undertakings.
- Chief Executives and Executives on the Board and other officers of E-7 and above in Schedule 'C' and 'D' Public Sector Undertakings.
- Managers and above in General Insurance Companies.
- Senior Divisional Managers and above in Life Insurance Corporation.
- Officers drawing salary of ₹8700/- per month (pre-revised) and above on Central Government D.A. pattern, as may be revised from time to time, in societies and local authorities owned or controlled by the Central Government

Limitations of CVC

The CVC is not an investigating agency. The only investigation carried out by the CVC is that of examining Civil Works of the Government which is done. There are certain limitations to CVC. These are

- CVC is only an advisory body. Central Government Departments are free to either accept or reject CVC's advice in corruption cases.
- CVC does not have adequate resources compared with number of complaints that it receives. It is a very small set up with sanctioned staff strength of 299. Whereas, it is supposed to check corruption in more than 1500 central government departments and ministries.
- CVC cannot direct CBI to initiate inquiries against any officer of the level of Joint Secretary and above on its own. Such permission has to be obtained from the concerned department.
- CVC does not have powers to register criminal case. It deals only with vigilance or disciplinary cases.
- CVC has supervisory powers over CBI. However, CVC does not have the power to call for any file from CBI or to direct CBI to investigate any case in a particular manner.
- CVC cannot make direct appointments as it is indirectly under the control of Govt. of India. Though the leader of the Opposition (in Lok Sabha) is a member of the Committee to select CVC and VCs. But the Committee considers candidates put up before it.
- Corruption investigations against government officials can proceed only after the government permits them.

As a result, although CVC is relatively independent in its functioning, it has neither resources nor powers to inquire and take action on complaints of corruption that may act as an effective deterrence against corruption.

Hence, CVC is often considered a powerless agency as it is treated as an advisory body only with no power to register criminal case against government officials or direct CBI to initiate inquiries against any officer of the level of Joint Secretary and above.

Whistle Blowers Protection Act (2014)

The salient features of the Whistle Blowers Protection Act (2014) are as follows:

- The Act provides a mechanism for protecting the identity of whistle blowers (a term given to people who expose corruption). People who expose corruption in Government or irregularities by public functionaries can now be free of any fear of victimization.
- The Act also provides for a system to encourage people to disclose information about corruption or the wilful misuse of power by public servants, including ministers.

- As per the Act, a person can make a public interest disclosure on corruption before a competent authority - which is at present the Central Vigilance Commission (CVC). The government, by notification, can appoint any other body also for receiving such complaints about corruption.
- The Act, however, lays down punishment of up to two years in prison and a fine of up to ₹30,000 for false or frivolous complaints.
- The Act says that every disclosure shall be made in good faith and the person making the disclosure shall provide a personal declaration stating that he reasonably believes that the information disclosed by him and the allegation contained therein is substantially true.
- Disclosures can be made in writing or by email message in accordance with the procedure as may be prescribed and contain full particulars and be accompanied by supporting documents, or other material.
- However, no action shall be taken on a disclosure if it does not indicate the identity of the complainant or public servant or if "the identity of the complainant or public servant is found to be incorrect."
- The Act is not applicable to the Special Protection Group.

CENTRAL BUREAU OF INVESTIGATION

CBI stands for Central Bureau of Investigation. It is the premier investigating police agency in India, which works under the Ministry of Personnel, Pension & Public Grievances, Government of India. The Ministry comes under the direct purview of the Prime Minister's Office.

History of the Central Bureau of Investigation (CBI)

During World War II, a Special Police Establishment (SPE) was formed in the Department of War of British India, in 1941. The SPE was to enquire into allegations of bribery and corruption in the war-related procurements.

Later, the SPE was formalized as an agency of the Government of India to investigate allegations of corruption in various wings of the Government of India by enacting the Delhi Special Police Establishment (DSPE) Act, 1946.

In 1963, the SPE was renamed by the Government of India to CBI with a view to investigating serious crimes. The Santhanam Committee on Corruption Prevention recommended the formation of the CBI. The CBI was then established by a Home Affairs Ministry resolution.

CBI now works under the Ministry of Personnel, Pension & Public Grievances, Government of India, and coordinates the investigation on behalf of the Interpol Member countries. For investigation of offences under the Prevention of Corruption Act, CBI vests superintendence to the Central Vigilance Commission.

What is CBI?

CBI is the premier investigating police agency in India. It is an elite force playing a major role in the preservation of values in public life and in ensuring the health of the national economy. The conversion rate of CBI is 65 to 70%, and that's why it can be tagged as one of the best investigation agencies in the world. It is not a statutory body.

The CBI derives power to investigate from the Delhi Special Police Establishment (DSPE) Act, 1946 and is headquartered in New Delhi, India. The CBI is involved in major criminal probes and is the Interpol agency in India.

Central Bureau of Investigation has emerged as a premier investigating agency of the country which enjoys the trust of the people, Parliament, Judiciary and the Government. In the last 75 years, the organisation has evolved from an anti-corruption agency to a multi-faceted, multi-disciplinary central police law enforcement agency with the capability, credibility and legal mandate to investigate and prosecute offences anywhere in India.

Motto and Vision of CBI

The Motto of CBI is - Industry, Impartiality, Integrity.

Vision of CBI

- CBI aims to develop transparency, professionalism, and adaptability to change and the use of technology and science in its work.
- It curbs corruption in public life, violent crimes, and economic and violent crimes through investigation and prosecution.
- Help fight cyber and high technology crime.
- Evolve effective systems and procedures for successful investigation and prosecution of cases.

- Play a lead role in the war against national and transnational organized crime, and uphold Human Rights, protect the environment, arts, antiques and heritage of our civilization.
- Strive for excellence and professionalism in all spheres of functioning so that the organization rises to high levels of endeavour and achievement.

Organization Structure of CBI

- The CBI is headed by a director, an IPS officer with a rank of Director General of Police or Commissioner of Police (State). The director is selected based on the CVC Act 2003, and has a two-year term. The CBI is subject to five ministries of the Government of India:
  - ***Ministry of Home Affairs:*** For Cadre clearance
  - ***Department of Personnel and Training (DoPT):*** For Administration, budget, and induction of non-IPS officers
  - ***Union Public Service Commission:*** For the selection of Officers above the rank of Deputy Superintendent of Police
  - ***Law and Justice Ministry:*** For Public prosecutors
  - ***Central Vigilance Commission:*** For Anti-corruption cases
- In 2014, the Lokpal Act provided a committee for appointment of CBI Director:
  - Headed by Prime Minister
  - Other members - Leader of Opposition/Leader of the single largest opposition party,
  - Chief Justice of India/ a Supreme Court Judge.
- Home Ministry sends a list of eligible candidates to DoPT. Then, the DoPT prepares the final list on basis of seniority, integrity, and experience in the investigation of anti-corruption cases, and sends it to the committee.
- Director of CBI has been provided security of two-year tenure, by the CVC Act, 2003.

Divisions under CBI

The Central Bureau of Investigation has the following divisions:

- Anti-Corruption Division (Delhi Special Police Establishment)
- Economic Offences Division
- Special Crimes Division
- Directorate of Prosecution
- Administration Division
- Policy & Coordination Division
- Central Forensic Science Laboratory

The Investigation & Anti-Corruption Division (Delhi Special Police Establishment) was entrusted with the following mandate in the resolution although it continued to derive its jurisdiction and powers from DSPE Act, 1946.

Cases Handled by CBI

The cases that can be handled by the CBI are mentioned below.

- Cases in which public servants under the control of the Central Government are involved either by themselves or along with State Government servants and/or other persons.
- Cases in which the interests of the Central Government, or of any public sector project or undertaking, or any statutory corporation or body set up and financed by the Government of India are involved.
- Cases relating to breaches of Central Laws with the enforcement of which the Government of India is particularly concerned, e.g.
  - Breaches of Import and Export Control Orders
  - Serious breaches of Foreign Exchange Regulation Act,
  - Passport frauds
  - Cases under the Official Secrets Act pertaining to the affairs of the Central Government.
  - Cases of certain specified categories under the Defence of India Act or Rules with which the Central Government is particularly concerned
- Serious cases of cheating or fraud relating to the Railways, or Posts & Telegraphs Department, particularly those involving professional criminals operating in several States.
  - Crime on the High Seas
  - Crime on the Airlines
- Important and serious cases in Union Territories particularly those by professional criminals.
- Serious cases of fraud, cheating and embezzlement

relating to Public Joint Stock Companies.

- Other cases of a serious nature, when committed by organised gangs or professional criminals, or cases having ramifications in several States including Union Territories, serious cases of spurious drugs, important cases of kidnapping of children by professional Inter-State gangs, etc. These cases will be taken up only at the request of or with the concurrence of the State Governments/Union Territories Administrations concerned.
- Collection of intelligence about corruption in the public services and the projects and undertakings in the public sector.
- Prosecution of cases investigated by this Division.
- Presentation of cases before Enquiry Offices in which departmental proceedings are instituted on the recommendation of this Division.

Functions of CBI

The CBI serves as India's point of contact with INTERPOL. CBI investigates cases involving violations of economic and fiscal laws, such as customs and central excise, export and import control, income tax, foreign exchange regulations, and so on. However, cases of this nature are investigated by the CBI either at the request of the department concerned or in consultation with the department concerned. Other function include:

- Coordination of the activities of various state police forces and anti-corruption organisations.
- Investigate any case of public importance at the request of a state government.
- Investigate serious crimes with national and international ramifications that are committed by professional criminals or organized gangs.
- Keeping crime statistics and spreading criminal information.
- CBI will no longer require government's prior sanction to launch investigations against officers of joint secretary rank and above in corruption cases.

Powers of CBI

The legal powers of investigation of the CBI are derived from the DSPE Act 1946, which confers powers, duties, privileges and liabilities on the Delhi Special Police Establishment (CBI) and officers of the Union Territories. The central government may extend to any area (except Union Territories) the powers and jurisdiction of the CBI for investigation, subject to the consent of the government of the concerned state. The CBI can investigate only with notification by the central government.

The High Courts and the Supreme Court have the jurisdiction to order a CBI investigation into an offense alleged to have been committed in a state without the state's consent.

Sources of Powers of CBI

- The CBI is the Government of India's primary investigative agency. It is not a statutory body; its powers are granted by the Delhi Special Police Establishment Act of 1946.
- Its critical role is to prevent corruption and maintain administrative integrity.
- In matters pertaining to the Prevention of Corruption Act, 1988, it works under the supervision of the CVC (Central Vigilance Commission).
- However, the Central Government can extend its jurisdiction to other areas, including railway areas and states, if the State Government consents.
- Because many of its investigators come from the Indian Police Service, the agency relies on the Home Ministry for staffing.
- The CBI also relies on the Ministry of Law for lawyers and lacks some functional autonomy.

What is General Consent in an investigation by the CBI?

- The CBI which is under the Delhi Special Police Establishment (DSPE) Act, 1946, will now have to approach the State government for permission for investigation on a case-by-case basis.
- It is not the first time. Over the years, several states had also withdrawn consent for some time. The CBI would still have the power to investigate old cases registered when general consent existed.
- Withdrawal of consent will only bar the CBI from registering a case within the jurisdiction of that state.
- Moreover, cases registered anywhere else in the country, but involving people stationed in Andhra Pradesh and West Bengal would allow CBI's jurisdiction to extend to these states.
- If the Supreme Court or a High Court directs that a particular investigation be handed over to the CBI, there is no need for any consent under the DSPE Act.

- Given that the CBI has jurisdiction only over Central govt departments and employees, it can investigate a case involving state government employees or a violent crime in a given state only after that state government gives its consent. Thus, it gets a general consent instead of a case-specific consent to avoid taking permission each time.
- The general consent is normally given for periods ranging from six months to a year.
- CBI has claimed that this has tied its hands.
- In November 2021, the Supreme Court expressed concern over CBI's submission that 78% of its 150 requests for sanction to investigate cases were pending with State Governments that had withdrawn consent to the CBI.

Jurisdiction of CBI v/s State Police

Law and Order is a state subject and the basic jurisdiction to investigate crime lies with State Police. Besides, due to limited resources, the CBI would not be able to investigate crimes of all kinds. CBI may investigate:

- Cases which are essentially against the Central Government. employees or concerning affairs of the Central Government.
- Cases in which the financial interests of the Central Government are involved.
- Cases relating to the breaches of Central Laws with the enforcement of which the Government of India is mainly concerned.
- Big cases of fraud, cheating, embezzlement and the like relating to companies in which large funds are involved and similar other cases when committed by organised gangs or professional criminals having ramifications in several States.
- Cases having interstate and international ramifications and involving several official agencies where, from all angles, it is considered necessary that a single investigating agency should be in charge of the investigation.

Challenges associated with CBI

Here are some concerns associated with CBI:

- ***Police Agency:*** Since the police is a State subject under the Constitution, and the CBI follows the procedures outlined in the Code of Criminal Procedure (CrPC), it is classified as a police agency.
- ***Manipulation by Government:*** The CBI is also vulnerable to the government's ability to manipulate senior officers because they rely on the Central government for future postings.
- ***Consent of State:*** The CBI needs the permission of the State administration in issue before it can make its presence in that State. As a result, certain situations may go un-investigated, resulting in a quiet standoff.
- ***CBI and RTI:*** CBI is listed under the Right to Information Act's Second Schedule, it specifies that the statute "does not apply to certain organizations." However, the CBI made the point that they are investigating all types of cases, including ones of strategic importance to India, and that if they were submitted to RTI, much of that material would be released into the public realm.
- ***Corruption and politically biased:*** The politicization of the Central Bureau of Investigation (CBI) has been ongoing for several years. This was emphasized in Supreme Court criticism for being a caged parrot speaking in the voice of its master.
- ***CBI Autonomy:*** The Supreme Court questioned the issue of the bureau's independence in the infamous Coalgate corruption case, saying that "the CBI has become the state's parrot." Only screams, echoing the master's voice" The Supreme Court then directed the Centre to make the CBI impartial and to guarantee that it operates free of any extraneous pressures.

CBI Academy

The CBI Academy is located at Ghaziabad, Uttar Pradesh and started functioning in 1996. Earlier, training programmes were being conducted at the CBI Training Centre, New Delhi.

Vision – "Excellence in Training in the Fields of Crime Investigation, Prosecution and Vigilance Functioning"

Beside the CBI Academy at Ghaziabad, there are three regional training centres imparting training at regional levels at –

- Kolkata
- Mumbai
- Chennai

Two types of training courses –

- Short Term In-service Courses: For officers of the

CBI, state police, central para-military forces and central government undertakings

- Long Term Basic Courses: For directly recruited deputy superintendents of police, sub-inspectors and constables of CBI

Supreme Court over Autonomy of CBI

The landmark judgment in Vineet Narain v. Union of India in 1997 laid out several steps to secure the autonomy of CBI. The Court directed –

- the CBI director shall have a "minimum tenure of two years, regardless of the date of his superannuation".
- the Central Vigilance Commission (CVC) "shall be responsible for the efficient functioning of CBI".
- the CVC chief shall be selected by a panel comprising the prime minister, home minister and the leader of the opposition from a panel of "outstanding civil servants".

Most importantly, the Vineet Narain judgement stated that the "transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment, should have the approval of the selection committee"

CBI: A Caged Parrot?

- Politicisation of the Central Bureau of Investigation (CBI) has been a work in progress for years.
- Corruption and politically biased: This was highlighted in Supreme Court criticism for being a caged parrot speaking in its master's voice.
- CBI has been accused of becoming 'handmaiden' to the party in power, as a result high profile cases are not treated seriously.
- Since CBI is run by central police officials on deputation hence chances of getting influenced by government was visible in the hope of better future postings.

Saradha Chit-Fund scam

- It is a major financial scam caused by collapse of Ponzi scheme, a collective investment scheme, run by Saradha group.
- The group collected around Rs. 20,000-30,000 crores from over 17 lakh people in various areas of West Bengal. The scheme collapsed in 2013.

Issues with the Case

- ***Conduct of CBI:*** West Bengal Government has alleged that CBI is working on the behest of central government to derail government in West Bengal. CBI must seem to work more transparently and independently.
- ***Conduct of West Bengal Government:*** The CBI while filing the contempt plea in Supreme Court said that it was stopped from performing its lawful duty by the state police and state administration. An independent and transparent investigation is needed to book the perpetrators and state government should cooperate with the agency instead of blocking it from functioning.

LOKPAL AND LOKAYUKTAS

An ombudsman means a commissioner or an agent. While the Swedish are typically credited with having the first legislative ombudsman, ombudsman-like roles were popular in other nations and traditions. In first nations communities in North America, for example, disputes were frequently decided by an elder – someone who understood the people and could make choices that were far-reaching on a personal basis.

The Constitution of India came into force on January 26, 1950, which established a Parliamentary democratic framework. Accordingly, the Indian government has implemented measures to combat corruption and the establishment of the institution of an ombudsman has become a sine qua non to reduce corruption and maladministration.

Origin and Meaning

The term 'Ombudsman' is of Scandinavian origin literal translation of the Swedish word is "representative" or "agent". Ombudsman is defined as -

"A public official appointed by the legislature to receive and investigate citizen complaints against administrative acts of government"; and, furthermore, "a neutral, independent intermediary between the complainant and the agency, who investigates complaints and objectively determines if an agency acted in a mistaken, unfair, arbitrary or illegal manner."

The ombudsman was first established in Sweden in 1713, when a "chancellor of justice" was appointed by King to protect the Kings rights.

For example, when King Charles XII was at a war the

ombudsman would make sure everything was in order while the king was abroad. Lars Augustin Mannerheim, the first government ombudsman, was appointed by the Swedish Parliament to protect the people's rights rather than preserve the king's rights.

In 1809 Sweden became the first nation to establish the institution of the ombudsman, but the ombudsman has appeared in various other countries over the century. Since 1920, Finland has had the institution of a Parliamentary ombudsman. More than 130 countries now have similar institutions of ombudsmen.

Evolution of Lokpal and Lokayukta in India

Evolution of Lokpal and Lokayukta in India can sum up as follows:

- ***1963:*** L.M. Singhvi has coined the word Lokpal
- ***1963:*** The concept of an ombudsman first came up in Parliament during a discussion over the Law Ministry's budget allocation.
- ***1966:*** The First Administrative Reforms Commission recommended that two independent authorities be established- at the Central and State level, to look into complaints against public servants, including M.P.s.
- ***1968:*** The Lok Pal Bill was introduced eight times in Parliament but was never passed.
- ***1971:*** The Maharashtra was the first Indian state to establish a corruption watchdog, The Maharashtra Lokayukta
- ***2002:*** The Commission to Review the Working of the Constitution (headed by Shri M.N. Venkata Chilliah)) advocated the appointment of the Lok Pal and Lokayukta, as well as the exclusion of the Prime Minister from the jurisdiction of authority.
- ***2005:*** The second Administrative Reforms Commission (headed by Shri Veerappa Moily) advised establishing the Lok Pal office as soon as possible.
- ***2011:*** The popular Anna Movement for Lokpal.
- ***2013:*** Both Houses of Parliament passed the Lokpal and Lokayukta Bill, which was introduced in 2011.
- ***2014:*** The Lokpal and Lokayukta Act, 2013, came into force on January 16, 2014.
- ***2016:*** The Lokpal and Lokayukta Act, 2013, was amended by Parliament to address minor issues.
- ***2018:*** Meetings of the Selection Committees as per section 4(1) of the Lokpal and Lokayukta Act, 2013 were held in March and April 2018 following the intervention of the Supreme Court.
- ***2019:*** On March 19, 2019, Justice (Retd) Pinaki Chandra Ghose was appointed as the first Lokpal of India, along with eight judicial and non-judicial members, following judicial intervention.
- ***2020:*** Rules and format for filing complaints with Lokpal issued.

Salient Features of the Lokpal and Lokayukta Act, 2013

In India the establishment of an Ombudsman institution has happened through The Lokpal and Lokayukta Act, 2013 which was enacted in the year 2014. The act provides the following key details:

Structure

- Lokpal is a multi-member body, that consists of
  - one Chairperson and
  - maximum of 8 members.
- Chairperson of the Lokpal should be either the former Chief Justice of India or the former Judge of Supreme Court or an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- Out of the maximum eight members, half will be judicial members and minimum 50% of the Members will be from SC/ ST/ OBC/ Minorities and women.
- The judicial member of the Lokpal either a former Judge of the Supreme Court or a former Chief Justice of a High Court.
- The non-judicial member should be an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- The term of office for Lokpal Chairman and

Members is 5 years or till the age of 70 years.

- The members and the Chairman of Lokpal are appointed by the President on the recommendation of a selection committee. The selection committee consists of-
  - The Prime Minister of India (chairperson);
  - The Speaker of Lok Sabha;
  - The Leader of Opposition in Lok Sabha;
  - The Chief Justice of India or any Judge nominated by Chief Justice of India;
  - One eminent jurist.
- For selecting the Chairperson and the members, the selection committee constitutes a search panel of at least eight persons.

Condition of Office

- The Salary allowances and other conditions of service of the chairperson and members are equivalent to that of Chief Justice of India and Judge of the Supreme Court respectively.
- They are not eligible for reappointment, cannot hold any constitutional or governmental office.
- They cannot contest any elections for a period of 5 years.

Investigative powers

The Lokpal on the receipt of a complaint may order a-

- Preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter.
- Investigation by any agency (including the Delhi Special Police Establishment) when there exists a prima facie case jurisdiction
- A Lokpal may inquire or start an investigation on the allegation of a complainant against the following people:
  - Prime Minister, and the other Ministers,
  - Members of Parliament,
  - Groups A, B, C and D officers,
  - Officials of Central Government.
  - Every person who is or has been in charge (director/ manager/ secretary) of a body or a society set up by the act of central government,
  - Any society or body financed or controlled by the central government,
  - Any person involved in act of abetting, bribe giving or bribe-taking.
- The Lokpal does not have jurisdiction over Ministers and MPs in the matter of anything said in Parliament or a vote given there.
- Its jurisdiction also includes any person who is or has been in charge (director/ manager/ secretary) of anybody/ society set up by central act or any other body financed/ controlled by central government and any other person involved in act of abetting, bribe giving or bribe taking.
- It has the powers to superintendence over, and to give direction to CBI.

Exception for Prime Minister

- If a complaint is filed against the Prime Minister, the Lokpal shall inquire or cause an inquiry to be conducted into the allegation of corruption.
- However, the Act does not allow a Lokpal inquiry if the allegation against the Prime Minister relates to-
  - International relations
  - External and internal security
  - Public order
  - Atomic energy
  - Space
- Also, complaints against the Prime Minister are not to be probed unless the full Lokpal bench considers the initiation of an inquiry and at least 2/3rds of the members approve it.
- Such an inquiry against the Prime Minister (if conducted) is to be held in camera.
- If the Lokpal concludes that the complaint deserves to be dismissed, the records of the inquiry are not to be published or made available to anyone.

Powers

- It has Superintendence over the Central Bureau of Investigation and can give directions to it. If a case is referred to CBI by Lokpal, the investigating officer in such a case cannot be transferred without the approval of Lokpal.
- Lokpal will have an Inquiry Wing and Prosecution Wing. The Inquiry Wing has the powers of a Civil Court.

- It can confiscate assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.
- It can transfer or suspend public servants connected with allegations of corruption.
- It has the power to give directions to prevent the destruction of records during the preliminary inquiry.

Functions

- A complaint can be made to the Lokpal for an offence under the Prevention of Corruption Act.
- The Lokpal may order a preliminary inquiry by its Inquiry Wing or refer it any investigation agency like CBI.
- However, the Lokpal should establish that a prima facie case exists after seeking an explanation from the public servant as well as his competent authority.
- With respect to Central Government Servants, it may refer cases to the Central Vigilance Commission.
- Preliminary Enquiry report should be done within 60 days. The preliminary investigation should be normally completed within 90 days.
- A Lokpal bench of not less than 3 members considers it and after giving an opportunity to the public servant, decides on a further investigation – it may dismiss, initiate a full investigation or start departmental proceedings.
- The trials will be held in special courts, which must complete them within one year.
- Extensions can be made but the total period cannot exceed two years.

Lokpal and Lokayukta Amendment Act, 2016

This bill also amended Section 44 of the Lokpal and Lokayukta Act 2013. Section 44 of the Act dealt with the provisions of furnishing of details of assets and liabilities, within 30 days of joining the government service, of any public servant.

This amendment replaced the time limit of 30 days. It stated that the public servants will make a declaration of their assets and liabilities in the form and manner as prescribed by the Government.

In the case where any non-governmental organization receives funds of more than Rs. 1 crore from government or receives foreign funding of more than Rs. 10 lakhs then the assets of the trustees and board members were to be disclosed to the Lokpal. The bill provided an extension to the time limit given to trustees and board members to declare their assets and those of their spouses.

Lokpal (Complaint) Rules, 2020:

The notification, under Section 59 of the Lokpal and Lokayukta Act, lays down the rules called the Lokpal (Complaint) Rules, 2020.

- According to the complaint forms, published as part of the notification, a complainant has to give a valid proof of identity, as specified therein.
- Foreign nationals can also lodge complaints. Only a copy of their passports will be accepted as proof of identity.
- The complaint can be filed electronically, by post or in person. In case the complaint is filed electronically, its hard copy has to be submitted to the Lokpal within 15 days.
- No complaints can be filed against a public servant under the Army Act, Navy Act, Air Force Act and the Coast Guard Act.
- A complaint may ordinarily be made in English, provided that the Lokpal may also entertain a complaint in any of the languages referred to in the Eighth Schedule to the Constitution.
- Apart from the details of the accused official(s), allegation and the evidence relied upon, the complainant or the authorised signatory will also have to submit an affidavit.
- Registration/incorporation certificate of the organisation, on whose behalf the complaint is made and copy of authorisation certificate in favour of the signatory, if the complaint is on behalf of a board, body, corporation, company, limited liability partnership, authority, society, association of persons or trusts, has to be furnished.
- The Lokpal bench will decide the complaint in the first instance at the admission stage. The Lokpal may seek other details or affidavit, if necessary.
- The identity of the complainant or the accused official will be protected by the Lokpal till the conclusion of inquiry or investigation. However, the protection will not be applicable in cases where the complainant herself reveals her identity to

any other office or authority while making the complaint to Lokpal.

- The complaints, whose contents are illegible, vague or ambiguous, which are trivial or frivolous, do not contain any allegation, are not filed within the limitation period of seven years, or are pending before any other court, tribunal or authority, will have to be disposed of within 30 days.

Lokayukta

Overview about Lokayukta

- Even much before the enactment of the Lokpal and Lokayukta Act (2013) itself, many states had already set up the institution of Lokayukta.
- It must be noted that the institution of Lokayukta was first established in Maharashtra in 1971.
- Although Odisha had passed an Act in this regard in 1970, it came into force only in 1983.
- Till date 20 States and 2 Union Territories (Delhi, Jammu and Kashmir) have established Lokayukta.

Salient Features of Lokayukta

The following are the features of Lokayukta:

Structural Variations:

The structure of the Lokayukta is not the same in all states. Some states like Rajasthan, Karnataka, Andhra Pradesh and Maharashtra have created the Lokayukta and as well as Upalokayukta while Himachal Pradesh, Bihar and Uttar Pradesh have created only the Lokayukta. There are states like Punjab and Orissa that have designated officials as Lokpal. This was not as per recommendations of the ARC report

Appointment:

The Lokayukta and Upalokayukta are appointed by the governor of the state. While appointing them, Governor in most of the states consults:

- The Chief Justice of the State High Court
- The Leader of the Opposition in the state legislative assembly

Qualification:

Judicial qualifications are prescribed for the Lokayukta in the States of Uttar Pradesh, Himachal Pradesh, Andhra Pradesh, Gujarat, Orissa, Karnataka and Assam. But no specific qualifications are prescribed in the states of Bihar, Maharashtra and Rajasthan.

Tenure:

In most of the states, the term of office fixed for Lokayukta is of 5 years duration or 65 years of age, whichever comes first. He is not eligible for reappointment.

Jurisdiction:

There is no uniformity regarding the jurisdiction of Lokayukta in all the states. The following points can be noted in this regard:

- The Chief Minister is included within the jurisdiction of Lokayukta in the states of Himachal Pradesh, Andhra Pradesh, Madhya Pradesh and Gujarat, while he is excluded from the purview of Lokayukta in the states of Maharashtra, Uttar Pradesh, Rajasthan, Bihar and Orissa.
- Ministers and higher civil servants are included in the purview of Lokayukta in almost all the states. Maharashtra has also included former ministers and civil servants.
- Members of state legislatures are included in the purview of Lokayukta in the States of Andhra Pradesh, Himachal Pradesh, Gujarat, Uttar Pradesh and Assam.
- The authorities of the local bodies, corporations, companies and societies are included in the jurisdiction of the Lokayukta in most of the states.

Investigations:

In most of the states, the Lokayukta can initiate investigations either on the basis of a complaint received from the citizen against unfair administrative action or suo moto. But he does not enjoy the power to start investigations on his own initiative in the states of Uttar Pradesh, Himachal Pradesh and Assam.

Scope of Cases Covered:

The Lokayukta can consider the cases of 'grievances' as well as 'allegations' in the States of Maharashtra, Uttar Pradesh, Assam, Bihar and Karnataka. But, in Himachal Pradesh, Andhra Pradesh, Rajasthan and Gujarat, the job of Lokayukta is confined to investigating allegations (corruption) and not grievances (maladministration).

Other Features:

- The Lokayukta presents, annually, to the governor of the state a consolidated report on his performance. The governor places this report along with an explanatory memorandum before the State Legislature. The Lokayukta is responsible to the state legislature.

- He takes the help of the state investigating agencies for conducting inquiries.
- He can call for relevant files and documents from the State Government departments.
- The recommendations made by the Lokayukta are only advisory and not binding on the State Government.

Limitations

- The institution of Lokpal has tried to bring a much-needed change in the battle against corruption in the administrative structure of India but at the same time, there are loopholes and lacunae which need to be corrected.
- Years have passed since the Lokpal and Lokayukta Act 2013 was passed by Parliament, but not a single Lokpal has been appointed till date indicating the lack of political will.
- The Lokpal act also called upon states to appoint a Lokayukta within a year of its coming to force. But only 16 states have established the Lokayukta.
- Lokpal is not free from political influence as the appointing committee itself consist of members from political parties.
- The appointment of Lokpal can be manipulated in a way as there is no criterion to decide who is an 'eminent jurist' or 'a person of integrity.'
- The 2013 act did not provide concrete immunity to the whistle blowers. The provision for initiation of inquiry against the complainant if the accused is found innocent will only discourage people from complaining.
- The biggest lacuna is the exclusion of judiciary from the ambit of the Lokpal.
- The Lokpal is not given any constitutional backing and there is no adequate provision for appeal against the Lokpal.
- The specific details in relation to the appointment of Lokayukta have been left completely on the States.
- To some extent, the need for functional independence of the CBI has been catered to by a change brought forth in the selection process of its director, by this Act.
- The complaint against corruption cannot be registered after a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

NATIONAL INVESTIGATION AGENCY

The 26th November 2008 Mumbai terrorist attack had given rise to the formation of the National Investigation Agency Bill 2008 to create the National Investigation Agency to investigate matters affecting the sovereignty and the security of the country. It deals with the offences of terrorism, counterfeit currency, human trafficking, narcotics, etc. The divisions of NIA are Investigation Division, Policy Research and Coordination Division and the Administrative Division. The NIA is a counter-terrorism agency in India. Officers of NIA also have powers similar to that of the police

As of now NIA has 15 Branch offices across the country. The headquarters of the NIA is at New Delhi. The branch offices of the NIA are located at Hyderabad, Guwahati, Mumbai, Lucknow, Kochi, Kolkata, Jammu, Raipur, Imphal, Chennai, Ranchi, Chandigarh, Bengaluru and Patna. In addition, the NIA has a separate specialised cell known as TFFC Cell dealing with the subjects of fake currency notes and terror funding. NIA maintains the most wanted list.

The NIA is headed by a Director-General. He is appointed by the Central Government. His powers are similar to the powers exercisable by a Director-General of Police in respect of the police force in a state.

The NIA works under the administrative control of the Ministry of Home Affairs, Government of India. The state government extends all assistance and co-operation to the NIA for investigation of the offences specified under the NIA Act

Vision of National Investigation Agency (NIA)

- The National Investigation Agency aims to be a thoroughly professional investigative agency matching the best international standards. The NIA aims to set the standards of excellence in counter terrorism and other national security related investigations at the national level by developing

into a highly trained, partnership-oriented workforce. NIA aims at creating deterrence for existing and potential terrorist groups/individuals. It aims to develop as a storehouse of all terrorist related information.

Mission of National Investigation Agency (NIA)

The stated missions of the NIA are as follows:

- In-depth professional investigation of scheduled offences using the latest scientific methods of investigation and setting up such standards as to ensure that all cases entrusted to the NIA are detected.
- Ensuring effective and speedy trial.
- Developing into a thoroughly professional, result oriented organization, upholding the constitution of India and Laws of the Land giving prime importance to the protection of Human Rights and dignity of the individual.
- Developing a professional work force through regular training and exposure to the best practices and procedures.
- Displaying scientific temper and progressive spirit while discharging the duties assigned.
- Inducting modern methods and latest technology in every sphere of activities of the agency.
- Maintaining professional and cordial relations with the governments of States and Union Territories and other law enforcement agencies in compliance of the legal provisions of the NIA Act.
- Assist all States and other investigating agencies in investigation of terrorist cases.
- Build a data base on all terrorist related information and share the data base available with the States and other agencies.
- Study and analyse laws relating to terrorism in other countries and regularly evaluate the adequacy of existing laws in India and propose changes as and when necessary.
- To win the confidence of the citizens of India through selfless and fearless endeavours.

Probe by National Investigating Agency

- ***Referral:***
  - ***State government:***
  - As provided under Section 6 of the Act, State governments can refer the cases pertaining to the scheduled offences registered at any police station to the Central government (Union Home Ministry) for NIA investigation.
  - After assessing the details made available, the Centre can then direct the agency to take over the case.
  - State governments are required to extend all assistance to the NIA.
  - ***Central government:***
  - In India: When the Central government is of the opinion that a scheduled offence has been committed which is required to be investigated under the Act, it may, suo motu, direct the agency to take up the probe.
  - ***Outside India:***
  - Where the Central government finds that a scheduled offence has been committed at any place outside India to which this Act extends, it can also direct the NIA to register the case and take up investigation.
- ***Sanction:***
  - For prosecuting the accused under the Unlawful Activities (Prevention) Act, 1967 (UAPA) and certain other scheduled offences, the Agency seeks the sanction of the Central Government.
  - The sanction is granted under the UAPA based on the report of the 'Authority' constituted under section 45 (2) of the UAPA.
- ***Other:***
  - is an exclusive Left wing extremism cell to effectively deal with cases related to terror financing aspects of Naxalite groups.
  - While investigating any scheduled offence, the agency can also investigate any other offence which the accused is alleged to have committed if the offence is connected to the scheduled offence.
  - After investigation, the cases are placed before the NIA Special Courts.

Special Courts of National Investigating Agency

- The Central Government for the trial of Scheduled Offences constitutes one or more Special Courts under Section 11 and 22 of the NIA Act 2008.

- ***Composition:***
  - The Special Court shall be presided over by a judge to be appointed by the Central Government on the recommendation of the Chief Justice of the High Court.
  - The Central Government may, if required, appoint an additional judge or additional judges to the Special Court, on the recommendation of the Chief Justice of the High Court.
- ***Jurisdiction of Special Courts:***
  - The Special Courts have all powers of the court of sessions under the Code of Criminal Procedure, 1973.
  - Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.
  - The Supreme Court can transfer a case pending before a Special Court to any other Special Court within that State or any other State in some exceptional cases where it is not feasible to conduct a peaceful, fair, impartial and speedy trial.
    - Similarly, the High Court has the power to transfer a case pending before a Special Court in a State to any other Special Court within that State.

Jurisdiction

- The agency has been empowered with all the powers and privileges to conduct investigations under the various acts specified in the Schedule book of NIA act. State government authorities can request an investigation by NIA upon approval of Central government within the limits of law specified under the NIA Act.
- The Central Government can handover cases for investigation to NIA anywhere in India and the officials involved in the handling of these cases are from the IPS and IRS cadre.
- The law under which the agency operates extends to the whole of India and also applies to Indian citizens outside the country.
- Persons in the service of the Government wherever they are posted.
- Persons on ships and aircraft registered in India wherever they may be.
- Persons who commit a scheduled offence beyond India against the Indian citizen or affecting the interest of India.

NIA (Amendment) Act, 2019

The NIA (Amendment) Act 2019 was passed by the Parliament and received the presidential assent in July 2019. This Act has made a few major changes to the original NIA Act of 2008. The changes are discussed below:

- The amendment allows the agency to investigate the following new offences as well:
  - Human trafficking
  - Counterfeit currency or bank notes related offences
  - Sale or manufacture of prohibited arms
  - Offences under the Explosive Substances Act, 1908
  - Cyber terrorism
- The amendment also expands the jurisdiction of the NIA. Now, it has the authority to investigate offences that are committed outside Indian territory subject to international treaties and domestic laws of other nations.
- The amendment also allows the central government to constitute Special Courts to conduct trials of scheduled offences.
  - Accordingly, the government will have the power to designate Sessions Courts as Special Courts, after consulting with the Chief Justice of the High Court (under which the Sessions Court functions).
  - Act also authorises the state governments to designate Special Courts.
  - The Government can appoint more than Special Court in an area.
  - Currently, there are 38 Special NIA Courts across the states and 7 across the Union Territories.
  - The Special Courts' judges are appointed by the Government of India in consultation with the High Court Chief Justices of the area.
  - The trials of the NIA Special Courts have precedence over the trial of the accused in any other case in any other court.

Significance of National Investigating Agency

- The NIA professionally investigates the scheduled offenses using the most up-to-date scientific methodologies.
- It allows for a quick and efficient trial.
- The NIA is developing into a goal-oriented and professional organization that defends the Indian Constitution and the law of the nation while placing a premium on human rights and dignity.
- The NIA develops a professional workforce through regular training and exposure to best practices.
- While performing their tasks, it displays a scientific mindset and a spirit of advancement.
- It helps in having friendly relations with the country's federal and state governments, as well as other law enforcement agencies.
- It assists states and other agencies with terror-related case investigations.
- The NIA creates a database of all information about terrorists and shares it with states and other entities.
- It analyses and assesses terrorism-related laws in India on a regular basis, as well as suggesting any necessary revisions.

Criticism of National Investigating Agency

- The preservation of public order and police forces are listed as matters of state in Schedule VII of the Constitution.
- Criminal law, on the other hand, is included in the concurrent list, while national security is included in the realms of the union list.
- The NIA is given the ability to take over the investigation of crimes including charges of human trafficking, offenses under the Explosives Act, and certain offenses under the Arms Act by the Central government.
- However, not every criminal offense listed in the above statute poses a threat to national security or sovereignty, and governments have the authority to address them.
- Section 66F of the Information Technology Act is added to the Schedule of Offenses by the Amendment Bill. Cyber terrorism is addressed in Section 66F. However, India lacks data protection laws and no definition of cyber terrorism.
- The NIA Act has been amended to allow the agency to investigate crimes committed by foreigners against Indian citizens or acts "affecting the interest of India". However, the word "affecting India's interest" is unclear, and governments might use it to restrict freedom of speech and expression.

NATIONAL DISASTER MANAGEMENT AUTHORITY

The National Disaster Management Authority (NDMA), headed by the Prime Minister of India, is the apex body for Disaster Management in India. Setting up of NDMA and the creation of an enabling environment for institutional mechanisms at the State and District levels is mandated by the Disaster Management Act, 2005. NDMA is mandated to lay down the policies, plans and guidelines for Disaster Management. India envisions the development of an ethos of Prevention, Mitigation, Preparedness and Response.

Evolution of NDMA

- In August 1999, the Government of India established a High-Powered Committee (HPC) to make recommendations on the preparation of Disaster Management plans and suggest effective mitigation mechanisms, in recognition of the importance of Disaster Management as a national priority.
- After the Gujarat earthquake (2001), the Government of India established a National Committee to make recommendations on the preparation of Disaster Management plans and suggest effective mitigation mechanisms.
- For the first time, a thorough chapter on disaster management was included in the Tenth Five-Year Plan document.
- The Twelfth Finance Commission was also tasked with reviewing the disaster management funding arrangements.
- On 23 December 2005, the Government of India

enacted the Disaster Management Act, which envisaged the creation of National Disaster Management Authority (NDMA), headed by the Prime Minister, and State Disaster Management Authorities (SDMAs) headed by respective Chief Ministers, to spearhead and implement a holistic and integrated approach to Disaster Management in India.

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NDMA Vision

"To build a safer and disaster resilient India by a holistic, pro-active, technology driven and sustainable development strategy that involves all stakeholders and fosters a culture of prevention, preparedness and mitigation."

Important Provisions under the Disaster Management Act, 2005

This Act establishes various authorities and bodies for the effective management of disasters at all three levels- national, state, and district. It also provides the 'plan' for each level.

National level

National Disaster Management Authority (NDMA)

The Act authorises the establishment of the National Disaster Management Authority. It shall consist of the following members-

- The Prime Minister of India as a Chairperson of the National Authority, and
- Other members not exceeding nine, are to be nominated by the Chairperson.
- One of these nine members nominated the Chairperson to be designated as Vice-Chairperson of the National Authority.

NDMA, as the apex body, is mandated to lay down the policies, plans and guidelines for Disaster Management to ensure timely and effective response to disasters. Towards this, it has the following responsibilities: -

- Lay down policies on disaster management.
- Approve the National Plan.
- Approve plans prepared by the Ministries or Departments of the Government of India in accordance with the National Plan.
- Lay down guidelines to be followed by the State Authorities in drawing up the State Plan.
- Lay down guidelines to be followed by the different Ministries or Departments of the Government of India for the Purpose of integrating the measures for prevention of disaster or the mitigation of its effects in their development plans and projects.
- Coordinate the enforcement and implementation of the policy and plans for disaster management.
- Recommend provision of funds for the purpose of mitigation.
- Provide such support to other countries affected by major disasters as may be determined by the Central Government.
- Take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with threatening disaster situations or disasters as it may consider necessary.
- Lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management.

Advisory committee

The National Authority may constitute Advisory Committee to advise or make recommendations on various aspects of disaster management, which may consist of-

- Experts in disaster management, and
- Persons having practical experience in disaster management at any level- national, state or district.

National Executive Committee

The National Executive Committee is constituted by the Central Government to assist the National Authority in discharging its functions. Additionally, the National Executive Committee may constitute one or more sub-communities to discharge its functions smoothly.

The National Executive Committee may consist of the following members-

- The Secretary to the Government of India in the Ministry or department of Central Government, having control over the disaster management as an ex-officio Chairperson,
- The Secretaries to the Government of India in the Ministries or departments of atomic energy, agriculture, defence, drinking water supply, finance, health, power, rural development, environment and forest, science and technology, space, telecommunication, urban development, water resources and the Chief of the Integrated Defence Staff of the Chiefs of Staff Committee, as ex officio members,
- Any other officer of the Central or State Government may be invited by the Chairperson.

The powers and functions of the National Executive Committee are as follows: -

- To act as a coordinating and monitoring body for disaster management,
- Preparing the National Plan to be approved by the National Authority,
- Monitoring the implementation of the National Policy,
- Making guidelines for plans,
- Providing technical assistance to State Governments and authorities for carrying out their functions,
- Monitoring the implementation of the National Plan and the plans prepared by other departments and ministries of Central government,
- Evaluating the preparedness of government at all levels,
- To organise a specialised training programme for disaster management,
- To require the Government to provide such men and material resources in case of emergency response, rescue and relief, to the National Authority,
- To advise, assist and coordinate activities of the concerned authorities, NGOs and others engaged in disaster management,
- To promote general education and awareness about disaster management, etc,
- To perform such other functions as the National Authority may require it to perform.

National Plan

National Executive Committee shall prepare the 'National Plan' which should be reviewed and updated manually, and which shall include-

- Measures for prevention of disasters,
- Measures for integration of mitigation measures in the plans,
- Measures for preparedness and capacity-building to fight disaster situations, and
- Duties and responsibilities of ministries and departments of the Government of India.

National Institute of Disaster Management (NIDM)

The Central Government shall constitute this institute and prescribe its members, terms of office and vacancies.

The main functions of this institute are as follows-

- Develop training modules and undertake research and documentation,
- Formulate and implement a comprehensive development plan,
- Assist in the formulation of national policies,
- Assist the state governments and state training institutes,
- Promote awareness among college students or school teachers,
- Organise study courses, conferences, lectures, and seminars within and outside the country, etc.

National Disaster Response Force (NDRF)

Under section 44 of the Act, the National Disaster Response Force shall be constituted to provide a specialised response at times of threatening disaster situations with the help of trained professionals, which includes medical staff, engineers, technicians, dogs squads, rescuers, etc. NDRF has played a major role in rescuing people in many situations like the Kosi breach in Bihar in 2008, the Kashmir Flash Floods, in 2014, and the Kerala Floods in 2018.

State level

State Disaster Management Authority (SDMA)

The Act authorises the establishment of the State Disaster Management Authority. It will consist of the members as follows-

- The Chief Minister of the State or the Lieutenant Governor of the Union Territories as an ex-officio Chairperson of the State Authority,

- Other members not exceeding eight to be nominated by the Chairperson of the State Authority,
- One of these nominated members to be designated as Vice-Chairperson of the State Authority,
- The Chairperson of the State Executive Committee is the Chief Executive Officer of the State Authority.

In the case of Union Territories having a Legislative Assembly except for Delhi, the Chief Minister will be the Chairperson of the State Authority. In the case of Delhi, the Lieutenant Governor shall be the Chairperson and the Chief Minister will be the Vice-Chairperson of the State Authority.

Section 18 of the Act specifies the powers and functions of the State Disaster Management Authority like –

- Laying down the state policy on disaster management,
- Approving the state plan, and plans by other departments,
- Laying down guidelines for different departments of state,
- Monitoring the implementation of the state plan for disaster management,
- Recommending funds for mitigation measures,
- Reviewing the developmental plans of different departments of the state,
- Review the measures taken for mitigation, capacity building and preparedness by the departments of the state and issue necessary guidelines.

Advisory Committee

The State Authority may constitute an advisory committee to make recommendations on disaster management which shall consist of experts in disaster management having practical experience.

State Executive Committee

The State Executive Committee is constituted by the State Government to assist the State Authority in discharging its functions. Additionally, the State Executive Committee may constitute one or more sub-communities to discharge its functions smoothly.

The State Executive Committee may consist of the following members-

- The Chief Secretary to the State Government as an ex-officio Chairperson,
- The four Secretaries to the State Government of such departments which it thinks fit,

Section 22 specifies the powers and functions of the State Executive Committee like-

- Monitoring the implementation of the National and state plan,
- Testing the vulnerability of different parts of the state to different forms of disasters,
- Laying down guidelines for preparing plans,
- Providing technical assistance for carrying out their functions,
- Coordinating the implementation of the plans and guidelines,
- Evaluating the preparedness at both governmental and non-governmental levels,
- Arranging response in the event of any threatening disaster situation,
- Assisting and coordinating activities of the concerned authorities, NGOs and others engaged in disaster management,
- Promoting general education, awareness and community training about disaster management, and
- Advising the state government regarding financial matters,
- Ensuring communication systems are in order, etc.

State Plan

It shall be prepared by the State Executive Committee, which shall include-

- The vulnerability of different parts of the state to different disasters,
- Measures to be taken for prevention and mitigation,
- The manner in which these measures shall be integrated with plans,
- Measures to be taken for capacity building and preparedness,
- Roles and responsibilities of different departments of the state government.

District level

District Disaster Management Authority (DDMA)

The Act authorises the establishment of the District Disaster Management Authority. It shall consist of the following members-

- The Collector or District Magistrate or Deputy

Commissioner of the district as an ex-officio Chairperson of the District Authority,

- The elected representative of the local authority as the Co-Chairperson,
- The Chief Executive Officer of the District Authority,
- The Superintendent of Police,
- The Chief Medical Officer of the district,
- Not exceeding two other district-level officers, to be appointed by the State Government.

In the case of tribal areas, as referred to in the Sixth Schedule of the Constitution, the Co-Chairperson will be the Chief Executive Member of the district council of an autonomous district. The powers and functions of the District Authority are as follows:

- Preparing a disaster management plan for the district,
- Monitoring the implementation of plans and policies,
- Identifying the areas vulnerable to disasters,
- Giving directions to district authorities and laying down the guidelines,
- Assessing the state of capabilities for responding to any disaster and the preparedness measures,
- Examining the construction in the district to check the standards for the prevention of disaster, and if have not been followed, directing the authorities to take action,
- Identifying buildings or places which can be used as relief centres or camps at the time of the disaster,
- Establishing stockpiles of relief and rescue materials and ensuring preparedness,
- Organising specialised training programmes for officers or voluntary rescue workers,
- Facilitating community training and awareness programmes, etc.

Advisory Committee

The District Authority may constitute one or more advisory committees and other committees for the efficient discharge of its functions.

District Plan

'District Plan' shall be prepared by the District Authority, which shall include the following-

- Areas vulnerable to different disasters in the district,
- Measures to be taken for prevention and mitigation of disaster,
- Measures for capacity building and preparedness,
- Response plans and procedures,
- Other matters as required by the state authority.

Shortcomings of the NDMA

- The role of NDMA was questioned during the Uttarakhand floods of 2013, where it failed to timely inform people about the flash floods and landslides.
- The post-disaster relief response had been equally poor due to poor planning of NDMA that lead to unfinished projects.
- A Comptroller and Auditor General (CAG) of India report in 2013 noted that the NDMA had no information and control over the progress of disaster management work in the states, neither could it successfully implement various projects it had initiated for disaster preparedness and mitigation.
- There were huge delays in the completion of river management activities and works related to border areas projects which were long-term solutions for the flood problems of Assam, north Bihar and eastern Uttar Pradesh.
- Misutilization of expenditure and several critical posts in NDMA are vacant.

NATIONAL COMMISSION FOR WOMEN

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 to:

- review the Constitutional and Legal safeguards for women;
- recommend remedial legislative measures;
- facilitate redressal of grievances and
- advise the Government on all policy matters affecting women.

Constitutional Provision of National Commission for Women

There are no provisions in the Indian Constitution

that specifically mention the National Commission for Women, although there are several safeguards for women's safety that are mentioned in Article 14, Article 15 (3), Article 16(4), Article 23, Article 38, 39(a), 39(b) and 39(e), 42, 44 and 45 deals with the welfare and development of women.

Brief History

- The Committee on the Status of Women in India (CSWI) recommended nearly two decades ago, the setting up of a National Commission for women to fulfil the surveillance functions to facilitate redressal of grievances and to accelerate the socio-economic development of women.
- Successive Committees/Commissions/Plans including the National Perspective Plan for Women (1988-2000) recommended the constitution of an apex body for women.
- During 1990, the central government held consultations with NGOs, social workers and experts, regarding the structure, functions, powers etc of the Commission proposed to be set up.
- In May 1990, the Bill was introduced in the Lok Sabha.
- In July 1990, the HRD Ministry organized a National Level Conference to elicit suggestions regarding the Bill. In August 1990 the government moved several amendments and introduced new provisions to vest the commission with the power of a civil court.
- The Bill was passed and received accent of the President on 30th August 1990.
- The First Commission was constituted on 31st January 1992 with Mrs. Jayanti Patnaik as the Chairperson.

Mission

To strive towards enabling women to achieve equality and equal participation in all spheres of life by securing her due rights and entitlements through suitable policy formulation, legislative measures, effective enforcement of laws, implementation of schemes/policies and devising strategies for solution of specific problems/ situations arising out of discrimination and atrocities against women.

Vision

The Indian Woman, secure in her home and outside, fully empowered to access all her rights and entitlements, with opportunity to contribute equally in all walks of life.

Composition

The Commission shall consist of: -

- A Chairperson, committed to the cause of women, to be nominated by the Central Government.
- five Members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry potential of women, women's voluntary organisations (including women activist), administration, economic development, health, education or social welfare;
  - Provided that at least one Member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively;
- a Member-Secretary to be nominated by the Central Government who shall be: -
  - an expert in the field of management, organisational structure or sociological movement, or
  - an officer who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience.

Tenure of National Commission for Women

The Chairperson and every Member shall hold office for such a period, not exceeding three years, as may be specified by the Central Government on this behalf.

Removal of National Commission for Women

- If a person becomes an undischarged insolvent, the Central Government may remove him or her from the position of Chairperson or member. Or,
  - gets convicted and sentenced to prison for an offence that the central government considers to be morally reprehensible.
  - becomes mentally ill and is declared as such by a full-court.
  - refuses to act or loses the ability to act.
  - is absent from three consecutive commission

meetings without receiving leave of absence from the panel.

- The central government believes that the Chairperson or members have abused their positions to the point where their continued service is detrimental to the public interest.
- No individual shall be removed under this provision unless and until he or she has been given a reasonable opportunity to be heard in the issue.

Objective

The notable achievements of the National Commission for women are that they prepared gender profiles. Then they took initiative into the creation of the Parivarik Mahila Lok Adalat to take proactive steps regarding the rights of women. They evaluated and reviewed laws concerning Indian Penal Code 1860, Pre-Conception and Pre-natal Diagnostic Technique Act,1994 and The Dowry Prohibition Act,1960 and so on. To take more effective actions against violations under the National Commission for Women Act 1990. Set up and organise awareness workshops and consultations outlets. The objectives of NCW are as follows:

- To suggest the government regarding policies regarding women,
- A platform to redress the grievances,
- To make recommendations relating to legislation measures,
- To review legal and constitutional safeguards for women.

Working

It acts as a statutory body and takes measures to safeguard and protect women. It works under the National Commission for Women Act, 1990. It derives the vital guidelines from the commission to make recommendations and suggestions to make strategic plans for the well-being of women and their rights.

Powers of NCW

- Provide consultation on all major policy matters that affect women.
- Issuing summons for the examination of documents and the witnesses.
- It has the power to make any public record.
- Receiving evidence on affidavits.
- Discovery and production of documents.
- Summoning and enforcement.

Function of National Commission for Women:

The functions of the National Commission for Women are as follows:

- ***Presentation of Reports:*** Table reports should be submitted to the Central Government every year. When the commission feels it's appropriate. The reports upon the functioning and working of the safeguards.
- ***Investigation and Examination:*** There should be proper investigation and examination made under the Constitution and other laws. This is related to the protection of the rights of women.
- ***Review:*** Constantly all laws are reviewed and scrutinised. And necessary amendments and alterations are made to meet the needs of the current world. This is to meet any break, incapacity or any inadequacies in the legislation.
- ***Cases of Violation:*** Ensure there is no violation against women and taking due care of such cases.
- ***Suo Motu Notice:*** It takes care of complaints and also suo motu matters about the deprivation of rights of women. Implementation of laws favouring the welfare of women.
- ***Evaluation:*** Assessing the development and the progress of the women community under the Centre and State level.
- ***Recommendation:*** To suggest the wellbeing of women and their rights.
- ***Special studies and investigation:*** To understand the limitations in the system and curb it with strategic plans and mechanisms.
- ***Research:*** To make research and study to understand the needs of women, healthcare and such related components. This is to make a proper support system to help the women in need.
- ***Participation in all spheres particularly in planning:*** Take measure to facilitate economic and social development and improvement of women by recognising their rights.

- ***Inspection:*** Inspect the jail, remand home to ensure that the women staying here are not exploited as they are vulnerable.
- ***Funding and Reporting:*** Ensure there is a fund for litigation of matters relating to women rights. There should be periodical reports made under the difficulties faced by women daily.

Challenges of National Commission for Women:

In spite of positive aspects of Women Commission and great achievements, there are also some shortcomings:

- The commission is dependent on the grant from the Union Government.
- The commission does not have the power to select own members.
- The power is vested with the Union Government.
- The commission has no right to concrete legislative power.
- It has only to power recommend amendments and submit reports which are not binding on state or Union Government.
- The Commission's Jurisdiction is not operative in Jammu and Kashmir.
- Financial assistance is so less that it is difficult make awareness of legal program.
- The National Commission for women in India seizes women's cause only when it is brought to light. Unreported cases of oppression and suppression of women are not attended to.
- In rural sector, there is lack of mindfulness education, opportunities and basic facilities for women for economic of empowerment.

NATIONAL COMMISSION ON MINORITIES

The National Commission for Minorities was originally titled Minorities Commission. In 1978, setting up of the Minorities Commission (MC) was envisaged in the Ministry of Home Affairs Resolution.

In 1984, the MC was detached from the Ministry of Home Affairs and placed under the newly created Ministry of Welfare, which excluded linguistic minorities from the Commission's jurisdiction in 1988.

With the enactment of National Commission for Minorities Act 1992, the Minorities Commission (a non-statutory body) was renamed as National Commission for Minorities.

Who constitutes of minority?

- The central government notifies the status of minorities to a religion in India.
- Constitution has not defined the term minority neither laid down procedures to notify a community or religion as a minority community
- However, article 29 recognizes religious and linguistic minorities while article 30 provides the right to establish and administer educational institutions maintained by them.
- Initially five religions viz. Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minorities by the Union government in 1993.
- After that, Jain was notified as a minority community in 2014.

Constitutional provisions for minorities

Constitutional provisions related to minorities can be seen in Fundamental Rights (FR), Directive Principles of State Policy (DPSP), and Fundamental Duties (FD).

Fundamental Rights:

- ***ARTICLE 14:*** people's right to 'equality before the law' and 'equal protection of the laws'
- ***ARTICLE 15:*** prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth
- ***ARTICLE 16:*** 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 25:*** 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:*** the 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:*** the 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.

Directive Principles of State Policy

DPSP under Part IV, includes the following provisions having significant implications for the Minorities: –

- The 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)
- The obligation of State 'to promote with special care' the educational and economic interests of 'the weaker sections of the people' [Article 46]

Fundamental Duties

- ***Article 51A:***

- 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.'

Composition of National Minorities Commission

- ***It has seven members:***

- A Chairperson
- A Vice-Chairperson
- 5 members

Total of 7 person, to be nominated by the Central Government should be from amongst persons of eminence, ability and integrity and all of them shall be from amongst the minority communities.

Term of Members of National Commission for Minorities: Each member of the commission holds the office for three years from the date of assumption of the office.

Removal Process of Office of Chairperson

The Central Government shall remove a person from the office of Chairperson or the member if

- Becomes undischarged insolvent.
- Unsound mind and stand so declared by a competent court.
- Refuse to act or become incapable of acting.
- Convicted and sentenced to imprisonment for an offense which in the opinion of the Central Government involves moral turpitude.
- Absent from three consecutive meetings without obtaining leave of absence.
- Abused the position of chairperson or member in the opinion of the Central Government.
- Detrimental to the interest of minorities or public interest.

Note: No person shall be removed under this clause until the person has been given a reasonable opportunity of being heard in the matter.

Functions of National Commission on Minorities

The National Minorities Commission performs the following functions:

- It evaluates the progress of the development of minorities under both central and state governments.
- It monitors the working of the constitutional laws enacted for the welfare of minorities, both by central and state governments.
- It makes recommendations for the implementation of protective safeguards for the minorities.
- It is the authorized body to look into complaints regarding deprivation of the rights and safeguards of the minority communities.
- Its initiatives include studies concerning minorities' issues arising from discrimination.
- It conducts studies, research and analysis concerning issues related to the socio-economic and educational development of minorities.
- It presents periodic or special reports concerning minorities and their issues to the central government.
- It governs matters which the central government refers to.

39 Co-Operative Societies

Introduction

According to ILO, a Co-operative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.

History of the Co-operative Movement in India

Pre-Independence:

- The Co-operatives were first started in Europe to serve the credit-starved people in Europe as a self-reliant, self-managed people's movement with no role for the Government.
- British India replicated the Raiffeisen-type co-operative movement in India to mitigate the miseries of the poor farmers, particularly harassment by moneylenders.
- The term Co-operative Societies came into existence when the farmers of Pune and Ahmednagar spearheaded an agitation against the money lenders. The first credit co-operative society was formed in Banking in the year 1903 with the support of Government of Bengal.
- Co-operative Credit Societies Act of India was enacted in 1904.
- In 1912, another Co-operative Societies Act was passed to rectify some of the drawbacks of the earlier law. Co-operation became a state subject in 1919.
- Land Mortgage Co-operative Banks were established in 1938 to provide loans initially for debt relief and land improvement. Reserve Bank of India started refinancing co-operatives for Seasonal Agricultural Operations from 1939.
- In 1942, the Government of British India enacted the Multi-Unit Co-operative Societies Act to cover Co-operative Societies with membership from more than one province.

Post-Independence:

- After independence, co-operatives became an integral part of Five-Year Plans.
- Like agriculture, co-operatives is in the concurrent list.
- In 1958, the National Development Council (NDC) had recommended a national policy on co-operatives and also for training of personnel and setting up of Co-operative Marketing Societies.
- National Co-operative Development Corporation (NCDC), a statutory corporation, was set up under National Co-operative Development Corporation Act, 1962.
- In 1984, Parliament of India enacted the Multi-State Co-operative Societies Act to remove the plethora of different laws governing the same types of societies.
- Government of India announced a National Policy on Co-operatives in 2002.
- The Constitution (Ninety Seventh Amendment) Act 2011 relating to the co-operatives is aimed to encourage economic activities of co-operatives which in turn help progress of rural India
- In Part III of the Constitution, instead of "or unions" the words "Co-operative Societies" was added.
- In Part IV a new Article 43B was inserted, which says: The state shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of the co-operative societies".
- After Part IXA of the constitution, a Part IXB was inserted to accommodate state vs centre roles.
- Union Agriculture Ministry launched NCDC's youth-friendly scheme 'Yuva Sahakar-Co-operative Enterprise Support and Innovation Scheme' for attracting youth to co-operative business ventures.
- NCDC recently started Mission Sahakar 22, which aims to double farmers' income by 2022.

Constitutional Provision

The Constitution (97th Amendment) Act, 2011 added a new Part IX B right after Part IX A (Municipals) regarding the co-operatives working in India.

The word "co-operatives" was added after "unions and associations" in Article 19(1)(c) under Part III of the Constitution. This enables all the citizens to form co-operatives by giving it the status of fundamental right of citizens.

A new Article 43B was added in the Directive Principles of State Policy (Part IV) regarding the "promotion of co-operative societies".

- Part IX – Art 243 – 243 O – Panchayats
- Part IX A – Art 243P – 243ZG – Municipalities
- Part IX B – Art 243ZH – 243ZT – Co-operatives

97th Amendment Act, 2011

Part IX B of the Constitution, inter alia, seeks to empower the Parliament in respect of multi-state co-operative societies and the State Legislatures in case of other co-operative societies to make appropriate law, laying down the following matters, namely: -

- provisions for incorporation, regulation and winding up of co-operative societies based on the principles of democratic member-control, member-economic participation and autonomous functioning;
- specifying the maximum number of directors of a co-operative society to be not exceeding twenty-one members;
- providing for a fixed term of five years from the date of election in respect of the elected members of the board and its office bearers;
- providing for a maximum time limit of six months during which a board of directors of co-operative society could be kept under supersession or suspension;
- providing for independent professional audit;
- providing for right of information to the members of the co-operative societies;
- empowering the State Governments to obtain periodic reports of activities and accounts of co-operative societies;
- providing for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on the board of every co-operative society, which have individuals as members from such categories;
- providing for offences relating to co-operative societies and penalties in respect of such offences.

Role of Co-operatives in Socio-Economic Development

- Co-operatives are community-based, voluntary in nature, rooted in democracy, flexible, and have participatory involvement, which makes them well suited for economic development.
- It is an association of persons and not of capital.
- It generates employment and eliminates all forms of exploitation.
- It educates people the principles of equality, mutuality, and co-operation.
- As co-operatives foster economies of scope and scale, they increase the bargaining power of their members providing them, among others benefits, higher income and social protection. Hence, co-operatives accord members opportunity, protection and empowerment-essential elements in uplifting them from degradation and poverty.
- They promote the "fullest participation of all people" and facilitate a more equitable distribution of the benefits of globalization.
- They provide their employees with the opportunities to upgrade their skills through workshops and courses and offer youth in their base communities short and long-term employment positions.
- Co-operatives provide agricultural credits and funds where state and private sectors have not been able to do very much.
- They provide strategic inputs for the agricultural-sector; consumer societies meet their consumption requirements at concessional rates.
- It softens the class conflicts and reduces the social cleavages.
- It reduces the bureaucratic evils and follies of political factions
- It creates a conducive environment for small and cottage industries.

Challenges faced by Co-operative Sector in India

Non-accountability:

- The Government gave too many benefits to co-operatives, but then there was no further accountability which led to these co-operatives becoming more and more lethargic.
- Besides as there was no competition, they became more and more costly they were not at all efficient and the worst part was that the Government allowed them to function like this and pass on the burden of costs to consumers.

Vested interest of some people:

- A lot of times people who are in position in control of co-operatives are actually people who have joined co-operatives for personal gains.

Lack of co-ordination:

- Generally, what happens in co-operatives is that different co-operatives at different level don't coordinate this makes the work of co-operatives difficult.

Quantity over Quality:

- Different co-operatives go in for quantity and this causes a major problem because they think it's a quick way to earn money so this basically affects the productivity.

No Balanced Growth:

- The co-operatives in Northeast areas and in areas like West Bengal, Bihar, Orissa are not as well developed as the ones in Maharashtra and Gujarat.

Political Interference:

- This is the biggest problem faced by Sugar co-operatives in Maharashtra.

Mismanagement and Manipulation:

- A hugely large membership turns out to be mismanaged unless some secure methods are employed to manage such co-operatives.
- In the elections to the governing bodies, money became such a powerful tool that the top posts of Chairman and Vice-Chairman usually went to the richest farmers who manipulated the organization for their benefits.

Lack of Awareness:

- People are not well informed about the objectives of the Movement, rules and regulations of co-operative institutions.

Restricted Coverage:

- Most of these societies are confined to a few members and their operations extended to only one or two villages.

Functional Weakness:

- The Co-operative Movement has suffered from inadequacy of trained personnel.

Ministry of Co-operation

Recently, a separate 'Ministry of Co-operation' was formed in July 2021' for realizing the vision of 'Sahkar se Samriddhi' (Prosperity through Cooperation) and to give a new push to the co-operative movement.

The Ministry provides a separate administrative, legal and policy framework for strengthening the co-operative movement in the country.

Objectives

The ministry was created with objectives:

- To realise the vision of "Sahkar se Samriddhi" (prosperity through cooperation).
- To streamline processes for ''Ease of doing business'' for co-operatives and enable development of Multi-State Co-operatives (MSCS)
- To provide a separate administrative, legal and policy framework for strengthening the co-operative movements in the country.
- To deepen the co-operative as a true people-based movement reaching up to the grassroot level.

Significance of Ministry of Co-operation:

- It seeks to provide a separate administrative, legal and policy framework for strengthening the co-operative movement in the country.
- It is expected to deepen Co-operatives as a true people-based movement reaching up to the grassroots.
- It will work to streamline processes for 'Ease of doing business 'for co-operatives and enable development of Multi-State Co-operatives (MSCS).
- Co-operative structure has managed to flourish and leave its mark only in a handful of states like

Maharashtra, Gujarat, and Karnataka etc. Under the new Ministry, the co-operative movement would get the required financial and legal power needed to penetrate into other states also.

- Over the years, the co-operative sector has witnessed drying out of funding. Under the new Ministry, the co-operative structure would be able to get a new lease of life.

Reforms in Co-operative Society

Training:

- Co-operatives to take up the task of training farmers in the right use of fertilizers, and also help them understand new technologies in farming.
- Co-operatives to take active part in skilling rural youth
- Co-operative training must not only be imparted to employees in co-operatives, but also extend beyond co-operatives, to children in schools, colleges, universities, technical and professional institutions, and also for those who want to form co-operatives, but who are not aware of the various modalities, and requirements.

More inclusive:

- Increased participation of women in co-operative movement.
- Co-operative sector has a big role in bridging the urban-rural divide and creating opportunities for income generation.

Use of technology

- To have a transparent, accountable and efficient system, co-operatives should make effective use of digital technology in their functioning, especially in governance, banking and businesses.
- New areas are emerging with the advancement of technology and co-operative societies can play a huge role in making people familiar with those areas and technologies.
- There are irregularities in co-operatives and to check them there have to be rules and stricter implementation.

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40 Official Language

Introduction

India is a Democratic Republic and has a constitution of its own. It is also home to several languages. Many of them are listed as the official language of the country. The Constitution of India includes Articles 344 to 351 which deal with languages. These are included in the eighth Schedule which recognizes 22 languages.

Article 345 of the Indian Constitution, provides Constitutional recognition as "Official languages" of the Union to any language adopted by a State Legislature as the official language of that state. In the Constitution, its provisions have been mentioned as follows –

Language of the Union

Official Language of the Union:

The following clauses regarding the Union's official language are found in the Constitution.

- Devanagari-scripted Hindi will serve as the Union's official language. However, the international form of Indian numerals and not the Devanagari form of numerals must be used for official purposes of the Union.
- However, the English language would continue to be used for all of the official functions of the Union for which it was being used before 1950 for a period of fifteen years following the start of the Constitution (i.e., from 1950 to 1965).
- The Parliament may nevertheless make provisions for the continued use of English for the designated purposes beyond fifteen years.
- The President should form a panel to offer suggestions regarding the gradual use of Hindi, limitations on the use of English, and other relevant concerns after five years and again after ten years from the start of the Constitution. A committee of Parliament will be established to look over the commission's recommendations and report back to the President on them.

As a result, in 1955, the B.G. Kher was apponted as the Chairman of an Official Language Commission. In 1956, the Commission delivered its report to the President. A committee of Parliament established another commission in 1957, headed by Gobind Ballabh Pant evaluated the findings of previous commission. However, in 1960 there was no appointment of a new Official Language Commission as required by the Constitution.

The Official Languages Act was later passed by Parliament in 1963. The statute mandates the use of Hindi and English for all official Union functions as well as for the conduct of business in Parliament (even after 1965).

Notably, there is no time limit on the use of English under this act. In addition, this act was revised in 1967 to mandate the use of English in specific circumstances in addition to Hindi.

Regional Languages

Official Language or Languages of a State

The Constitution does not specify the official language of different states. In this regard, it makes the following provisions:

- Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:
  - Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.
- Most States have made the main regional language their official language in accordance with this clause. Examples include the adoption of Telugu by

Andhra Pradesh, Malayalam by Kerala, Assamese by Assam, Bengali by West Bengal, and Odia by Odisha. Himachal Pradesh, Uttar Pradesh, Uttarakhand, Madhya Pradesh, Chhattisgarh, Bihar, Jharkhand, Haryana, and Rajasthan are the nine northern states that have embraced Hindi as their official language.

- Along with Gujarati, Hindi has been embraced in Gujarat. Similar to Goa, which also uses Konkani, Marathi has been embraced. Urdu, not Kashmiri, has been embraced by Jammu & Kashmir.
- While others, like Meghalaya, Arunachal Pradesh, and Nagaland in the northeast, have adopted English.
- Notably, the State has a wide range of options to choose from in addition to the languages listed in the Constitution's Eighth Schedule.

Official Language for Communication between One State and another or between a State and the Union

- The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union
  - Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

Special Provision relating to Language Spoken by a Section of the Population of a State

- On a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.

Languages Used in Judiciary and Laws:

Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc-

1) Unless otherwise specified by Parliament, the following shall only be in the English language:
   a. The Supreme Court's and all High Courts' proceedings.
   b. The official texts of all constitutional bills, acts, ordinances, orders, rules, regulations, and by-laws at the federal and state levels.
2) The authoritative texts of all bills, acts, ordinances, orders, rules, regulations and bye laws at the Central and state levels.
3) The use of Hindi or any other state official language, however, can be authorised by the Governor of a state with the President's prior approval for proceedings in the state's top court, but not for decisions, decrees, or orders made by the court. In other words, until Parliament specifies otherwise, the top court's rulings, decisions, and orders must continue to be in English alone.

The Parliament has not made any law prescribing Hindi to be used as a language of the Supreme Court, and hence the sole language of the Supreme Court has been English. Incidents have occurred in the past, wherein a petition in Hindi was rejected by Supreme Court on the ground that the language of the court was English and allowing Hindi would be unconstitutional.

Special Directives

Language is to be used in representations for redressal of grievances to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

Protection of Linguistic Minorities:

- Children from linguistic minority groups should have access to suitable facilities for instruction in the mother language at the elementary stage of education from every state and every local authority within the state. The President has the authority to issue the directives required for this.
- There shall be a Special Officer for linguistic minorities to be appointed by the President. It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters.
- Every individual who feels aggrieved has the right to submit a representation in any of the languages used by the Union or the state, as the case may be, to any official or authority of the Union or a state for the redress of any grievance. As a result,

a representation cannot be disregarded because it was not written in the language of the official document.

The directive for development of the Hindi Language:

- It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule.

Currently, the Eighth Schedule of the Constitution contains 22 languages-Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telugu, Urdu, Bodo, Santhali, Maithili and Dogri.

In terms of the Constitution provisions, there are two objectives behind the specification of the above regional languages in the Eighth Schedule:

- the members of these languages are to be given representation in the Official Language Commission; and
- the forms, style and expression of these languages are to be used for the enrichment of the Hindi language.

However, no time frame can be fixed for consideration of the demands for the inclusion of more languages in the Eighth Schedule to the Constitution of India.

Parliamentary Committee on Official Language:

The Official Languages Act, 1963 provided to set up of a Committee on Official Language for reviewing the progress made in the use of Hindi for the official purpose of the Union. The Committee was to be constituted after ten years of the promulgation of the Act under the section 3 of the Official Languages Act 1963.

Mandate: The Committee shall review the progress made in the use of Hindi for the Official purposes of the Union and submit a report to the President making recommendations. The President shall then lay the report before each House of Parliament and send it to all the State Governments.

Composition: The Committee comprises of 30 members of Parliament elected with the system of proportional representation by means of the single transferable vote.

- 20 from Lok Sabha
- 10 from Rajya Sabha

The Chairman of the Committee is elected by the members of the Committee. As a convention, the union Home minister has been elected as Chairman of the Committee from time to time.

Functions:

- to review the progress made for the use of Hindi for Official purposes of the Union
- To submit a report to the President for making recommendations thereon
- President laid the report before each House of Parliament and sent it to all the State Governments

Classical Language

According to Article 343, the official language of India should be Hindi in the Devanagari script. As per the Eighth Schedule of the Indian Constitution, we have 22 languages. In 2004 it was decided by the Indian Government to proclaim Indian Languages meeting certain requirements as "Classical Language".

Criteria for declaring Classical Languages in India

In February 2014, the Ministry of Culture in the Rajya Sabha gave the guidelines for declaring language as classical. These are:

- The high antiquity of its early texts is recorded in history.
- A body of ancient literature/texts, which is considered a valuable heritage by the generation of speakers.
- The literary tradition be original and not borrowed from another speech community.
- The classical language and literature are distinct from modern; there may also be a discontinuity between the classical languages.

Classical Languages

- In 2004, the Government of India declared Tamil as the Classical Language of India.
- In 2005, right after Tamil, the government declared Sanskrit as a Classical Language of India. These two languages are undeniably parental sources for several languages belonging to the Indo-European family and the Dravidian family of language groups.
- The Government gave the classical language status to Kannada and Telugu in 2008.
- Malayalam was declared as a classical language in 2013 and in 2014, Odia was also given the status of the Classical language.

Benefits accorded to Classical Languages in India

Two major annual international awards are given for scholars of eminence in classical Indian languages.

- Two major annual international awards for scholars of eminence in classical Indian languages
- A Centre of Excellence for studies in Classical Languages is set up
- The University Grants Commission is requested to create, to start with at least in the Central Universities, a certain number of Professional Chairs for the Classical Languages so declared."

Issues Related to Indian Language

- A language is an umbrella term which contains many mother tongues.
- 43% of Indians speak the Hindi language, which includes many mother tongues such as Bhojpuri, Rajasthani & Hindi.
- Only about 26% of Indians speak Hindi as their mother tongue under the broader Hindi language grouping (according to Census 2011).
- Close to 40% of the Hindi language speakers speak mother tongues other than Hindi.
- Despite being spoken by a large number of people, Bhojpuri and Rajasthani are not listed as scheduled languages, while Bodo and Nepali which are spoken by relatively fewer people are in the Eighth Schedule.

People's Linguistic Survey of India 2013

- According to the People's Linguistic Survey of India 2013, around 220 languages has been lost in the last 50 years and 197 has been categorised as Endangered.
- Government of India currently defines a language as one that is marked by a script and effectively neutering oral languages. Therefore, government recognizes 122 languages which is far lower than the 780 counted by the People's Linguistic Survey of India (along with a further 100 suspected to exist).
- This discrepancy is caused primarily because Government of India doesn't recognise any language with less than 10,000 speakers.
- Many unscheduled languages have a sizeable number of speakers: Bhili/Bhilodi has 1,04,13,637 speakers; Gondi has 29,84,453 speakers; Garo has 11,45,323; Ho has 14,21,418; Khandeshi, 18,60,236; Khasi, 14,31,344; and Oraon, 19,88,350.
- A significant proportion of the estimated 370 million indigenous people in the world today "still lack basic rights, with systematic discrimination and exclusion continuing to threaten ways of life, cultures and identities. This contradicts the UN Declaration on the Rights of Indigenous Peoples and the 2030 Agenda for Sustainable Development, "with its promise to leave no one behind".

Case for Tulu Language to be included in Eighth Schedule

- Tulu is a Dravidian language whose speakers are concentrated in two coastal districts of Karnataka and in Kasaragod district of Kerala.
- The Census reports 18,46,427 native speakers of Tulu in India. The Tulu-speaking people are larger in number than speakers of Manipuri and Sanskrit, which have the Eighth Schedule status.
- Robert Caldwell (1814-1891), in his book, A Comparative Grammar of the Dravidian or South-Indian Family of Languages, called Tulu as "one of the most highly developed languages of the Dravidian family".

Three Language Formula

- Introduced by the first National Education Policy, the three-language formula stated that state governments should adopt and implement a study

of a modern Indian language, preferably one of the southern languages, apart from Hindi and English in the Hindi-speaking states, and of Hindi along with the regional language and English in the non-Hindi speaking states.

- The draft policy recommended that this three-language formula be continued and flexibility in the implementation of the formula should be provided.
- On promotion of Hindi, the NPE 1968 said every effort should be made to promote the language and that "in developing Hindi as the link language, due care should be taken to ensure that it will serve, as provided for in 351 of the Constitution, as a medium of expression for all the elements of the composite culture of India.
- The establishment, in non-Hindi States, of colleges and other institutions of higher education which use Hindi as the medium of education should be encouraged.
- Incidentally, the NPE 1986 made no change in the 1968 policy on the three-language formula and the promotion of Hindi and repeated it word to word.

Hindi as Official Language

Merit

- ***Common Identity for India:*** As India is the country of different languages, one common language would reflect the identity of India in the world.
- ***Unity among the people of India:*** Hindi is the most widely spoken language in India, the common Hindi language will unite people from different parts of the country.
- ***Glory in the multilingual nation:*** The people of this nation of different states are sometimes not able to communicate with each other, just because of the diversity in languages. Adopting a common national language helps them communicate with other linguistic groups.
- ***National Language:*** Indians can't accept a foreign language as a national language. As Hindi has already been accepted as the Official language, imposition can provide its national status.

Demerit

- ***Hindi Imperialism:*** Many of the critics believed that imposition of one common language for India as an imposition of Hindi imperialism for others non-Hindi speaking
- ***Against Diversity of this country:*** As India is a diverse country with many languages, the imposition of Hindi as a common language will break the beauty of diversity in languages.

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41 Public Service

Introduction

Public service is one that the Government provides to people living within its jurisdiction, either directly (via the public sector) or by financing private provision of services. It includes the services provided, the interactions that occur as a result of those services, and the grievance redressal that occurs as a result of those services.

All aspects of daily life that the Government provides, such as health care, education, infrastructure, and law and order, fall under the purview of public service.

Historical Background of Public Service

The British Government established civil services with the primary goal of strengthening the British administration in India. During this time, the role of civil services was to expand British interests and was entirely regulatory. They later took on developmental roles as well.

The Indian Civil Service (ICS) has a modern history that begins with the East India Company.

Lord Wellesley recognized the need for higher education, expertise, and character in empire administrators as early as AD 1800. As a result, he established the College of Fort William, to which every employee of the Company was to be sent for a three-year course of education comparable to that of the universities of Oxford and Cambridge.

While accepting the proposal, the directors decided that the college should be located in England. Following that, for the next half-century or so, all civil servants were educated and given special training at the East India College in Haileybury, England. The method of recruitment was through a competitive examination, but the method of entry was through the Directors' nomination.

The ICS examination was held in London, and the curriculum used to determine the merit of the candidates was such that Indians had little chance of competing successfully unless they were wealthy and attended a school in England.

The Indian National Congress's constant demand since its inception in 1885 has been to increase the number of Indians in the ICS. As a result, the curriculum was first broadened, and then, in 1922, a parallel examination was introduced in India. As a result, at the time of the power transfer, half of the members of the ICS were Indians.

All India Services

- All-India services are those that are shared by both the Central and state Governments. Members of these services hold top positions (or key posts) in both the Centre and the states, and they serve them alternately.
- There are currently three all-India services:
  - Indian Administrative Service (IAS)
  - Indian Police Service (IPS)
  - Indian Forest Service (IFS)
- The Indian Civil Service (ICS) was replaced by IAS in 1947, and the Indian Police (IP) was replaced by IPS, both of which were recognized as All-India Services by the Constitution. The Indian Forest Service was established in 1966 as the third all-India service.
- The All-India Services Act of 1951 empowered the Central Government to make rules in consultation with the state Governments to govern the recruitment and service conditions of All-India Service members.
- Members of these services are recruited and trained by the central Government before being assigned to different states for work. They are members of various state cadres, with the Centre lacking its own cadre in this regard.

- They serve on deputation for the Central Government and then return to their respective states when their term expires. The Central Government hires these officers on deputation through the well-known tenure system.
- It should be noted that, regardless of how they are divided among different states, each of these All-India Services forms a single service with common rights and status, as well as uniform pay scales across the country. The respective state Government pays their salaries and pensions.
- The Central and State Governments jointly control All-India Services. The central Government has ultimate control, while the state Governments have immediate control. Only the Central Government can take disciplinary action (impose penalties) against these officers.
- In the Constituent Assembly, Sardar Vallabhbhai Patel was the main proponent of all-India services. As a result, he became known as the "Father of All-India Services."

Central Services

The Central Government's Civil Services include both established services known as central civil service and civil posts created outside of established services, which comprise the general central service.

There are currently 62 Group 'A' Central services. Among them are:

- Central Engineering Service
- Central Health Service
- Central Information Service
- Central Legal Service
- Central Secretariat Service
- Indian Audit and Accounts Service
- Indian Defence Accounts Service
- Indian Economic Service
- Indian Foreign Service
- Indian Meteorological Service
- Indian Postal Service\Indian Revenue Service (Customs, Excise and Income Tax)
- Indian Statistical Service
- Overseas Communication Service
- Railway Personnel Service

The majority of the aforementioned cadres of Group A Central services have corresponding Group B services.

Group C Central services are made up of clerical personnel, while Group D is made up of manual personnel.

Thus, officers in groups A and B are gazetted, whereas officers in groups C and D are not.

In terms of prestige, status, pay, and emoluments, the Indian Foreign Service (IFS) is the highest central service.

In fact, despite being a central service, it competes with All-India Services in terms of position, status, and pay scales. It is ranked second only to the IAS, and its pay scale is higher than the IPS.

State Services

The term "State Services" refers to state-level civil service. In India, not one, but two distinct sets of civil services operate at the state level.

One of these is the civil service, which is recruited by state Governments to handle a wide range of Governmental activities at the state level. These are referred to as State Civil Services or simply State Services.

The All-India Civil Services is the second set of civil services that serves the states. The number of services available in each state varies. The following services are provided by all states:

- Civil Service
- Police Service
- Forest Service
- Agricultural Service
- Medical Service
- Veterinary Service
- Fisheries Service
- Judicial Service
- Public Health Service
- Educational Service
- Co-operative Service

The civil service (also known as the administrative service) is the most prestigious of all state services.

Provisions

Part XIV of the Constitution (Articles 308 to 314)

contains provisions for All-India Services, Central Services, and State Services.

- ***Article 309*** empowers the Parliament and State Legislatures to regulate the recruitment and conditions of service of individuals appointed to public services and positions under the Centre and the states, respectively.
- Under this provision, the Parliament or State Legislatures can impose 'reasonable' restrictions on public servants' Fundamental Rights in the interests of integrity, honesty, efficiency, discipline, impartiality, secrecy, neutrality, anonymity, devotion to duty, and so on.
- Such limitations are outlined in conduct rules such as the Central Services (Conduct) Rules, Railway Services (Conduct) Rules, and so on.
- ***Article 310*** states that members of the defence services, the civil services of the Centre, and the All-India Services, as well as those holding military or civil posts under the Centre, hold office during the President's pleasure.
- There is an exception to this general rule of dismissal at pleasure. The President or the Governor may (in order to secure the services of a person having special qualifications) provide for the payment of compensation to him in two cases:
  - if the post is abolished before the expiration of the contractual period, or
  - if he is required to vacate that post for reasons not connected with misconduct on his part.
- Notably, such a contract can be made only with a new entrant, that is, a person who is not already a member of a defence service, a civil service of the Centre, an All-India Service or a civil service of a state.
- ***Article 311*** imposes two limitations on the aforementioned "doctrine of pleasure." In other words, it protects civil servants from arbitrary dismissal by providing two safeguards:
  - A civil servant may not be dismissed or removed by an authority that is subordinate to the one that appointed him.
  - A civil servant may not be dismissed, removed, or reduced in rank unless he has been informed of the charges against him and has been given a reasonable opportunity to be heard on those charges.
- However, the second safeguard (holding inquiry) is not available in the following three cases:
  - Where a civil servant is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
  - Where the authority empowered to dismiss or remove a civil servant or to reduce him in rank is satisfied that for some reason (to be recorded in writing), it is not reasonably practicable to hold such inquiry; or
  - Where the President or the Governor is satisfied that in the interest of the security of the state, it is not expedient to hold such inquiry
- ***Article 312*** specifies provisions for All-India Services.
  - The Parliament can create new All India Services (including an all-India judicial service), if the Rajya Sabha passes a resolution declaring that it is necessary or expedient in the national interest to do so. Such a resolution in the Rajya Sabha should be supported by two-thirds of the members present and voting. This power of recommendation is given to the Rajya Sabha to protect the interests of states in the Indian federal system.
  - Parliament can regulate the recruitment and conditions of service of persons appointed to All-India Services. Accordingly, the Parliament has enacted the All-India Services Act, 1951 for the purpose.
  - The services known at the commencement of the Constitution (that is, January 26, 1950) as the Indian Administrative Service and the Indian Police Service are deemed to be services created by Parliament under this provision.
  - The All-India Judicial Service should not include any post inferior to that of a district judge. A law providing for the creation of this service is not to be deemed as an amendment of the Constitution for the purposes of Article 368.
- Though the 42nd Amendment Act of 1976 made the provision for the creation of All India Judicial

Service, no such law has been made so far.

- ***Article 312 A*** (added by the 28th Amendment Act of 1972) empowers Parliament to change or revoke the terms of service of persons appointed to the civil service of the Crown in India prior to 1950.
- ***Article 313*** deals with transitional provisions, stating that until otherwise provided, all laws in force prior to 1950 and applicable to any public service would continue to be in effect.
- The 28th Amendment Act of 1972 repealed Article 314, which provided for the protection of existing officers of certain services.

Significance of Public Services

- In developing societies, public services are an important tool for political modernization.
- Prior to electoral democracy, there must be a well-knit and well-organized public bureaucratic structure.
- It ensures the stability and continuity of the Government system.
- Civil servants, particularly All India Service officials, contribute to fostering a sense of belonging to a single nation, India.
- Civil servants must commit to building an inclusive society in which the poor and vulnerable are also beneficiaries of economic growth.
- It has a role to play in undoing years of colonial misrule. It promotes a welfare-oriented approach.
- It functions as an unbiased development agent in a heterogeneous, fissiparous, pluralistic, and diverse society. It advocates for democratic socialism.
- It works to ensure the rule of law by balancing political direction and legal provisions. It is useful for conflict resolution, change management, and crisis management.

Criticism

- Public services consume a large portion of Government budgets, but increased spending is not always matched by improved outcomes.
- It has been observed on several occasions that corruption can disrupt public services, resulting in money intended for books, teachers, dispensaries, medical supplies, and infrastructure being siphoned off by officials or private contractors.
- The lack of improvements in provider agencies, as well as the limited 'exit' options available to people, continue to make it difficult for the most vulnerable members of society to access these services.
- Following independence, the Indian Civil Service or bureaucracy as a whole gradually evolved into a corruption-ridden system characterized by nepotism and corruption.
- The system frequently suffers from excessive centralization issues, and policies and action plans are far removed from the needs of citizens. As a result, there is a mismatch between what is required and what is provided.
- It is reasonable to conclude that corruption and nepotism in Indian bureaucracy have both political and administrative ramifications. It has become an integral part of the system's structure.
- Red-tapism is a major impediment to India's socio-economic development. Because of these roadblocks, development-related projects are delayed, affecting the development process.
- The mass transfer of bureaucrats that occurs with a change in Government in the modern era imposes certain tendencies on bureaucrats to seek the patronage and favour of politicians.

42 Political Parties

Introduction

India has more than 2300 political parties, being the largest democracy in the world. The presence of so many political parties signify a healthy ruling system for the nation. It gives people a choice to make a more effective and rational decision.

A political party is an association of people having a common perspective, principles and aims, concerning the political system. The party members work together to win elections and form the ruling Government, by getting their candidates elected in the assembly. In order to do so, they nominate candidates before the election and campaign for them to win the election. India has a multi-party system, where there are three or more parties which have the capacity to form Government separately or in a coalition.

Role of Political Parties

- The motive of political parties is to add people who hold similar point of view about the Government. Even though many people are associated with the same party, they don't exactly share the same beliefs but the core beliefs about how the Government should run, remain the same.
- The parties hold true to a core set of beliefs which enables the voters to understand the basic beliefs of one of the nominated candidates.
- Opposition parties are responsible for keeping an eye on the activities of the Government. They spend much of their time investigating the ruling party's policies and activities which help us, citizens, to be informed of both sides of an issue. Although voters tend to get tired of the debates and arguments, it helps to present balanced information.
- People in the same political party remain connected with each other through their party. A party can link its members at different levels of Government-local, state or national. This plays a uniting role for all the members.
- Parties even offer access to Government machinery and welfare schemes. Local party leaders act as a string between the citizens and Government officials.
- Political parties shape public opinion. With the help of the Government, they get to understand the ongoing issues in the nation.

Need of Political Parties

The functions that political parties perform demonstrate that democracies cannot exist without them. If there were no political parties, then:

i. All election candidates would run as independents. They can't promise the people any major policy changes. No one will be in charge of the country's administration.

ii. Only representative democracy can function in large societies. Political parties have evolved into a clearing house for different points of view on various issues, which they then present to the Government.

Party System

There are three types of party systems:

- One-Party System
- Two-Party System and
- Multi-Party System

One-Party System

- There is no competition in this system. The lone party nominates the candidates and the voters have only two choices:
  - Not to vote at all or
  - write 'yes' or 'no' against the name of the candidates nominated by the party.
- This system has been popular in Communist countries and other authoritarian regimes e.g., China, North Korea and Cuba. This system was also prevalent in USSR till Communism collapsed.

Two-Party System

- In a Two-party system power shifts between two

major, dominant parties. In this system, to win elections, the winner has to get maximum number of votes, but not necessarily a, majority of votes. The smaller parties usually merge with the bigger parties or they drop out of elections.

- This parliamentary system prevails in Great Britain and Canada, in which only two parties hold significant numbers of seats. Supporters of this system believe that this prevents dangers of fragmentation (too many parties winning seats from different constituencies) and the Government can run smoothly.

Multi-Party System

Multi-Party System is the most common type of party system.

- In this system, three or more parties have the capacity to gain control of the Government separately or in coalition.
- When no party gains a majority of the legislative seats in multi-party parliamentary system, then several parties join forces and form a coalition Government.

Supporters of this system point out that it allows more point of views to be represented in the Government. Critics of this system point out that multi-party system sometimes leads to political instability.

What is an Alliance?

When several parties in a multi-party system join hands for the purpose of contesting elections and winning power, it is called an alliance or a front.

India, in 2004 and 2009, had three such Alliances for Parliamentary elections:

- National Democratic Alliance
- The United Progressive Alliance and
- Left Front.

Famous Political Parties in India

India has a multi-party system where political parties can be classified as national, state or unrecognized parties. The Election Commission accords the status of the parties and keeps on reviewing it from time to time. All the parties have to be registered with the Election Commission. A special and unique election symbol is allocated to every registered party by the Election Commission.

Recognised Parties:

Are given a unique symbol – only the official candidates of that party can use that election symbol. It comprises of two types of Parties

- National
- Regional/State Parties

National Parties

There are currently 8 National Parties in India. A registered party is recognised as a national party if it fulfils any one of three given conditions-

- If a party wins 2% of seats in the Lok Sabha from at least 3 different States, or
- At a general election to Lok Sabha, the party polls 6% of votes in four States along with 4 additional Lok Sabha seats, or
- A party is recognised as a State Party in at least four States.

Currently, the national parties are:

- Bhartiya Janata Party,
- Indian National Congress,
- Communist Party of India (Marxist),
- Communist Party of India,
- Bahujan Samajwadi Party,
- Nationalist Congress Party,
- All India Trinamool Congress,
- National People's Party.

State Parties/ Regional Parties

Owing to rich cultural diversity, India's political fabric has seen the necessity of state parties which can cater to the interests of their particular states, and are often critical to make or break alliances in the Lok Sabha elections.

A political party in order to become a state party should fulfil at least one of the following criteria:

- A party should win at least 1 seat in the Lok Sabha for every 25 states or any fraction thereof allocated to that State by the Election Commission or
- A party should win at least 3% of the total number of seats or at least 3 seats in the Legislative Assembly or
- The party should win at least 6% of the total number of valid votes that are polled in the Lok Sabha or

Legislative Assembly, in addition to 1 Lok Sabha seat and 2 Legislative Assembly seats or

- If the party fails to win any seat in the State general elections to the Legislative Assembly of the State or the Lok Sabha, the party will still be eligible for recognition if it secures at least 8% of the total valid votes polled in the State.
    - Currently, there are 53 State parties in India. Some of the famous state-level political parties are Jharkhand Mukti Morcha, Forward Bloc, All India Anna Dravida Munnetra Kazhagam, Aam Admi Party.

According to the Election Commission of India, there are over 2000 political parties in India, which include eight "recognized national" and more than 50 "recognized state" parties

Evolution of Regional Party

- Over the last four decades, the number and strength of regional parties has expanded. This has made the Parliament of India politically more diverse. Regional political parties have emerged to fulfil regional aspirations.
- No one national party is able to secure on its own a majority in Lok Sabha. As a result, the national parties are compelled to form alliances with State parties. The regional political parties started playing a crucial role in coalition politics since 1989.
- It is because of the regional political parties that our party-system has been federalized. The Centre has begun to address their problems and respond their aspirations through accommodation. The evolving nature of our party system has strengthened the cooperative trends of our federal system.

Unrecognized Parties

An unrecognized party is one which does not have the privilege of contesting elections on a symbol of its own. This party has to choose one symbol out of the list of 'free symbols' issued by the poll panel during an election. There are more than hundred unrecognized political parties in India.

Example: Akhil Bhartiya Gorkha League, Amra Bangali, Hindustani Awam Morcha, Jammu and Kashmir Apni Party etc

Advantages of being recognized as a State or National Party

There are certainly many benefits of being a recognized state or national party.

Reserved Party Symbol:

- The biggest advantage of being recognized is getting the reserved symbol. If a political party is recognized as a state party, it becomes entitled to the exclusive allotment of its reserved symbols to the candidates set up by the said party in states in which it is recognized. It can also allocate symbols to its candidates in other states and UTs, by fulfilling the conditions mentioned.
- If it's a National Party, it exclusively allocates its symbol to the candidates set up throughout the country.

One Proposer for filing nomination:

- Recognized parties need only one proposer for filing the nomination and they also get two sets of electoral rolls free of cost at the time of the revision of rolls.
- Their candidates also get one copy of the electoral roll free during General Elections.

Broadcast Facilities:

- They are also entitled to broadcast or telecast facilities over Akashwani or Doordarshan during elections.
- The telecast and radio facilities can be best used to address the people and convey their message to the masses.

Star Campaigners:

- Political parties, be it recognized or unrecognized, can nominate Star Campaigners during elections.
- A recognized National or State Party can have a maximum of 40 Star Campaigners while registered unrecognized parties can have a maximum of 20 Star Campaigners.
- The travel expenses of these star campaigners are not included in the election expense accounts of candidates of these parties. They also get subsidized land for their party offices at the national or state capitals.

Additional benefits:

- The State parties also entail the right to participate in the all-party meeting convened by Election Commission or State or Central Government.

- The candidates set up by these parties are arranged alphabetically and presented on the top of the ballot paper followed by candidates of registered unrecognized parties and lastly, the independent candidates.
- If the candidate nominated by a recognized party dies before the polling begins, then the elections in that constituency are adjourned and that party is given an additional time of a week to nominate another candidate.

Advantages of Political Parties

The advantages of being a political party are mentioned below:

An average person can make a change

- It might be difficult for a single person to create change. By having political parties, individuals get to work together with people who share the same opinion about specific issues. This gives rise to a collective voice rather than an individual one, which makes it easier to convey to people what is being offered.

Growth of personal and professional networks

- People are subconsciously attracted to others who have similar values, beliefs and perspectives. When someone joins a political party, they may discover many people who share the same perspective. This process can form many new friendships and hence form a meaningful and potentially profitable network of people who can make the world a better place.

Makes the process faster

- Political parties help to shape the conversations around governing because they group the conversations into various categories that are appropriate. If you ask 100 different people their opinion, there is a possibility that they come up with the same answer if their political views are the same.
- When this group process is simplified, the governing process can operate quickly and efficiently.

Encourages political participation

- As a democratic nation, India allows its citizens to freely express their opinions and to support the political party that shares their interest and opinion. Unlike China, India supports the public to participate and cast their votes at the polls. Hence, citizens can contribute toward making important changes that will benefit everyone.

Ensures distribution of information

- The presence of political parties ensures that the necessary information about governance is available to those who want it.

Encourages people to become politically active

- Everyone has the capability of casting a vote. It takes no special skill to cast a vote but a political party works hard to ensure that people are informed about the ongoing issues and can make empowered decisions about the future of their society and Government.

Helps decisions be made quicker

- When people can come together in a party and debate over the ideas and policies, they can create legislation faster than if they were to do it alone. This seems to be an advantage if the party is managed properly.

Creates checks and balances

- In India, with multiple parties, the parliamentary system is designed so as to bring politicians from major political parties to negotiate over legislation and policies. The goal of multiple party systems is to create a balance of power.

Disadvantages of Political Parties

The disadvantages of being a political party are listed below:

Might have selfish propaganda

- Political parties might carry vested interests and self-centred propagandas that benefit only a few and are not in the interest of the whole nation. This damages the country's political, social and economic infrastructure. When a certain group pays heed to its members rather than the entire country, it disturbs the nation's peace and order.

Could create factionalism

- A country with multiple party systems could create a difference of ideologies. It could create animosity between parties, encourage jealousy and develop occasional riots which would lead the public to form factions as it would be hard for all of them to agree on certain levels.

Could ruin individuality

- Parties may expect its members to support and

share their views blindly without questioning the decision-makers. They might not allow them to criticize their opinions or decisions. So, this would prohibit the members from forming individual opinions on certain issues because they are expected to follow what their party is telling them.

Could encourage corruption

- It is often seen that parties distribute money to the electorate to secure votes for their candidates during elections. Aside from that, their candidate may be making abundant promises about delivering food, electricity, shelter and all the necessities only to persuade the voting population into electing them. But once they are elected into office, they might never deliver to their promises. They might also place those who supported them during the election, in higher positions in exchange for their votes.

Can become abusive

- Every country may not be a democracy. Communism and dictatorships also have political parties. The purpose of these parties is usually only about enforcement of laws and expectations without taking the public's consent into consideration or being politically active from an individualized perspective. If a political party has too much strength or leverage, they can become abusive.

May prioritize themselves

- Indian political parties and candidates spent nearly $8.65 billion in India's 2019 general election according to a report by the Centre for Media Studies making it the most expensive election ever, anywhere. The incumbent Bhartiya Janata Party was the biggest spender, accounting for 45-50% of the total expenditure.
- This figure is almost twice the amount, estimated by the Centre for Media Studies for the last general polls in 2014. Just one election in India at those figures is enough to solve its hunger issues for an entire year. This depicts that the goal of most political parties is to prioritize themselves so that they can be in power. For them, these costs are investments.

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43 Elections - Election Laws & Electoral Reforms

Introduction

The concept of democracy as visualised by the Constitution pre-supposes the representation of the people in Parliament and State legislatures by the method of election. The Supreme Court has held that democracy is one of the inalienable basic features of the Constitution of India and forms part of its basic structure.

The Constitution of India adopted a Parliamentary form of government. Parliament consists of the President of India and the two Houses — Rajya Sabha and Lok Sabha. India, being a Union of states, has separate state legislatures for each state. State legislatures consist of the Governor and two Houses — Legislative Council and Legislative Assembly — in six states, namely, Andhra Pradesh, Telangana, Bihar, Karnataka, Maharashtra and Uttar Pradesh, and of the Governor and the state Legislative Assembly in the remaining 22 states. Apart from the above, three out of the seven Union Territories, namely, National Capital Territory of Delhi and Puducherry and Jammu & Kashmir, also have their Legislative Assemblies.

The Election Commission of India is an autonomous constitutional authority responsible for administering Union and State election processes in India. The body administers elections to the Lok Sabha, Rajya Sabha, State Legislative Assemblies in India, and the offices of the President and Vice President in the country.

Powers and Functions of the Election Commission

The primary function of the Election Commission is to conduct free and fair elections in India. For this purpose, the Election Commission has the following functions:

Delimitation of Constituencies

The country has been divided into 543 Parliamentary Constituencies, each of which returns one MP to the Lok Sabha, the lower house of the Parliament. The Federal Democratic Republic of India has thirty-five constituent units. All the twenty-eight States and two of the seven Union Territories have their own assemblies – Legislative Assembly. The thirty-one Assemblies have 4120 Constituencies.

To facilitate the process of elections, a country has to be divided into several constituencies. Constituency It is territorial area from where a candidate contests elections The task of delimiting constituencies is generally performed by the Delimitation Commission consisting of five serving or retired judges of the Supreme Court and the Chief Election Commissioner who is its ex-officio member. All secretarial assistance (at all levels, national, state, district) is provided to the Delimitation Commission by the Election Commission. The Delimitation Commission is constituted by the Government from time to time

Preparation of Electoral Rolls

Each constituency has a comprehensive list of voters. It is known as the Electoral Roll, or the Voters' List. The Commission prepares the Electoral Roll for Parliament as well as Legislative Assembly elections. The Electoral Roll of every constituency contains the names of all the persons who have right to vote in that constituency. The electoral roll is also revised from time to time generally before every general election, by-election and mid-term election in the constituency.

1. ***General Election:*** Election to constitute a new Lok Sabha or Assembly is called General Election.
2. ***Bye-Election:*** If at any time there is a mid-term vacancy due to the death or resignation of a member either in Lok Sabha or Legislative Assembly only one seat falls vacant. The election for that seat is known as bye-election.
3. ***Mid-term Election:*** If the Lok Sabha or State Assembly is dissolved before completion of five years and the election is held to constitute new Lok Sabha or new State Assembly, etc. is called mid-term election.

The revision is carried out from house to house by the

enumerators appointed by Election Commission and all eligible voters are registered. A person can be registered as a voter if he/she fulfils the following conditions:

1. He/she is a citizen of India.
2. He/she is 18 years of age.
3. He/she is resident of the constituency.

Recognition of Political Parties

One of the important functions of the Election Commission is to recognise political parties as all India (National) or State (Regional) Political Parties. If in a general election, a particular party gets four percent of the total valid votes polled in any four states it is recognised as an all India (National) Party. If a party gets four percent of the total valid votes in a state, it is recognized as a State or regional party.

Allotment of Symbol

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 Bhartiya Janata Party (BJP) and Elephant is the symbol of Bahujan Samaj Party. These symbols are significant for the following reasons:

1. They are a help for the illiterate voters who cannot read the names of the candidates.
2. They help in differentiating between two candidates having the same name.

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 and 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 in charge 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 thousand 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 officers. They check the names of the voters in the electoral roll, put indelible ink on the finger of the voter, issue ballot papers and ensure that votes are secretly cast by each voter.

Indelible ink – This ink cannot be removed easily. It is put on the first finger of the right hand of the voter so that a person does not come again to cast vote for the second time. This is done to avoid impersonation.

Electoral Process

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

Every candidate has to make a security deposit at the time of filing nomination. For Lok Sabha every candidate has to make a security deposit of Rs.10,000/- and for State Assembly Rs. 5,000. But candidates belonging to Scheduled Castes and Scheduled Tribes are required to deposit Rs. 5,000/– for if contesting the Lok Sabha elections and Rs. 2,500/– for contesting Vidhan Sabha elections. The security deposit is forfeited if the candidate fails to get at least 1/6 of the total valid votes polled.

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 grounds:

(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, highlighting the main issues of their election manifesto (election manifesto is a document issued by political party. It is declaration of policies and programmes of the party concerned.

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.

Scrutinization of Expenses

Though the Election Commission provides free access for a limited time to all the recognised 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.

Electronic Voting Machines (EVMs)

The Election Commission has started using tamper proof electronic voting machines to ensure free and fair elections. Each machine has the names and symbols of the candidates Structure of Government in a constituency.

One Electronic Voting Machine (EVM) can accommodate maximum of 16 candidates. But if the number exceeds 16, then more than one EVM may be used. If the number of candidates is very large, ballot papers may be used.

The voter has to press the appropriate button to vote for the candidate of his/her choice. As soon as the button is pressed, the machine is automatically switched off. Then comes the turn of the next voter. The machine is easy to operate, and with this the use of ballot paper and ballot boxes is done away with.

When the machine is used, the counting of votes becomes more convenient and faster. The EVMs were used in all the seven Lok Sabha constituencies in Delhi in 1999, and later in all the State Assembly constituencies.

In 2004 General Elections, EVMs were used all over the country for Lok Sabha elections. The sealed ballot boxes or EVMs are shifted in tight security to the counting centre. Counting takes place under the supervision of the Returning Officer and in the presence of candidates and their agents. If there is any doubt about the validity or otherwise of a vote, decision of the Returning Officer is final.

As soon as counting is over, the candidate securing the maximum number of votes is declared elected (or returned) by the Returning Officer.

Re-poll

If at the time of polling, a booth is captured by some anti-social elements, the Election Commission may order holding of re-poll in either the entire constituency or particular booths.

Countermanding of Election.

If a duly nominated candidate belonging to a recognised party dies at any time after the last date of nomination and before the commencement of polling, the Election Commission orders countermanding the elections. This is not just postponement of polling. The entire election process, beginning from nominations is initiated afresh in the concerned constituency.

Elections Laws in India

There are various laws related to the conduct of elections in India. The elections for both the centre and the state are conducted differently but the laws governing the conduct of elections of the Parliament and State Legislature are almost the same. These are as follows:

The Representation of the People Act, 1950

This act provides for the allocation of seats in Lok Sabha and Legislative Assemblies, delimitation of constituencies, qualifications of voters, manner of filling the seats of Rajya Sabha by Union Territory representatives etc.

- The Election Commission should appoint or nominate a Chief electoral officer for each and every state with the consultation of the State Government.
- Appointment of district level election commissioners should also be done by the Election Commission with the consultation of the state government.
- The Central government has the power to make any rules under this Act with the consultation of the Election Commission.

- This Act bars the power of the Civil Courts to question the legality of any action of electoral registration officer regarding revision of electoral roll.

The Representation of the People Act, 1951

This Act provides for the conduct of elections to the Parliament and State Legislatures, qualifications, disqualifications, various offences, various doubts and disputes etc. Following are some of the rules laid down under this Act:

- Everybody or association who wants to stand as a candidate in the elections have to get itself registered with the Election Commission of India. It is on the Election Commission to register a political party or not after considering various relevant factors and particulars.
- Any change in the name and address of the political party should be communicated to the Election Commission.
- A person cannot represent the people in either Lok Sabha or Rajya Sabha if he is not eligible to vote.

The Registration of Electors Rules, 1960

- The rules contained in this Section are related to the preparation of electoral rolls, their periodic updating and revision.
- This act also provides the process for registration of eligible voters and the issuance of voter ID cards with the photograph of the voter.
- The inclusion of eligible and registered voters in the electoral rolls and the exclusion of non-eligible and non-existing voters are included in this act.
- The election commission prepares the electoral rolls during the elections which contain the name, photograph and the other particulars of the voter because of the rules mentioned under this Act.

Conduct of Election Rules, 1961

- This Act deals with each and every stage of conduct of elections in detail. It holds the issuing of writ notification for conducting elections, filing of nominations, scrutiny of nominations, withdrawal of candidates.
- This rule also governs the counting of votes and taking of polls. In the end, this rule also categorises the constitution of the Houses on the basis of the results.
- Many amendments have been made in this rule such as the Conduct of Election Rules (Amendment), 2013 and the Conduct of Election Rules (Amendment), 2016.

Election Symbols Order, 1968

This is the order which empowers the Election Commission to recognise political parties and allot them symbols. The commission also has the power to decide disputes arising among rival groups or sections of a political party who is claiming the symbol. Under this, only the Election Commission has the power to decide all the issues arising on any disputes or a merger.

Presidential and Vice-Presidential Rules, 1974

This Act is particularly made for the conducting of elections for both the President and Vice-President. This act consisted of 41 sections in total and provides the whole process for conducting elections such as:

- Voting by electors under preventive detention
- Adjournment of the poll in emergencies
- Place and time for counting of votes
- Maintenance of secrecy of voting
- Recounting
- Production and inspection of election papers
- Copies of return of election

Section 41 of this Act repealed the Presidential and Vice-Presidential Elections Act, 1952.

Shortcomings of Indian Electoral System

There has been universal appreciation of the Indian electoral system. People have hailed the manner in which elections have been conducted in India. But there are its weaknesses. It has been seen that in spite of the efforts of Election Commission to ensure free and fair election, there are certain shortcomings of our Electoral system. Some notable weaknesses are discussed below:

Money Power Structure of Government

The role of unaccounted money in elections has become a serious problem. The political parties collect funds from companies and business houses, and then use this money to influence the voter to vote in their favour. The business contributions are mostly in cash and are not unaccounted. Many other corrupt practices are also adopted during election such as bribing, rigging or voters' intimidation, impersonation and providing transport and conveyance of voters to and fro the polling stations. The reports of liquor being distributed in poor areas are frequent during election.

Muscle Power

Earlier the criminals used to support the candidates by intimidating the voter at a gunpoint to vote according to their direction. Now they themselves have come out openly by contesting the elections leading to criminalisation of politics. As a result, violence during elections has also increased.

Caste and Religion

Generally, the candidates are given tickets by the political parties on the consideration whether the candidate can muster the support of numerically larger castes and communities and possesses enough resources. Even the electorates vote on the caste and communal lines. Communal loyalties of the voters are used at the time of propaganda campaign.

Misuse of Government Machinery

All the political parties do not have equal opportunity in respect of access to resources. The party in power is always in advantageous position then the opposition parties. There is widespread allegation that the party in power accomplishes misuse of government machinery. All these features lead to violence, booth capturing, rigging bogus voting, forcible removal of ballot papers, ballot boxes burning of vehicles, etc. which result into loss of public faith in elections.

Electoral Reforms

In order to restore the confidence of the public in the democratic electoral system, many electoral reforms have been recommended from time to time by Tarkunde Committee and Goswami Committee which were particularly appointed to study and report on the scheme for Electoral Reforms in the year 1974 and 1990 respectively. Out of these recommendations some have been implemented. In fact, it was under the chairmanship of the then Chief Election Commissioner, T.N. Sheshan, that Election Commission initiated many more measures to ensure free and fair elections. Some of the reforms which have been implemented so far are as follows:

Electoral reforms undertaken by authorities can be broadly divided into two categories:

- Pre-2000 and
- Post-2000

Both of these are discussed in the section below:

Electoral Reforms Pre-2000

Lowering of Voting Age:

- The 61st Amendment Act to the Constitution reduced the minimum age for voting from 21 to 18 years.

Deputation to Election Commission:

- All personnel working in preparing, revising and correcting the electoral rolls for elections shall be considered to be on deputation to the Election Commission for the period of such employment, and they shall be superintended by the Election Commission.

Increase in the number of proposers and the security deposit:

- The number of electors required to sign as proposers in the nomination papers for elections to the Rajya Sabha and the State Legislative Councils has been raised to 10% of the electors of the constituency or ten such electors, whichever is less chiefly to prevent frivolous candidates. The security deposit has also been hiked to prevent non-serious candidates.

Electronic Voting Machine (EVMs):

- First introduced in 1998 during the state elections of Delhi, Madhya Pradesh and Rajasthan, EVMs are used widely now as they are Full-proof, efficient and a better option in terms of the environment.

Disqualification on conviction for violating the National Honours Act, 1971:

- This shall lead to disqualification of the person for 6 years from contesting to the Parliament and the State Legislatures.
- Restriction on contesting from more than 2 constituencies: A candidate cannot contest from more than 2 constituencies.

Death of a contesting candidate:

- Previously, the election was countermanded on the death of a contesting candidate. In the future, no election will be countermanded on the death of a contesting candidate. If the deceased candidate, however, was set up by a recognized national or state party, then the party concerned will be given an option to nominate another candidate within 7 days of the issue of a notice to that effect to the party concerned by the Election Commission.

Prohibition on sale of liquor:

- No liquor or other intoxicants shall be sold or given or distributed at any shop, eating place, or any other place, whether private or public, within a polling area during the period of 48 hours ending with the hour fixed for the conclusion of poll.

Time limit for bye-elections:

- Bye-elections to any House of Parliament or a State Legislature will now be held within six months of the occurrence of the vacancy in that House
- The period of campaigning has been reduced

It is prohibited by law to go to or near a polling booth bearing arms. This is punishable by imprisonment for up to 2 years.

On poll days, employees of organisations get a paid holiday and violation of this is punishable by a fine.

Electoral Reforms Post 2000

The electoral reforms target the election process in the country. The list of such electoral reforms is given below:

Ceiling on election expenditure:

- At present, there is no limit on the amount a political party can spend in an election or on a candidate. But the Commission has put a cap on individual candidates' spending. For the Lok Sabha elections, it is Rs. 50 – 70 lakhs (depending on the state they are contesting the Lok Sabha seat from), and Rs. 20 – 28 lakhs for an assembly election.

Restriction on exit polls:

- The Election Commission issued a statement before the 2019 Lok Sabha elections saying that exit poll results could be broadcast only after the final phase of the elections were over. This was done to avoid prospective voters being misguided or prejudiced in any manner.

Voting through postal ballot:

- In 2013, the Election Commission decided to expand the ambit of postal ballot voting in the country. Previously, only Indian staff in missions abroad and defence personnel in a limited way, could vote via postal ballots. Now, there are 6 categories of voters who can use the postal ballot: service voters; special voters; wives of service voters and special voters; voters subjected to preventive detention; voters on election duty and Notified voters.

Awareness Creation:

- The Government decided to observe January 25th as 'National Voters Day' to mark the Election Commission 's founding day.
- Political parties need to report any contribution in excess of Rs 20,000 to the Election Commission for claiming income tax benefit.
- Declaring of criminal antecedents, assets, etc. by the candidates is required and declaring false information in the affidavit is now an electoral offence punishable with imprisonment up to 6 months or fine or both.

VVPAT – Voter Verifiable Paper Audit Trail

- From 2013, a new system has been added in the EVM called Voter Verifiable Paper Audit Trail. A printer is attached with the EVM and kept into Voting Compartment which prints Sr. No., Name and Symbol of the candidate for whom a voter has voted. This printed slip remains exposed for 7 seconds under a transparent window and gets cut automatically and falls into a drop box which remain sealed.

None Of the Above (NOTA) Option in EVMs

- In its judgment, the Supreme Court has directed that there should be a "None of the Above" (NOTA) option on the ballot papers and EVMs. The Court has directed that the Commission should implement it 'either in a phased manner or at a time with the assistance of Government of India'.
- On the Balloting Unit, below the name of the last candidate, there will now be a button for NOTA option so that electors who do not want to vote for any of the candidates can exercise their option by pressing the button against NOTA.
- The Commission takes all steps to bring this to the knowledge of voters and all other stakeholders and to train all field level officials including the polling personnel about the NOTA option. Similarly, NOTA provision is also there for the Postal Ballots.

Affidavits of Candidates – All Columns to be filled in

- In pursuance of the judgment dated 13th September, 2013 passed by the Supreme Court, which among other things makes it obligatory for the Returning

Officer "to check whether the information required is fully furnished at the time of filing of affidavit disclosing their criminal antecedents, assets, liabilities and qualifications with the nomination paper", the Commission has issued instructions that in the affidavit to be filed along with the nomination paper, candidates are required to fill up all columns.

- If any column in the affidavit is left blank, the Returning Officer will issue a notice to the candidate to file the affidavit with all columns filled in. After such notice, if a candidate fails to file affidavit complete in all respect, the nomination paper will be liable to be rejected at the time of scrutiny. The Chief Electoral Officer has been directed to brief all Returning Officers about the judgment of the Supreme Court and the Commission's instructions.

Photos of Candidates on EVMs and Ballot Papers

- To prevent confusion among voters in seats where namesakes are running for office, the Election Commission ordered that in any election held after May 1, 2015, the ballot papers and EVMs feature an image of the candidate along with his or her name and party emblem.
- The first elections in which candidate images appeared on ballots were the June 2015 by-elections for six seats in five states.
- The Commission has observed that there are several instances of candidates contest from the same seat who have the same or similar names. Although suitable suffixes are applied to candidate names where there are two or more candidates with the same name, the Commission believes that additional steps are necessary to prevent confusion in voters' minds during the voting process.

There is no doubt that India needs drastic poll reforms but still the fact remains that Indian elections have been largely free and fair and successfully conducted. It gives the country the proud distinction of being the largest democracy in the world.

Electoral bonds

- Electoral Bonds are an instrument through which anyone can donate money to political parties. Such bonds, which are sold in multiples of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore, can be bought from authorised branches of the State Bank of India.
- Purpose of Electoral Bonds is to bring in transparency into political funding in India. The system of electoral bonds addresses the distress of donors continues to be unknown to the general public otherwise to rival political parties. This reform is anticipated to encourage superior transparency and answerability in political funding, at the same time as preventing the prospective generation of Black Money.
- A donor is required to pay the amount — say Rs 10 lakh — via a cheque or a digital mechanism (cash is not allowed) to the authorised SBI branch. The donor can then give this bond (just one, if the denomination chosen is Rs 10 lakh, or 10, if the denomination is Rs 1 lakh) to the party or parties of their choice.

Concerns with respect to Electoral Bonds:

Even though the Electoral Bond Scheme acts as a measure against the old under-the-table donations since bonds are through cheques and digital paper trails of transactions, there are many key provisions of the scheme that are causes of concern.

- ***Anonymity:*** There is no obligation on the part of the donor (individual or corporate) or the political party to reveal where the donations come from.
- ***Transparency:*** It will also go against transparency, a fundamental principle in political financing. Companies will no longer have to declare the names of the political parties to which they have donated, so shareholders won't know where their money has gone.

There are possibilities of making electoral bonds a convenient channel for black money. The following provisions are controversial in that sense:

- Doing away with the 7.5% cap for corporate donations.
- No need for companies to reveal their political contributions in their profit and loss statements.
- The requirement that companies should be in existence for 3 years before making political contributions undermines the scheme's intent. This makes it easy for dying, troubled or shell companies to make an unlimited donation anonymously.

- Since the bonds are bought through the State Bank of India (SBI), the government is always in a position to know who the donor is. This asymmetry of information threatens to favour whichever political party is ruling at the time.

The Election Commission of India had asked that the limit for reporting the donations (which is Rs 20000) should be brought down to Rs 2000, but instead, the government has reduced the maximum contribution by cash to Rs 2000.

It could become a convenient channel for business to round-trip their cash parked in tax havens to political parties for a favour or advantage granted in return for something

Drawbacks of Electoral Bonds

The RPA (Representation of People Act 1951) although makes it mandatory for the political parties to disclose donations over Rs 20,000, there is no law that prohibits these parties from disclosing donations below Rs 20,000 but the parties lack political will hence do not disclose

- The political parties have regularly delayed submitting the audited reports to the ECI. As per ADR between 2011-2015
  - BJP has delayed the submission on an average by 182 days
  - Congress by 166 days
  - NCP by 87 days
- Worse is the fact that some political parties do not even file the returns. There is little to show that action has been against these parties who have either delayed or not filed the returns.
- The political parties can continue to collect the funds through cheque and digital payments (but will have to file returns to the Income Tax authority).

Reform that can be done

- As per T. S. Krishnamurthy (Former CEC), the Government will not know how many times, the bond has been sold in the market before being encashed by the political party. So, it would be better if an Election Fund is set up by the Election Commission and donations to various political parties are collected by ECI (with compulsory PAN number).
- The above suggestion of setting up of election fund has been given by Indrajit Gupta Committee.

Stance of Election Commission

- The political parties can choose to encash such bonds within 15 days of receiving them and fund their electoral expenses. On the face of it, the process ensures that the name of the donor remains anonymous.
- The Election Commission, in its submission to the Standing Committee on Personnel, Public Grievances, Law and Justice in May 2017, had objected to the amendments in the Representation of the People (RP) Act, which exempt political parties from disclosing donations received through electoral bonds.
- It described the move as a "retrograde step".

Voting Behaviour in India

India is the largest democracy in the world. All citizens of 18 years or above of the age have the right to vote in Indian elections. Despite the fact that nearly half of them are illiterates, they have in the past acted wisely and in a mature way to elect their representatives. They have already participated in several elections to Lok Sabha, State Legislative Assemblies and a large number of bye-elections. At the first general elections in India in 1952, some election studies were conducted. In the beginning, these studies lack methodological rigour and sophistication. However, with the increased use of the survey method and observation technique has improved the quality of election studies in India.

Voting Behaviour in India and its Determinants:

In India following main political and socioeconomic factors which act as determinants of voting behaviours in our Democratic system:

Education:

- It is often seen that the educated people take more interest in casting their vote as compared to the illiterates because they know the importance of their right to vote and consider the use of this right a national duty. They know that they can elect the government of their choice by executing their right to vote. Thus, education affects the voting behaviour of person and with the spread of education the ratio of the use of franchise is also increasing and during the election of the 16th Lok Sabha, the percentage

of voting had gone up to 66.38% which was quite high in comparison to previous elections.

Charisma:

- One important factor of voting behaviour is Charisma. It means the exceptional quality of a factor and overrides group elements leader that becomes a source of attraction and reverence for the people in large numbers in an opposite sense, it also means a source of fear to many people because they do not speak or dare to speak against the wishes of a powerful leader. Fortunately, in our country, the constructive aspect of charisma has had its role at the time of the election.
- The slogan of "Garibi Hatao" performed miracles in the 1971 elections, the personality of Mrs. Gandhi after India's miraculous victory in the Bangladesh war had the same wonderful impact on the mind of the electorate in the State Assembly elections of 1972. The image of Jayaprakash Narayan had the same effect in the elections of 1977. The personality of Modi, BJP won the election of 2014.

Caste:

- Caste continues to be a determining factor in voting behaviour in India. It has deep roots in society and constitutes an important basis for social relations at all levels. Despite the adoption of various provisions that prohibit action and discrimination on the basis, the caste continues to be a determining factor in political behaviour. The politicization of caste and casteism in politics has been a well-known reality of the Indian political system. The political parties in India, without exception, in formulating their policies, programs and electoral strategies always keep the caste factor in mind. Rural voters pay special attention to the caste of the candidate. Despite the adoption of democratic values that conceive a society free from casteism, the caste continues to characterize politics in India.

Ideological Commitment:

- The ideological commitment of the voters also effects the voting behaviour most of the voters are crazy about particular ideology and they keep in view the ideology of the candidate and the political party at the time of casting their votes. This fact is applicable to the voters who are the supporter of the leftist parties.

Populist slogans:

- Sometimes different political parties raise the populist slogans according to the need of the time and affect the thinking of the voters. For example, congress raised the slogan of, 'Garibi Hatao' in 1971. During the 16th Lok Sabha election, the slogans like 'Abki baar, Modi Sarkar.

Personal Contacts:

- Personal contacts of the candidate and voters also affect the voting behaviour of the voters. Most of the voters get influenced by personal visits of the candidate and they cast their vote in their favour. Besides this, the relatives and friends of the candidate also cast their votes in favour of them because of their personal relationship.

Party Loyalty:

- In India, many of the people are attached to their different political party and they always cast their vote in favour of the party rather than the candidate. They can't change their party loyalty even when they know that their candidate would not be going to win, such voters are known as committed voters.

Religion:

- Religion also plays an important role in Indian politics. Many political parties have been formed on the basis of religion in India. At the time of elections, different political parties beg votes in the name of religion. They raise the slogan 'Religion is in danger' and instigate the religious feelings of the people. While distributing party tickets the religion of the voters and candidates is given due consideration. It is often seen that the voters cast their votes in favour of the candidates of their own religion on being influenced by the religious feeling.

Language:

- India is a multi-lingual state. The language also serves as a factor in voting behaviour. The organization of states on a linguistic basis fully reflects the importance of language as a factor of politics in India. There have been problems in states like that of the status of one particular language in that state, or relating to the quality of the status of a language of a state. Since people have an emotional attachment with their languages, they easily get

influenced whenever there comes up any issue relating to language. Linguistic interests always influence voting behaviour, for example, D.M.K secured the vote of the people in Tamil Nadu in 1967 and 1971 by making anti-Hindi propaganda.

Influence of Money:

- India is a poor country with a large number of people living below the poverty line. Money as such plays a crucial role in determining the behaviour of votes in India. A rich candidate or party has more chances of winning the elections always. At the time of elections, the poor are allured by the glitter of the money and their votes are purchased. In this way, the process of, 'give a note and take vote' goes on in India.

Performance of the Party in Power:

- Each Political party contests elections on the basis of an election manifesto, and after coming to power, it is expected to fulfil the promises made therein. Good or bad performance of the ruling party, just on the basis of the election promises made and promises actually fulfilled influence the basic behaviour of the people in a big way. In 1989 in India, when the Congress (I), which got a thumping majority in 1984 elections, could not win even a simple majority in the very next election held in 1989 mainly because of its failure to perform successfully. In 1989, the Congress Party and in 1991 the Janata Dal failed to win because of their failures to exercise power and maintain their political stabilities. The main reason for this is a corresponding increase in the number of "floating voter" or "switchers" who are mostly young citizens from an educated upper middle class and are ready to transfer their support from one to another party on the basis of their performance.

Mass Literacy:

- Mass literacy has been another determinant of voting behaviours in India. Due to this weakness of the people that political parties, communal groups, and militant outfits, are in a position to exploit the sentiments of the people in the name of caste, religion, region and another such factor. The votes of the illiterate constitute a big proportion of the votes polled and hence it plays a big role in determining the outcomes of elections. However, despite this fact, the common sense and maturity born out of the past experience have also been playing a big role in influence the voters mind and actions. In 1977 they united to defeat the forces authoritarianism and 1980; they again to defeat this united nonperformer.

Factionalism:

- The Indian Political life from the village level to the national level is characterized by factionalism. Neither political party nor even the cadre-based BJP and the two communist parties is free from factionalism. It is at work, as Rajni Kothari points out, at all level of the congress. It has adversely affected the strength of the congress is a political party with a glorious past, a weak present and not a bright future. Other parties are also suffering from factionalism. The voters are getting disappointed with some of the political parties because of their inability to overcome factionalism. They are moving to regional parties which, because of their small organizational network and limited operational based are relatively less affected by factionalism.

Public Esteem of the Candidate:

- A candidate report with the people with a constituency or his known qualities or contribution in any value spread of activity always acts as a factor of voting behaviour. In addition to his party loyalty or opinion on various issues and problems, the voter, while making his choice, always takes into account the nature and level of his association with the candidate. A positive image of a party's candidate is a source of popular support for the party. A voter prefers to vote for a candidate who is approachable and who can help him anyway.

Election Campaign:

- Each party launches election campaigns on a large scale to influence the voters in its favour. Use of mass gatherings, street gatherings, personal contacts, posters, poster war, movie star speeches, TV and radio broadcasts, newspaper advertising, pamphlets, processions, and propaganda is made to win votes, particularly floating votes. Polling campaign plays a role in influencing the choice of the voters. The ruling party always try to create an impression through its election campaign that it has a chance to win can earn some additional votes as several voters try to stand beside what they perceive to be a winning side.

44 Coalition Government

Introduction

The term 'coalition' is derived from the Latin world 'coalitio' which means 'to grow together'. Thus, technically, coalition means the act of uniting parts into one body or whole. Politically, coalition means an alliance of distinct political parties

Coalition usually occurs in modern parliaments when no single political party can muster a majority of votes. Two or more parties, who have enough elected members between them to form a majority, may then be able to agree on a common programme that does not require too many drastic compromises with their individual policies and can proceed to form a Government.

Features of Coalition Government

The following are the characteristics of a Coalition Government:

- A coalition is formed with the purpose of gaining monetary or psychological gain.
- A coalition system's core idea is based on the simple fact of temporary convergence of specific interests.
- Because coalition players and groups can split and form new ones, coalition politics is not static but a dynamic business.
- Compromise is the hallmark of coalition politics, and hard dogma has no place in it.
- A coalition operates on the basis of a minimal program, which may or may not be perfect for each coalition partner.
- Coalition politics is defined by pragmatism rather than ideology. Principles may have to be laid aside in order to make political concessions.
- The goal of a coalition adjustment is to gain control of the situation.
- There are two notions at the heart of coalition governance. One is what is known as 'common governance,' which is based on a shared decision-making process. Another option is 'joint governance,' which is based on power distribution.
- The coalition's operations are not governed by any legal staff.
- Coalition politics is defined by pragmatism rather than ideology.
- Because electorates learn about the common manifesto, the pre-poll partnership is seen as fairer and more advantageous.

Coalitions have formed in India before and after elections. The pre-election coalition is useful because it gives a common platform for all parties to lure voters using a shared manifesto. Constituents are supposed to be able to share political power and manage the Government through a post-election union.

Merits of Coalition Government

- The Government's operations take into account a variety of interests.
- A coalition Government serves as a conduit for meeting the expectations and resolving the grievances of various groups, allowing for the accommodation of diverse interests in the operation of the Government.
- India is a very diverse nation. There are several ethnic groups, castes, languages, cultures, and faiths. This indicates that the coalition Government is more representative in nature and more accurately captures the general electorate's viewpoint.
- It consists of various political parties, each of which has its own ideology or goals. However, all coalition members must agree to follow Government policies. A coalition Government thus produces consensus-based politics.
- The federal structure of the Indian political system is strengthened by coalition politics. This is so that a coalition Government may respond better to local requests.
- The likelihood of dictatorial governance is

decreased under a coalition Government. This is because a single political party no longer controls how the Government runs. The coalition's whole membership takes part in making decisions.

Demerits of Coalition Government

- They are prone to erratic behaviour. The coalition's demise is caused by disagreements among its constituents.
- The parliamentary form of government is based on the idea that the Prime Minister should lead. Since the coalition partners must be consulted before the Prime Minister makes any significant decisions, this principle is limited under a coalition Government.
- By acting as the "Super-Cabinet," the steering committee or coordination committee of the coalition partners undercuts the cabinet's status and role in the operation of the political system.
- The coalition Government's smaller constituents could end up acting as the "king-maker." They ask for more from the Parliament than simply strength.
- When making national decisions, the leaders of regional parties include local information. They threaten to leave the coalition if the coalition's central executive does not follow their demands.
- The Coalition Governments' members do not take responsibility for administrative mistakes and omissions. They could assign blame in order to get out of their individual and group obligations.

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45 Anti-Defection Law

Introduction

Anti-defection law was introduced by the 52nd Constitutional Amendment Act, 1985 to prevent the defections from one political party to another in lieu of certain gains by members of parliament and state legislatures, it led to introduction of 10th Schedule. It was further refined by 91st Constitutional Amendment Act, 2003.

Law of Anti-Defection

Anti-Defection Laws basically provide for the grounds under which a Member Legislative Assembly or a Member Parliament can lose his privileges as an Elected Representative of a party and hence can be disqualified from the party. These Grounds have been provided under the Tenth Schedule of the Constitution. The Indian Judiciary has time and again intervened through various judicial pronouncements and has tried to lay down several guidelines through precedents in order to promote better politics and healthy competition among the parties.

The law of Anti Defection states that if a Member Parliament or Member Legislative Assembly:

- Voluntarily gives up the membership of the party.
- Votes or abstains for voting or defies any party whip.
- Joins any other party.

The member will be disqualified from the party and he will not hold the position of a nominated or an elected individual under the party. Thus, he will lose his position as a Member of Parliament or an MLA.

Introduction of Anti-Defection framework in Indian Constitution

- The bill for Anti- Defection was proposed by Rajiv Gandhi and it was approved unanimously by both the houses and came into effect on 18 March 1985, after receiving the assent of the President.
- The Anti-Defection provision was added into the Constitution by the way of Tenth schedule of the Constitution by the 52nd Amendment in the Constitution in 1985. These provisions provide for the disqualification of Member Parliaments under Article 102(2) and Member Legislative Assembly under Article 191(2). Under these articles of the Constitution the legislators can be disqualified if they are disqualified under the Tenth Schedule.

History and need for Anti-Defection Laws

- There is a well-known phrase of "Aaya Ram Gaya Ram" which relates back to 1967, when Gaya Lal, who was a congress leader fortnight went from congress to Janata Party and then back to Congress and then again to Janata Party.
- In the journal titled "Aaya Ram-Gaya Ram: The Politics of Defection" by the Indian Law Institute in 1979, it was stated that between the period of 1967 to 1969 more than 1500 party defections and 313 independent candidate defections had taken place in the 12 states of the country. It is estimated that till 1971, more than 50% of the legislature had switched from one party to another.
- A common term which is used is "Horse Trading" of the legislators which in simple terms means shifting of legislators from one party to another by monetary means. There can be several reasons for shifting of parties.
- All of these circumstances were impelling the government to create a statutory provision in the Constitution which would create punitive sanctions for those who were found guilty of such conduct.

10th Schedule – Provisions under Anti-Defection Law

- The Tenth Schedule includes the following provisions with regard to the disqualification of MPs and MLAs on the grounds of defection. Grounds for disqualification:
  - If an elected member gives up his membership of a political party voluntarily.
  - If he votes or abstains from voting in the House,

contrary to any direction issued by his political party.
    - If any member who is independently elected joins any party.
    - If any nominated member joins any political party after the end of 6 months.
- The decision on disqualification questions on the ground of defection is referred to the Speaker or the Chairman of the House, and his/her decision is final.
- All proceedings in relation to disqualification under this Schedule are considered to be proceedings in Parliament or the Legislature of a State as is the case.

Exceptions

- Disqualification under the purview of Anti-Defection shall not apply in case of split/merger of 1/3rd or more of the members of a party to another party.
    - It shall also not apply in the event of a merger i.e., 1/3rd of the members or more merge with any other party.
    - This exception where 1/3rd members was however revised by the way of 91st Amendment in the Constitution and after which it the provision of split was removed.
    - Now it requires 2/3rd members of a party can merge with another party. This amendment revised these rules as there were mass defections by legislators and this amendment brought change in the requirements from 1/3rd members of party to 2/3rd members and by removing the provision of split from the party.
- All of these circumstances were impelling the government to create a statutory provision in the Constitution which would create punitive sanctions for such conducts.

Decision of the Presiding Officer subject to Judicial Review

- Originally, the Act provided that the presiding officer's decision was final and could not be questioned in any court of law. But, in Kihoto Hollohan case (1992), the Supreme Court declared this provision as unconstitutional on the ground that it seeks to take away the jurisdiction of the Supreme Court and the High Courts.
- The court held that while deciding a question under the 10th Schedule, the presiding officer should function as a tribunal.
- In this case the Supreme Court laid down grounds for review of the decision of the speaker.
    - If it is in violation of Constitutional mandate.
    - If it is made in a mala-fide way.
    - If the decision of Speaker is irrational.
    - If it is in non-compliance with rules of natural justice and unreasonable.
- However, it held that there might not be any judicial intervention until the Presiding Officer gives his order.
- A good example to quote is from 2015 when the Hyderabad High Court declined to intervene after hearing a petition which alleged that there had been a delay by the Telangana Assembly Speaker in taking action against a member under the anti-defection law.

Time Limit within which the Presiding Officer should decide

- There is no time limit as per the law within which the Presiding Officers should decide on a plea for disqualification.
- The courts also can intervene only after the officer has made a decision, and so the only option for the petitioner is to wait until the decision is made.
- There have been several cases where the Courts have expressed concern about the unnecessary delay in deciding such petitions.
- In a few cases, there have been situations where members who had defected from their political parties continued to be House members, because of the delay in decision-making by the Speaker or Chairman.
- There have also been instances where opposition members have been appointed as a Ministers in the Government while still being members of their original political parties in the State Legislature.

Courts interpretation of the law while deciding on related matters

- The Supreme Court has interpreted different provisions of the law.
- The phrase 'Voluntarily gives up his membership' has a wider suggestion than resignation.

- The law says that a member can be disqualified if he 'voluntarily gives up his membership'. However, the Supreme Court has interpreted that without a formal resignation by the member, the giving up of membership can be inferred by his conduct.
- In other judgments, members who have publicly expressed opposition to their party or support for another party were considered as having resigned. Recently, the Chairman of the Upper House of Parliament disqualified two Janata Dal leaders from the house based on the allegation that was indulging in anti-party politics, and they had "voluntarily" given up their membership of the party (which is not synonymous to resignation as per the Supreme Court orders).

Anti-Defection Law affect legislators' ability to make decisions

- The anti-defection law aims to maintain a stable government by ensuring that the legislators do not switch sides. However, this law also limits a legislator from voting according to his conscience, judgement and electorate's interests.
- This kind of a situation hinders the oversight functions of the legislature over the government, by making sure that members vote based on the decisions taken by the party leadership, and not based on what their constituents would like them to vote for.
- Political parties issue directions to MPs on how to vote on most issues, irrespective of the nature of the issue.
- Anti-defection does not provide sufficient incentive to an MP or MLA to examine an issue in-depth and ponder over it to participate in the debate.
- The Law breaks the link between the elected legislator and his elector.
- Importantly, several experts have suggested that the law should be valid only for those votes that determine the stability of the Government (passage of the annual budget or no-confidence motions).

91st Amendment Act

Reasons

The reasons for enacting the 91st Amendment Act (2003) are as follows:

- Demands have been made from time to time in certain quarters for strengthening and amending the Anti-defection Law as contained in the Tenth Schedule, on the ground that these provisions have not been able to achieve the desired goal of checking defections. The Tenth Schedule has also been criticised on the ground that it allows bulk defections while declaring individual defections as illegal. The provision for exemption from disqualification in case of splits as provided in the Tenth Schedule has, in particular, come under severe criticism on account of its destabilising effect on the Government.
- The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of 1990, the Law Commission of India in its 170th Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of 2002 have, inter alia, recommended omission of the provision of the Tenth Schedule pertaining to exemption from disqualification in case of splits.
- The NCRWC was also of the view that a defector should be penalised for his action by debarring him from holding any public office as a minister or any other remunerative political post for at least the duration of the remaining term of the existing Legislature or until, the next fresh elections whichever is earlier.
- The NCRWC has also observed that abnormally large Councils of Ministers were being constituted by various Governments at Centre and states and this practice had to be prohibited by law and that a ceiling on the number of ministers in a state or the Union Government be fixed at the maximum of 10% of the total strength of the popular House of the Legislature.

Provisions in 91st Amendment Act

To limit the number of the Council of Ministers, prohibit defectors from holding public office, and tighten the anti-defection statute, the 91st Amendment included the following provisions:

- The overall number of ministers in the Central Council of Ministers, including the Prime Minister, should not exceed 15% of the Lok Sabha's total strength.
- Any member of either House of Parliament who

is disqualified from serving as a minister due to defection is likewise barred from serving as a minister.

- The total number of ministers in a State Council, including the Chief Minister, cannot exceed 15% of the Legislative Assembly's total strength. The total number of ministers of a state, including the Chief Minister, shall not be less than 12.
- A member of either House of a State Legislature who is disqualified from serving as a minister due to defection is likewise prohibited from serving as a minister.
- A member of either House of Parliament or the House of a State Legislature from any political party who is disqualified for defection from any political party is also barred from holding any remunerative political office.
- Any office under the Central Government or a State Government where the salary or remuneration for such office is paid out of the concerned government's public revenue;
- The exemption from the disqualification clause in the Tenth Schedule (Anti-Defection Act) has been abolished. This means that the divides no longer shield the defectors.

Significance of Anti-Defection Law

- It improves the stability of Parliament and State Legislatures by preventing legislators from switching parties.
- It reduces political corruption, which is a critical first step in combating the country's other forms of corruption.
- It strengthens democracy by establishing political stability and guaranteeing that the government's legislative programs are not harmed by a defecting member.
- It makes Members of Parliament more accountable and faithful to the parties with which they were aligned at the time of their election, as it is a belief that many believe that party allegiance plays a significant role in their election success.

Concerns regarding Anti-Defection Law

- The Anti-defection statute has failed to prevent defections in the past. This is due to the fact that it does not distinguish between disagreement and defection. For the sake of party loyalty, it limits the legislator's right to dissent and freedom of conscience.
- The distinction drawn between individual and collective defection is completely irrational. Even the distinction it creates between independent and nominated members is illogical. If the former joins a political party, he is disqualified, whereas the latter is permitted to do so.
- It encourages horse-trading of legislators, which clearly contradicts the values of a democratic system.

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46 Pressure Groups

Introduction

Pressure groups have become a very important part of an administrative system. These groups try to pressurise the administrative and political system of a country either to ensure that their interests are promoted or to see that at least their interests are not relegated to the background. No system can function effectively without taking their viewpoint into consideration.

In developing countries like India where there is a scarcity of various resources on the one hand and acute poverty and deprivation on the other, the pressure on administrative system is bound to be very heavy. The pressure groups arise in different forms in different walks of life. They provide a stabilising mechanism and form a crucial component of the structural equilibrium which means that they perform the system maintenance function. There can be another side of the phenomenon where the pressure on the system may reach a breakdown point.

The term 'Pressure Groups' originated in the USA which means a group of people who are organised actively for promoting and defending their own interest. Their activism influences public policy. In India, the pressure groups have been active even during the colonial period. The All-India Trade Union Congress was the first pressure group of India.

Role of Pressure Group

The role of the pressure groups is very important for the administrative, legislative, executive, bureaucratic, and political system. They are like a living public behind the parties. Their role is indirect yet effective. The various roles of pressure groups are as follows:

- Pressure groups play as a vital link between the government and the governed. They keep governments more inclined towards their interest.
- Pressure groups help in expressing the views and needs of the minority communities who otherwise may remain unheard.
- Pressure groups provide expertise to the government with various information which might be applicable to issues such as indigenous reconciliation.
- Pressure groups promote opportunities for political participation without joining a political party.

Advantages of Pressure Groups

Promotion of authentic freedom of expression

- By joining an interest group as an individual, one can add his/her ideas to the collective expression of everyone who shares the same opinion. It is like joining a worker's union. This advantage gives one an opportunity to make changes that will impact ones life in some way.

Exploration of new perspectives

- Interest groups give all of us the chance to look at new thoughts and perspectives which makes it easier for us to see beyond our echo chambers. When legislation goes through the preparation process, the drafters look at the impact on any specific and identifiable group. Then, there is the consideration of what will happen with the population as a whole. When one is a part of this process, one gets to see what others think about these specific subjects.

Balancing the impact of governance

- By coming together to speak with a collective voice, one gets the chance to hold the powerful few in the positions of authority to be accountable for their actions. The interest groups serve a system of checks and balances. One gets the chance to limit their governance by speaking to them about issues and even vote them out of office if they aren't satisfactory enough.

Usable platforms that facilitate change

- One along with the like-minded people around can create opportunities to put enough pressure in the decision-makers in society to do something in oner

interest. Policies, rules, regulations can be moulded if a group of voices speak about it because it is pretty challenging to ignore a group of voices with the same voice rather than a single person who is trying hard to be heard.

Emphasis on fairness at the local level

- Fairness can be seen as a difficult concept to balance an on-ground reality. There are chronic problems of poverty, illness, food scarcity, corruption and many more which affect people seriously. This deprives them of having a chance at all the opportunities fairly. By the time they can do something about it, their chances are long gone.
- Interest groups work toward equalizing income opportunities in society. They support each member to create a platform where everyone can start working towards a similar goal.

Creates opportunities for becoming community leaders

- Interest groups promote leadership in a community by influencing people to become part of an organized movement that can communicate the need for specific changes required. In modern times, one doesn't have to get out of their home and contribute to it. Sharing information on social media and making a few phone calls can also do the work.

Access to more information

- When one joins an interest group, then one has access to their resources which might lead one to get a chance to speak with elected officials directly instead of sending them a letter.

Lobbying for new legislation anytime

- Interest groups play an important role in spreading information. With all the data, they make efforts to turn it into usable laws, rules, or regulations. Every interest group tries to influence elected officials to move toward desired legislative changes.

Disadvantages of Pressure Group

Loudest voices usually win

- One thing about interest groups is that size doesn't matter. The ones who are more active usually generate more attention and get to play a part in modern politics. One can say that money speaks loudly in this arena, so there may be advantages to those who are wealthy.
- Both sides in Indian politics tend to blame each other for the ills of society. Any group can assimilate a small number of people and sound like the majority which can come under the banner of disadvantage.

Offensive views

- There is a democratic right to freedom of speech and expression. Some pressure groups still have unsecular and offensive views which stir up communal tensions. These groups whether small or large in number, tend to get a disproportionate amount of attention from the media.
- E.g. RSS, Bajrang Dal etc.

Opposition

- There can be direct opposition between pressure groups which can probably lead to some serious civil disruptions.
- An example can be taken from the incident of clashes between ABVP and JNU Students Union.

Disobedience

- Pressure groups can sometimes become aggressive and get involved in militancy to get their demands heard. They can pull out publicity stunts and protests for attention which can disrupt public life and property.
- E.g., JKLF and ULFA

Governing systems can change

- When an interest group grows large enough, then their activities can alter the way a nation governs itself. This disadvantage is problematic because it forces everyone outside that core group to either conform to the "new normal" or risk the consequences of being on the outside.

Unstable

- Pressure groups lack stability and commitment. This might result in their loyalties changing according to changing political situations.

Non-legitimate power-

- Leaders of pressure-groups are not elected like conventional politicians; therefore, they can't be held publicly accountable. The influence they exert is not democratically legitimate. Very few pressure groups work on the basis of internal democracy.

There has been a trend for pressure groups to be dominated by a small number of senior professionals.

Famous Pressure Groups in India

There are pressure groups in every country with India being no exception. They influence decision making in the order of their interest. India has a number of pressure groups who carry different aims and objectives.

Business Groups

- This category includes pressure groups which are formed by the employees of a particular occupation for the protection of their interests. Big business houses always have the most organized and powerful pressure groups at their command. This has to do with their vast outlay of resources, personnel, close links with elite groups in government, media, administration and opposition parties.
- Federation of Indian Chamber of Commerce and Industry (FICCI), Associated Chamber of Commerce and Industry of India (ASSOCHAM), Federation of All India Food-grain Dealers Association (FAIFDA), etc

Trade Unions

- The trade unions voice the demands of the industrial workers. They are also known as labour groups. A peculiar feature of trade unions in India is that they are associated either directly or indirectly with different political parties.
- All-India Trade Union Congress (AITUC), Indian National Trade Union Congress (INTUC), Hind Mazdoor Sabha (HMS), Bhartiya Mazdoor Sangh (BMS)

Professional Groups

- These are associations that raise the concerns and demands of doctors, lawyers, journalists and teachers. Despite various restrictions, these associations pressurise the government by various methods including agitations for the improvement of their service conditions.
- Indian Medical Association (IMA), Bar Council of India (BCI), All India Federation of University and College Teachers (AIFUCT)

Agrarian Groups

- The agrarian groups represent the farmers and the agricultural labour class.
- All India Kisan Sabha, Bhartiya Kisan Union, etc

Student's Organisations

- Various unions have been formed to represent the student community. However, these unions, like the trade unions, are also affiliated to various political parties.
- Akhil Bhartiya Vidyarthi Parishad (ABVP), All India Students Federation (AISF), National Students Union of India (NSUI)

Religious Groups

- The organisations based on religion have come to play an important role in Indian politics. They represent the narrow communal interest.
- Rastriya Swayam Sevak Sangh (RSS), Vishwa Hindu Parishad (VHP), Jamaat-e-Islami, etc.

Caste Groups

- Like religion, caste has been an important factor in Indian politics. The competitive politics in many states of the Indian Union is in fact the politics of caste rivalries: Brahmin versus Non-Brahmin in Tamil Nadu and Maharashtra, Rajput versus Jat in Rajasthan, Kamma versus Reddy in Andhra, Ahir versus Jat in Haryana, Baniya Brahmin versus Patidar in Gujarat. Kayastha versus Rajput in Bihar, Nair versus Ezhava in Kerala and Lingayat versus Okkaliga in Karnataka
- Some of the caste-based organisations are Harijan Sevak Sangh, Nadar Caste Association, etc

Linguistic Groups

- Language has been so important factor in Indian politics that it became the main basis for the reorganisation of states. The language along with caste, religion and tribe have been responsible for the emergence of political parties as well as pressure groups.
- Tamil Sangh, Andhra Maha Sabha, etc

Tribal Groups

- The tribal organisations are active in Madhya Pradesh, Chhattisgarh, Bihar, Jharkhand, West Bengal and the North Eastern States of Assam, Manipur, Nagaland and so on. Their demands range from reforms to that of secession from India and some of them are involved in insurgency activities.
- National Socialist Council of Nagaland (NSCN),

Tribal National Volunteers (TNU) in Tripura, United Mizo federal org, Tribal League of Assam, etc.

Ideology based Groups

- In more recent times, the pressure groups are formed to pursue a particular ideology, i.e., a cause, a principle or a programme.
- These groups include: Narmada Bachao Andolan, Chipko Movement, Women's Rights Organisation, India against Corruption etc.

Anomic Groups

- Anomic pressure groups mean groups having more or less a spontaneous breakthrough into the political system from the society such as riots, demonstrations, assassinations and the like. The Indian Government and bureaucratic elite, overwhelmed by the problem of economic development and scarcity of resources available to them, inevitably acquires a technocratic and anti-political frame of mind, particularistic demands of whatever kinds are denied legitimacy. As a consequence, interest groups are alienated from the political system.
- Naxalite Groups, Jammu and Kashmir Liberation Front (JKLF), United Liberation Front of Assam (ULFA), Dal Khalsa, etc.

Socio-Cultural Pressure Groups

- These pressure groups are concerned with community service and the promotion of interests of the community including language and religion.
- Examples of this type of community are Arya Pratinidhi Sabha, Shiromani Gurudwara Prabandhak Committee, Marathi Sangh, Ramkrishna Mission etc.

Institutional Pressure Groups

- These types of pressure groups influence the government without directly getting involved in the political system, yet they remain active.
- E.g., Civil Services Association, Police Welfare Association, Army Officers Association, Indian Red Cross, Gazetted Officers Association, Defence Personnel Association, etc. These groups mainly influence matters such as transfer-leave rules, allocation of duties, etc.

Ad-hoc pressure groups

- Some pressure groups are short-termed which come into existence only for the fulfilment of some particular demand. Their objective is to pressurize the government for specific demand.
- E.g., Orissa Relief Organisation, Kaveri Water Distribution Association, Gujrat Relief Association, etc.

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