

INDIAN POLITY CONCEPTS



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CONSTITUTIONAL FRAMEWORK

Historical Evolution

In order to know about Indian political structure, it becomes very important to know about the Indian Constitution. There are various rules and Acts which were passed before independence which play a vital role in shaping our Constitution. Some of the important historical events are listed down below:

■ Regulating Act of 1773

- It was the **first step taken by the British Government to control and regulate the affairs of the East India Company in India.**
- It **recognized, for the first time, the political and administrative functions of the Company.**
- It laid the foundations of central administration in India.
- It designated the Governor of Bengal as the '**Governor-General of Bengal**'. The first such Governor-General was Lord Warren Hastings.
- It provided for **the establishment of a Supreme Court at Calcutta (1774)** comprising one chief justice and three other judges.

■ Amending Act, 1781

- To rectify the defects of the Regulating Act of 1773, the British Parliament passed the Amending Act of 1781, also known as the **Act of Settlement or Declaratory Act, 1781.**
- The key provision of this act was to demarcate the relations between the Supreme Court and the Governor General in Council.
- It settled the question of jurisdiction of the Supreme Court.

■ Pitt's India Act, 1784

- Indian affairs came under **direct control** of British Government in Britain.
- **Distinguished between the commercial and political functions of the Company.**
- Allowed the Court of Directors to manage the commercial affairs and created a new body called Board of Control (6 members) to manage the political affairs. Thus, it established a system of dual government.
- **Empowered the Board of Control to supervise and direct all operations of the civil and military government or revenues of the British possessions in India.**

■ Charter Act, 1813

- **It ended the monopoly of the EIC in India** except company's monopoly in "trade with china" and "trade in tea with India".

- Thus, trade with India for all commodities except tea was thrown open to all British subjects. This lasted till 1833 when the next charter abolished the trade of the company.
- Charter Act 1813 for the **first time explicitly defined the constitutional position of the British territories in India.**

■ Charter Act, 1833

- Final step towards Centralization.
- Governor General of Bengal became the Governor General of India (Lord William Bentinck was the first governor-general of India).
- Governor General was vested with all civil and military powers.
- **It deprived the Governor's of Bombay and Madras of their legislative powers.**
- **The laws made under the previous acts were known as Regulations, while the laws made under this act were known as Acts.**
- It ended the activities of the EIC as a commercial body, making it a purely administrative body.
- Introduced law member (Macaulay) in Governor General's Council.

■ Charter Act, 1853

- Separated the legislative and executive functions of the Governor General's council.
- Provided for addition of six new members called legislative councilors to the council known as the Indian (Central) Legislative Council.
- **It introduced, for the first time, local representation in the Indian (Central) Legislative Council.**
- **Introduced an open competition for civil services.** The covenanted civil service was thus thrown open to the Indians also.

■ Government of India Act, 1858

- Also known as the Act for the Good Government of India.
- Rule of company was replaced by the Rule of crown.
- **Changed the designation of the Governor-General of India to that of Viceroy of India.**
- **Viceroy became the agent of the crown.**
- This act abolished the dual government of the Pitt's India Act.
- This act also ended the doctrine of lapse.
- The Secretary of State was a member of the British cabinet and was responsible ultimately to the British Parliament.
- Established a 15-member Council of India to assist the Secretary of State for India.

■ Indian Councils Act, 1861

- Initiated the process of decentralization by restoring legislative powers to Bombay and Madras. (These powers were taken away through Charter Act 1833).
- Introduced representative institutions in India by associating Indians with the law-making process.
- Viceroy nominated some Indians as non-official members of his expanded council. Three Indians nominated were —the Raja of Banaras, the Maharaja of Patiala, and Sir Dinkar Rao.
- It empowered the Viceroy to issue ordinances during Emergency.
- Empowered the Viceroy to frame the Rules of Business (the same power is given to President of India under Art 77).

- Statutory recognition to portfolio system.
- Establishment of new legislative councils for Bengal, NWFP, and Punjab.

■ **Indian Councils Act, 1892**

- Though the majority of official members were retained, the non-official members of the Indian Legislative Council were henceforth to be nominated by the Bengal Chamber of Commerce and the Provincial Legislative Councils, while
- The non-official members of the Provincial Council were to be nominated by certain local bodies such as universities, district boards and municipalities.
- Beginning of representative system in India.
- Council to have the power to discuss budget and of addressing questions to the Executive.

■ **Indian Councils Act, 1909(Morley-Minto Reforms)**

- Introduced for the first time, an element of elections to the Legislative Councils;
- At the Provincial Legislative Councils, non-official members to be in majority;
- Introduction of separate electorates (for Muslims).
- It provided for the first time, 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).

■ **Government of India Act, 1919 (Montague-Chelmsford Reforms)**

- The idea of "Responsible Government" stressed
- Office of the High Commissioner of India was created in London
- Indian Legislature became "bicameral" for the first time
- Communal representation extended to Sikhs
- Secretary of State for India now to be paid from British revenue
- Diarchy in provinces by dividing subjects of administration between official members and elected members.
- Created Centre State Relations.

■ **Government of India Act, 1935**

- Provided for the establishment of an All-India Federation consisting of provinces and princely states as units. (Note: Princely States did not join and so Federation didn't come into existence)
- Residuary powers were given to the Viceroy.
- Abolished diarchy in the provinces and introduced 'provincial autonomy' in its place.
- Introduced responsible government in provinces.
- Introduced Bicameralism in six out of eleven provinces.
- Extended the principle of communal representation by providing separate electorates for depressed classes (scheduled castes), women and labor (workers). (1909 – Only for Muslims, 1919 – extended for Sikhs, Indian Christians, Anglo-Indians and Europeans.)
- Abolished the Council of India, established by the Government of India Act of 1858.
- The Secretary of State for India was provided with a team of advisors.
- Established the Reserve Bank of India to control the currency and credit of the country.
- Established the Federal Public Service Commission, Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.
- Provided for the establishment of a Federal Court, which was set up in 1937.

■ Indian Independence Act, 1947

- Declared India as an independent and sovereign state from August 15, 1947.
- Provided for creation of two independent dominions of India and Pakistan with the right to secede from the British Commonwealth. (Governor General of each were to be appointed by King, the on advice of the Dominion Cabinet)
- Empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution and to repeal any act of the British Parliament, including the Independence act itself.
- Abolished the office of the secretary of state for India and transferred his functions to the secretary of state for Commonwealth Affairs.
- It assigned dual functions (i.e. constituent and legislative) to the Constituent Assembly formed in 1946.
- It declared this dominion legislature as a sovereign body. Granted freedom to the Indian princely states either to join the Dominion of India or Dominion of Pakistan or to remain independent.

PREAMBLE

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

■ Objectives

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

■ Preamble part of Constitution or not ?

- Keshvananda Bharti v/s State of Kerala (1973) case overruled its earlier decision (Berubari Case 1965) and made it clear that the Preamble is a part of the constitution and is subjected to the amending power of the Parliament within the core limits of the basic structure doctrine.
- It is an important guide to interpret the true spirit of the Constitution.
- LIC of India Case (1995) - upheld the Preamble and said that it is an integral part of the Constitution

■ Can Preamble be amended?

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

■ Keywords mentioned in the Preamble

- The word '**Sovereign**' emphasizes that there is no authority outside India on which the country is in any way dependent.
- By the word '**Socialist**' the Constitution means that the achievement of socialistic pattern of society through democratic means.
- India is a '**Secular state**' does not mean that India is nonreligious or irreligious, or anti-religious, but simply that the State in itself is not religious and follows the age-old Indian principle of "Sarva Dharma Samabhava". It also means that the State shall not discriminate against the citizens in any way on the basis of religion.
- The State regards religion to be the private affair of a person, including the right to believe or not to believe in a religion.
- The term '**Democratic**' means that the rulers elected by the people only, have the authority to run the government. India follows a system of 'Representative Democracy', where the MPs and MLAs are elected directly by the people.
- Efforts are being made to take democracy to the grassroots through Panchayats and Municipalities (73 rd. and 74th Constitutional Amendment Acts, 1992).
- However, the Preamble and DPSP envisages not only political democracy, but also social and economic democracies.
- The word '**Republic**' means, the head of the state is an elected representative (directly or indirectly) and not the hereditary monarch.

Borrowed Features from other Constitution

Indian constitution is a blend of various features which are borrowed from different constitution throughout the world. This is what which makes it the most distinct constitution in the world. Few of the borrowed features are listed below:

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Indian Constitution Borrowed Features		
1.	British Constitution	Parliamentary form of Government, Rule of Law, Law making procedure, Single Citizenship; Institution of Speaker, doctrine of pleasure tenure of civil servants.
2.	American Constitution	Judicial System, Fundamental Rights
3.	Canadian Constitution	Federal System with a strong central authority; Residual powers, Centre State Relation.
4.	Irish Constitution	Directive Principles, Election of the President of India
5.	Australian Constitution	Concurrent list; Freedom of Trade & Service within country
6.	Weimar Constitution	Emergency Provision
7.	Soviet Constitution	Five Year Plans; Fundamental duties
8.	Govt. of India Act 1935	Office of the governor, powem of the federal jury.
9.	South African	Amendment of Constitution.

■ Constitution of United States of America:

- Fundamental Rights
- Independence of Judiciary
- Impeachment of President
- Judicial Review

- Removal of Supreme Court and the High Court Judges.
- Role of Vice President
- Preamble to the Constitution

■ **Constitution of the United Kingdom:**

- The Parliamentary System
- The Election Procedure
- Office of Comptroller and Auditor General
- Writ Jurisdiction of Courts
- Civil Services
- The Law Making Procedures
- Cabinet System
- Martial Law
- Bicameralism
- Rule of Law
- System of Single Citizenship

■ **Constitution of Ireland:**

- Directive Principles of State Policy
- The method of Indian Presidential Election
- Nomination of Members of Rajya Sabha

■ **Constitution of Australia:**

- Concurrent List
- Joint sitting of 2 houses of the Parliament
- Provising regarding trade and commerce & intercourse

■ **Constitution of Canada:**

- The Federal System with a strong centre
- Appointment of the State Governor
- Advisory jurisdiction of SC
- Residuary Powers

■ **Other Constitutions:**

- South Africa: Amendment Procedure of the Constitution and Election of Members of Rajya Sabha
- France: Republic, Liberty, Equality, Fraternity.
- Japan: Procedure Established by Law
- Former USSR: Fundamental Duties, Justice (Social, Economic, and Political)
- Germany: Suspension of Fundamental Rights during Emergency

■ **From more than one Constitution:**

- Australia and UK: The Parliamentary Privileges
- Australia and USA: Public Interest Litigation

FUNDAMENTAL RIGHTS

Part III of the Indian Constitution consisting of Article 12 to 35 deals with Fundamental Rights. Part III of the Constitution is called the Cornerstone of the Constitution (Sajjan Singh v. State of Rajasthan) together with Part IV (Directive Principles of State Policy) as the 'Conscience of the Constitution'.

Features of Fundamental Rights

- Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
- The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):
 - ▶ **Right against discrimination on grounds of religion, race, caste, sex or place of birth** (Article 15).
 - ▶ **Right to equality of opportunity in the matter of public employment** (Article 16).
 - ▶ **Right to freedom of speech and expression, assembly, association, movement, residence and profession** (Article 19).
 - ▶ **Cultural and educational rights** (Articles 29 and 30).
- They are not absolute but qualified.
- Some of them are negative in character.
- They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.
- They are not sacrosanct or permanent.

Classification of Fundamental Rights

All the Fundamental Rights have been classified under the following six categories:

- Right to Equality (**Art.14-18**)
- Right to Freedom (**Art.19-22**)
- Right against Exploitation (**23-24**)
- Right to Freedom of Religion (**Art.25-28**)
- Cultural and Educational Rights (**Art.29-30**)
- Right to Constitutional Remedies (**Art.32**)

The right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978. It is made a legal right under Article 300-A in Part XII of the Constitution.

Article 12: Defines state (As used in FRs) which includes:

- The Government and Parliament of India,
- The Government and legislatures of the states,
- All local authorities and
- Other authorities in India or under the control of the Government of India.

Article 13: Laws inconsistent with FRs

- Provides shield to FRs by declaring that all laws, which are inconsistent with or in derogation of any of the Fundamental Rights, shall be void to the extent of their inconsistency.
- Here the term law includes ordinance, order, bye-law, rule, regulation, notification, custom or usage.
- Thus, Article 13 imposes an obligation on the State to respect and implement the Fundamental Rights and provides the Judiciary the Judicial Review power.

Article 14: Equality before the Law or the Equal Protection of Law

- It says that state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Two aspects are there:
 - **Equality Before Law:** A negative concept, where no man is above law. It ensures juristic equality under the constitution. Equality is antithetic to arbitrariness. Equality and arbitrariness are sworn enemies.
 - But **certain exceptions** to it are, the president of India, state governors, Public servants, Judges, Foreign diplomats, etc., who enjoy immunities, protections, and special privileges.
 - **Equal Protection of Law:** A positive concept, which says that law(s) shall be applied equally among individuals who are placed equally. It means like should be treated alike.

■ Rule of Law

- The guarantee of Equality before Law is a concept of Rule of Law which originated in England.
- It means no man is above law and that every person, whatever be his rank or status is subject to the jurisdiction of ordinary Courts.
- It also says that no person shall be subject to harsh, uncivilized or discriminatory treatment even for the sake of maintaining law and order.
- **There are three attributes to the Rule of Law:**
 - ▶ Absence of Arbitrary power (supremacy of law).
 - ▶ Equality before law – No one is above law.
 - ▶ The Constitution is the Supreme Law of the land and all laws passed by the legislature must be consistent with the provisions of the Constitution.

Article 15: Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth

- This says that the state shall not **discriminate against only of religion, race, caste, sex, place of birth or any of them.**
- No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, restriction or condition with regard to:
 - Access to shops, public restaurants, hotels and places of public entertainment;
 - 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.

■ Exceptions

There are three exceptions to this general rule of non-discrimination:

- The state is **permitted to make any special provision for women and children.**
- The state is **permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes.**
- The state is **empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions** including private educational institutions, whether aided or unaided by the state, except the minority educational institutions. The last provision **was added by the 93rd Amendment Act of 2005.**

Article 16: Equality of Opportunity in matters of Public Employment

- It provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State.
- No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

■ Exceptions

- **Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority.** As the Public Employment (Requirement as to Residence) Act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh⁵ and Telangana^{5a}.
- **The State can provide for reservation of appointments or posts in favor of any backward class that is not adequately represented in the state services.**
- **A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination.**

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Article 17: Abolition of Untouchability

- It abolishes "untouchability" and its practice in any form is made an offence punishable under the law.
- The enforcement of any disability arising out of untouchability shall be an offence punishable by law.
- Untouchability: not to be understood in its literary or grammatical sense and to be understood as the practice as it has developed historically.
- **It's an absolute right** which means there is no exception attached to this article.

Article 18: Abolition of Titles

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

Right to Freedom: Article 19 to 22

Article 19: Article 19 guarantees to all citizens the six rights and they are as follows:

- Right to freedom of speech and expression.
- Right to assemble peaceably and without arms.

- Right to form associations or unions or co-operative societies.
- Right to move freely throughout the territory of India.
- Right to reside and settle in any part of the territory of India.
- Right to practice any profession or to carry on any occupation, trade or business.
 - ▶ **These six rights are protected against only state action and not private individuals.**
 - ▶ The State can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in the Article 19 itself and not on any other grounds.

■ Restrictions

- The State can impose reasonable restrictions on the exercise of the freedom of speech and expression on the grounds of **sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.**

Article 20: Protection in Respect of Conviction for Offences

- It grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It contains three provisions in that direction:
 - ▶ No ex-post-facto law- This limitation is imposed **only on criminal laws** and not on civil laws or tax laws.
 - ▶ No double jeopardy
 - ▶ No self-incrimination- The protection against self-incrimination **extends to both oral evidence and documentary evidence.** However, **it does not extend** to (i) compulsory production of material objects, (ii) compulsion to give thumb impression, specimen signature, blood specimens, and (iii) compulsory exhibition of the body.

Article 21: Protection of Life and Personal Liberty

- It declares that no person shall be deprived of his life or personal liberty except according to procedure established by law.
- According to the Menaka case, the protection under Article 21 should be available not only against arbitrary executive action but also against arbitrary legislative action.
- It must be noted here that **Right to life does not include Right to Die or Right to get killed** i.e. mercy killing
- Giving the widest interpretation to Art 21, the Supreme Court has declared the following rights as fundamental rights within the scope of Art. 21:
 - Right to education
 - Right to health
 - Right to environment
 - Right to shelter
 - Right to privacy
 - Right to speedy trial
 - Right of the prisoners
 - Right to legal aid
 - Right against cruel and unusual punishment
 - Right not to be subjected to bonded labour
 - Right to travel abroad
 - Right against solitary confinement
 - Right against handcuffing

Right to education (Art. 21-A):

- It asks the state to provide free and compulsory education to **all children between the ages of 6 to 14 years**.
- In the same way, Supreme Court has also held that Freedom of speech and expression guaranteed under Article 19(1) includes the right to know, right to information and right to reply.

Article 22: Protection against arrest and detention

- Article 22 grants protection to persons under both kinds of detention namely, **punitive and preventive**.
- Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court. Preventive detention, on the other hand, means detention of a person without trial and conviction by a court.
- If a person is arrested after committing a crime, it is called punitive detention.
- Art. 22 provides following protection against such detention.
 - ▶ Right to be informed of the ground of arrest.
 - ▶ Right to consult and be defended by a lawyer.
 - ▶ Right to be produced before a magistrate within 24 hours of his arrest (excluding the time of journey).
 - ▶ Right not to be detained for more than 24 hours without the authority of a magistrate.

■ Safeguards against preventive detention:

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

Rights against Exploitation: Article 23 & 24

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

- It prohibits traffic in human beings, begar (forced labour) and other similar forms of forced labour.
- Parliament has enacted the Immoral Traffic (Prevention) Act, 1956 and the Bonded Labour System (Abolition) Act 1976 to punish for such traffic.

■ Exception

- It permits the State to impose compulsory service for public purposes, as for example, military service or social service, for which it is not bound to pay.
- However, in imposing such service, the State is not permitted to make any discrimination on grounds only of religion, race, caste or class.

Article 24: Prohibition of employment of children in Factories, etc.

- It prohibits the employment of children **below the age of 14 years in any factory**, mine or other hazardous activities like construction work or railway.
- But it **does not prohibit** their employment in any harmless or innocent work.

Right to Freedom of Religion: Article 25 – 28

Article 25: Freedom of conscience and free profession, practice and propagation of religion

- It says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.
- The implications of these are:
 - ▶ **Freedom of conscience**
 - ▶ **Right to profess**
 - ▶ **Right to practice**
 - ▶ **Right to propagate**

■ **Religious Conversions**

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

Article 26: Freedom to manage religious affairs

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

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

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

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

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

■ **Educational and Cultural Rights: Article 29 and 30**

Article 29: Protection of Interests of Minorities

- It provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same.
- **Article 29 grants protection to both religious minorities as well as linguistic minorities.**

Article 30: Right of Minorities to Establish and Administer Educational Institutions

- It grants the following rights to minorities, whether religious or linguistic:
 - ▶ All minorities shall have the right to establish and administer educational institutions of their choice.
 - ▶ The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them. This provision was added by the 44th Amendment Act of 1978 to protect the right of minorities in this regard. The Act deleted the right to property as a Fundamental Right (Article 31).
 - ▶ In granting aid, the State shall not discriminate against any educational institution managed by a minority.

■ Right to Property and Saving of Certain Laws: Article 31

Article 31: Abolition of right to property

- **The Constitution (44th Amendment) Act, 1978 omitted Article 19(1)(f) (Right to acquire, held hold and dispose of property), and shifted the provision in Article 31 (no person shall be deprived of his property except by law) to another article viz. Article 300-A.**
- The effect of this change is that the right to property is no more a fundamental right.
- Thus the Right to property though still a constitutional right, is not a fundamental right.
- If this right is infringed the aggrieved person cannot access the Supreme Court directly under Art. 32.

Right to Constitutional Remedies: Article 32

- It is the very soul of the Constitution and the very heart of it.
- The Supreme Court has ruled that Article 32 is a basic feature of the Constitution.
- **These writs are borrowed from English law where they are known as 'prerogative writs'.**
- The Supreme Court shall have power to issue directions or orders or writs for the enforcement of any of the fundamental rights. The writs issued may include **habeas corpus, mandamus, prohibition, certiorari and quo warranto.**

■ Habeas Corpus

- Means "to have the body of"
- Issued to a person or jailer or an authority who has illegally detained another person in jail to produce the detainee before the court.
- Issued in order to let the court know on what grounds he has been confined and justify the 'day and cause' of his detention.
- It is the most effective means to check the arbitrary arrest by any executive authority and protect individual liberty.
- Habeas Corpus is a prerogative writ; available to all aggrieved persons alike. The aggrieved person or any other person on the behalf of aggrieved can approach the court for the issuance of this writ.

■ Mandamus

- Mandamus means! 'We Command'.
- Issued to governmental or semi-governmental or judicial bodies: inferior court, tribunal, board, corporation or person requiring performance of a specific duty fixed by law.
- The writ can be issued only to enforce mandatory legal duty, not a discretionary function
- It cannot be issued to a private individual.

■ Certiorari

- The Order is issued by a superior court to an inferior court or tribunal to transmit the records of a case or matter pending before them.
- If the order of inferior court is found to be without jurisdiction or against the principles of natural justice, it is quashed.
- Its object is the secure that the jurisdiction of an inferior court or tribunals is properly exercised.
- Unlike Habeas Corpus, it should be utilized only by the person aggrieved, not by any other person.

Prohibition

- Issued by the Supreme Court or a High Court to an inferior court, forbidding it from continuing proceedings on a case which falls outside its jurisdiction.
- Prohibition is available only when the inferior court or tribunal has not yet made a decision. Certiorari can be issued even after the court or tribunal has made a decision.
- Prohibition wholly concerns with matters of jurisdictional defects, whereas Certiorari is only substantially concerned with such defects.
- The remedies under both Prohibition and Certiorari lie against a judicial or quasi-judicial body, not against an executive body.

■ Quo Warranto

- Means “by what authority”.
- Issued when any private person wrongfully usurps a public office.
- It is to enquire into the legality of the claim which a person asserts.
- The person applying for this writ must show the interest he has in the office with reference to which he seeks the remedy.

Article 33

- The Parliament can restrict or abrogate, by law, FR's in the application to:
- The members of Armed forces, Paramilitary Forces, police forces, intelligence agencies.
- The forces charged with the maintenance of public order.
- A parliamentary law enacted under Article 33 can also exclude the Court Martials (tribunals established 3. under the Military law) from the writ jurisdiction of the SC and HC, so far as the enforcement of the Fundamental Rights are concerned.

Article 34

- While Martial Law is in force in any area, the FRs can be restricted.
- The Supreme Court held that the declaration of martial law does not ipso facto result in the suspension of the writ of habeas corpus.

Article 35

- Article 35 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.

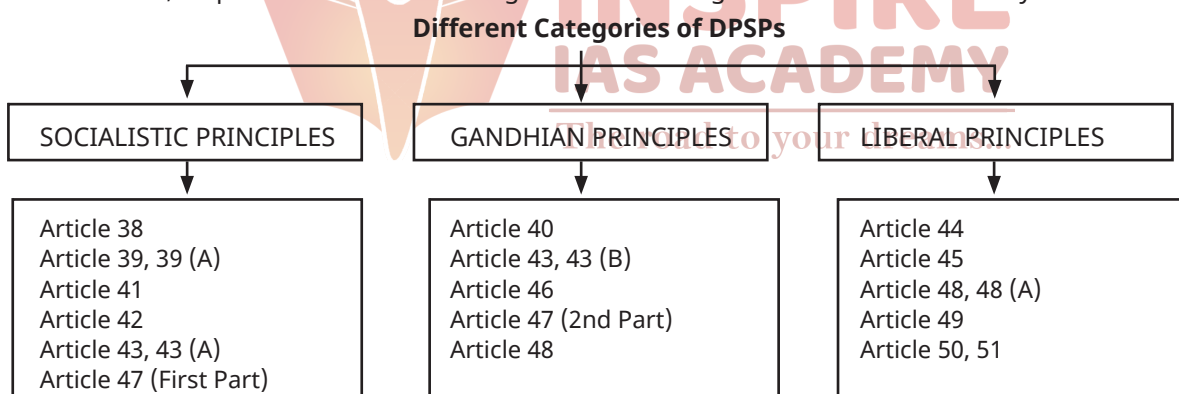
DIRECTIVE PRINCIPLE OF STATE POLICY

It is enumerated in Part IV of the Constitution from Articles 36 to 51.

This idea is **borrowed from the Irish Constitution of 1937**, which had copied it from the Spanish Constitution.

■ FEATURES OF THE DIRECTIVE PRINCIPLES

- The phrase 'Directive Principles of State Policy' denotes the ideals that the State should keep in mind while formulating policies and enacting laws.
- The Directive Principles resemble the 'Instrument of Instructions' enumerated in the Government of India Act of 1935.
- **They embody the concept of a 'welfare state' and not that of a 'police state'.**
- The Directive Principles are **non-justiciable** in nature. The Directive Principles, though non-justiciable in nature, help the courts in examining and determining the constitutional validity of a law.



■ Articles dealing with Directive Principles:

Article 36

- This defines the term state in the same way as A-2, which include:
- The Government of India and the Union Parliament;
- The Government of the states and their Legislatures;
- All local authorities; and
- Other authorities in India or under the control of the Government of India

Article 37

- This declares the importance of DPSPs.
- It states that though DPSPs are not justiciable yet they shall be considered fundamental in the governance of the country and it shall be the duty of the state to include these directives in their policies.

Article 38

- This directs the state to **create a social order for the promotion of welfare of the people.**
- This social order must provide social, economic and political justice.
- Under the **44th Amendment**, clause (2) has been added to A-38 which directs the state to **minimize inequalities in income, to eliminate inequalities in status, facilities and opportunities.**

Article 39

- This is a very important article containing a number of directives which go a long way to establish a welfare state in India.
- It directs the states to secure the following:
 - Adequate means of livelihood for all citizens.
 - Control and ownership of the material resources of the community to be distributed in such a manner that it serves the common good.
 - The operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
 - Equal pay for equal work for both men and women.
 - Health and strength of workers, and children are not abused and the citizens are not forced by economic necessity to enter vocations unsuited to their age or strength.
 - Children are given opportunities and facilities to develop in a healthy manner and their childhood and youth are protected against exploitation and moral and material abandonment (added by 42nd Amendment, 1976).

Thus, A-39 is very wide in its scope. It requires the state to ensure adequate means of livelihood, fair distribution of wealth, equal pay for equal work and protection of children and labor.

■ Specially A-39 (b and c) lay the foundations of a welfare state.

Article 39A

- Added to the Constitution by 42nd Amendment 1976, this article requires the state to provide for equal justice and free legal aid.

Article 40

- This directs the state to organize village panchayats and confer adequate powers to them so that they can function as units of self-government.
- Accordingly, the Parliament has passed the 73rd Amendment of 1992 which has introduced panchayats in Part IX in the Constitution.

Article 41

- Under this Article, the state is directed to provide right to work, to education and to public assistance subject to its economic capacity.

Article 42

- Under this article, the state shall make provision for securing just and humane conditions of work and maternity relief.
- The state has enacted laws such as the industrial Disputes Act, Minimum Wages Act, Maternity Relief Act, etc., to implement this article.

Article 43

- This article directs the state to make efforts to secure living wages and organize cottage industries in rural areas.

Article 44

- This article deals with the **implementation of a Uniform Civil Code for the citizens throughout India.**
- The state is supposed to take steps to establish a Uniform Civil code for all the citizens irrespective of caste, creed or religion.

Article 45

- Provision for free and compulsory education for children till the age of 14 years.
- However, this article has been amended by **86th Amendment Act, 2002** which has inserted A-21A in the constitution making right to education a fundamental right for all children between 6-14 years of age.
- Now **45-A** directs the state to make provisions for early childhood care and education for all **children till the age of 6 years.**

Article 46

- It seeks to protect the educational and economic interests of SC/STs and other weaker sections. A number of educational facilities have been extended to SC/STs in pursuance of this article.

Article 47

- The state has been directed by this article to raise the level of nutrition and the standard of living and to improve public health. This also includes prohibition of liquor and intoxicating drugs.

Article 48

- **Organization of agriculture and animal husbandry.**
- The state under this article has to organize agriculture and animal husbandry on modern and scientific lines.
- This also includes prohibition of killing of cows, calves and other milch and draught cattle.

Article 48-A

- Added by 42nd Amendment, 1976, this article enjoins on the state task of protecting and improving environment, forests and wild life.
- A number of acts relating to protecting the environment, forests and wild life have been enacted.

Article 49

- This article obligates the state to protect monuments and places of national importance.

Article 50

- Separation of judiciary from the executive in the public services of the state.

Article 51

- To promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration.

■ Amendments to Directive Principles

1. 42nd Constitutional Amendment Act.1976

- **Article 39A** -To promote equal justice and to provide free legal aid to the poor.
- **Article 39F** -To secure opportunity for healthy development of children.

- ▶ **Article 43A** - To take steps to secure the participation of workers in the management of industries
- 2. 44th Constitutional Amendment Act, 1978**
 - ▶ **Article 38 (2)** - To minimize inequalities in income, status, facilities and opportunities.
- 3. 86th Constitutional Amendment Act, 2002**
 - ▶ This amendment changed the subject matter of Article 45, and made elementary education a Fundamental Right under Article 21A.
 - ▶ **Article 45** - To provide early childhood care and education for all children until they complete the age of 14 years.
- 4. 97th Constitutional Amendment Act, 2011**
 - ▶ **Article 43B** - To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Fundamental Duties

- The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile USSR.
- **The Fundamental Duties of the citizens are enumerated in A-51A.**
- 42nd Amendment Act 1976 - They were included in 1976 by the 42nd Amendment on the recommendation of **Sardar Swaran Singh Committee**.
- Fundamental Duties did not form part of the Constitution as originally adopted.
- The duties are addressed to the citizens only.
- **Not Enforceable** - Although, these duties are not enforceable by a Court, they provide a valuable guide and aid in the interpretation of the Constitution.
- The Fundamental Duties can be imposed through some suitable legislation.
- **Eleven Duties**- The fundamental duties are 11 in number.
- **42nd Amendment Act 1976** - Ten duties were included in the Indian Constitution by the 42nd Amendment Act 1976 and
- **86th Amendment Act, 2002** - The Eleventh duty was added by the 86th Amendment Act, 2002.

■ List of Fundamental Duties

- 51A (a) To abide the Constitution and respect its ideals and institutions, the National Flag and the National Anthem
- 51A (b) To cherish and follow the noble ideals which inspired our national struggle for freedom
- 51A (c) To uphold and protect the sovereignty, unity and integrity of India
- 51A (d) To defend the country and render national services when called upon to do so
- 51A (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
- 51A (f) To value and preserve the rich heritage of our composite culture
- 51A (g) To value protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures
- 51A (h) To develop the scientific temper, humanism and spirit of inquiry and reform
- 51A (i) To safeguard public property and to abjure violence
- 51A (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement
- 51A (k) Duty of the parent or guardian to provide opportunities for education to his child, as the case may be, ward between the age of six and fourteen years (added by 86th Amendment Act, 2002)

■ FDs are Non-enforceable and Non-justiciable

- The fundamental duties are non-enforceable and non-justiciable in character.
- It means that no citizen can be punished by a court for violation of a fundamental duty.
- In this respect, the fundamental duties are like the directive principles of the constitution in Part IV.
- Courts can certainly take cognizance of laws seeking to give effect to fundamental duties.

■ Legal Provision for Implementation of Fundamental Duties

- The Verma Committee (1999) identified the existence of following legal provision
- The prevention of insults to National Honour Act (1971)
- The various criminal laws provide for punishment for encouraging enmity and discrimination
- The Protection of Civil Right Act (1955)
- The Representation of people Act (1951)
- The Wildlife Protection Act (1972) and
- Forest Conservation Act (1980)



PRESIDENT

- Articles 52 to 78 in Part V of the Constitution deal with the Union executive.
- The **Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India.**
- He is **the first citizen of India** and acts as the symbol of unity, integrity and solidarity of the nation.
- The President is elected not directly by the people but by members of electoral college consisting of
 - ▶ The elected members of both the Houses of Parliament
 - ▶ The elected members of the Legislative assemblies of the states; and
 - ▶ The elected members of the Legislative assemblies of the National Capital Territory of Delhi and of the Union Territory of Puducherry.

■ QUALIFICATIONS

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

■ ELECTION

- Art. 54 provides for indirect election of the President through an Electoral College consisting of:
 - ▶ The elected member of the Lok Sabha and the Rajya Sabha
 - ▶ The elected members of the legislative assembly of the States.
 - ▶ The members of the legislative assembly of the National Capital Territory of Delhi and of the Union Territory of Puducherry.

■ Manner of election

- The election of the President is held in accordance with the system of Proportional Representation by means of the single transferable vote.
- The voting is done by secret ballot.

■ Impeachment of the President

- Article 61 - lays down the procedure for the impeachment of the President.
- The procedure is a quasi-judicial procedure.
- The only ground for impeachment is violation of the Constitution.

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

■ POWERS OF THE PRESIDENT

A. Executive powers

- The executive power of the Union is vested in the President. The executive power does not only mean the execution of laws passed by the legislative but also the powers to carry out the business of the Government.
- However, it is evident that President is not free to use his powers; rather he acts on the advice of the Council of Ministers.
- The executive powers of the President include administrative powers and military powers.
- Administratively, the President may not discharge any function as there are ministries responsible for such an act. This way President becomes a formal head and action is taken in his name.
- The administrative power also includes the power to appoint and remove the high dignitaries of the State. The President shall have the power to appoint
 - ▶ The Prime Minister of India.
 - ▶ Other Ministers of the Union.
 - ▶ The Attorney-General for India.
 - ▶ The Comptroller and Auditor General of India.
 - ▶ The judges of the Supreme Court.
 - ▶ The judges of the High Courts of the States.
 - ▶ The Governor of a State
 - ▶ A commission to investigate interference with water-supplies.
 - ▶ The Finance Commission.
 - ▶ The Union Public Service Commission and joint Commissions for a group of States.
 - ▶ The Chief Election Commissioner and other members of the Election Commission
 - ▶ A Special Officer for the Schedule Castes and Tribes.
 - ▶ A Commission to report on the administration of Scheduled Areas.
 - ▶ A Commission to investigate into the condition of backward classes.
 - ▶ A Commission on Official Language.
 - ▶ Special Officer for linguistic minorities.
- In making some of the appointments, the President is required to consult persons other than his ministers as well. Thus, in appointing the Judges of the Supreme Court, the President shall consult the Chief Justice as he may deem necessary [Art. 124(2)].
- The President shall also have the power to remove – His Ministers, individually;
 - ▶ The Attorney-General of India;

- ▶ The Governor of a State;
- ▶ The Chairman or a member of the Public Service Commission of the Union or of a State, on the report of the Supreme Court;
- ▶ A Judge of the Supreme Court or of a High Court or the Election Commissioner, on an address of Parliament.

B. Legislative Powers

- **Summoning, Prorogation, Dissolution:** Indian President shall have the power to summon or prorogue the Houses of Parliament and to dissolve the lower House. He shall also have the power to summon a joint sitting of both Houses of Parliament in case of a deadlock between them. [Arts. 85, 108] b)
- **The Opening Address:** The President shall address both Houses of Parliament assembled together, at the first session after each general election to the House of the People and at the commencement of the first session of each year, and “inform Parliament of the causes of its summons” [Art. 87]. c)
- **The Right to send Messages:** Apart from the right to address, the Indian President shall have the right to send messages to either House of Parliament either in regard to any pending Bill or to any other matter, and the House must then consider the message “with all convenient dispatch” [Art. 86(2)]. d)
- **Nominating Members to the Houses:** President has been given the power to nominate certain members to both the Houses upon the supposition that adequate representation of certain interests will not be possible through the competitive system of election. Thus, I. In the Council of States, 12 members are to be nominated by the President from persons having special knowledge or practical experience of literature, science, art and social service [Art. 80(1)]. II. The President is also empowered to nominate not more than two members to the House of the People from the Anglo-Indian community, if he is of opinion that the Anglo-Indian community is not adequately represented in that House [Art. 331].
- **Laying Reports before Parliament:** The President is brought into contact with Parliament also through his power and study to cause certain reports and statements to be laid before Parliament, so that Parliament may have the opportunity of taking action upon them.
- **Previous sanction to legislation:** The Constitution requires the previous sanction or recommendation of the President for introducing legislation on some matters. These matters are:
- **Assent to legislation and Veto:** A Bill will not be an Act of the Indian Parliament unless and until it receives the assent of the President. When a Bill is presented to the President, after its passage in both Houses of Parliament, the President shall be entitled to take any of the following three steps
 - ▶ His assent to the Bill;
 - ▶ He withholds his assent to the Bill; or
 - ▶ He may, in the case of Bills other than Money Bills, return the Bill for reconsideration of the Houses, with or without a message suggesting amendments. A Money Bill cannot be returned for reconsideration
 - ▶ In case of (c), if the Bill is passed again by both Houses of Parliament with or without amendment and again presented to the President, it would be obligatory upon him to declare his assent to it (Art. 111).

■ Types of 'Veto power –

From the standpoint of effect on the legislation, executive vetoes have been classified as absolute, qualified, suspensive and pocket veto. Besides the power to veto Union Legislation, the President of India **shall also have the power of disallowance or return for reconsideration of a Bill of the State Legislature, which may have been reserved for his consideration by the Governor of the State (Art. 201).**

- **Absolute Veto:** Refusal of assent to any bill. The bill cannot become law, notwithstanding any vote of Parliament.
- **Qualified Veto:** A veto is ‘qualified’ when it can be overridden by a higher majority of the Legislature and the Bill can be enacted as law with such majority vote, overriding the executive veto.

- **Suspensive Veto:** A veto is suspensive when the executive veto can be overridden by the Legislature by an ordinary majority.
- **Pocket Veto:** By simply withholding a Bill during the last few days of the session of the Legislature, the Executive can prevent the Bill to become law.

C. Ordinance Issuing Power (ART- 123)

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

D. Pardoning Power

- Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the: –
 - ▶ Punishment or sentence is for an offence against a Union Law, offence by a court martial (military court) and the sentence of death.
 - ▶ The object of conferring this power on the President is to keep the door open for correcting any judicial errors in the operation of law and to afford relief from a sentence, which the President regards as unduly harsh.
- The pardoning power of the President includes the following: –
 - ▶ **Pardon-** It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications –
 - ▶ **Commutation-** It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment –
 - ▶ **Remission-** It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year. –
 - ▶ **Respite-** It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.
 - ▶ **Reprieve-** It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

E. Emergency Powers

- The President also enjoys emergency power. In a federal structure the grip of the Union on the State is not so tight and hence the Constitution framers did provide for the exigencies which may require a tighten grip of the Union on the State.
- **Article 356** gives powers to the President for the extension of his rule in the State. "If the President on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on; the President may extend his rule to the State.
- **Article 360** deals with financial emergency, "If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory is threatened ... the President can declare financial emergency."

VICE-PRESIDENT

- The Vice-President occupies the second highest office in the country.
- This office is modelled on the lines of the American Vice-President.

- The Vice-President holds office for a **term of five years** from the date on which he enters upon his office.
- However, he can resign from his office at any time by addressing the resignation letter to the President.
- A **formal impeachment is not required** for his removal.
- He can be removed by a resolution of the **Rajya Sabha** passed by an **absolute majority** (ie, a majority of the total members of the House) and agreed to by the Lok Sabha.
- He is also **eligible for re-election** to that office. He may be **elected for any number of terms**.

■ ELECTION

- The Vice-President, like the president, is elected not directly by the people but by the method of indirect election.
- Thus, this electoral college is different from the electoral college for the election of the President in the following two respects:
 - ▶ It consists of both elected and nominated members of the Parliament (in the case of president, only elected members).
 - ▶ It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included).

■ QUALIFICATIONS

To be eligible for election as Vice-President, a person should fulfil the following qualifications:

- He should be a citizen of India.
- He should have **completed 35 years of age**.
- He should **be qualified for 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.

■ CONDITIONS OF OFFICE

The Constitution lays down the following two conditions of the Vice-President's office:

- He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected Vice-President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.
- He should not hold any other office of profit.

■ FUNCTIONS OF THE VICE-PRESIDENT

- By virtue of his office (i.e., ex-officio), he is the Chairman of the Rajya Sabha. Hence, the normal function of the Vice-President is to preside over the Rajya Sabha.
- The Vice-President acts as President when there is a vacancy in the office of the President.
- The vacancy may occur by reasons of death, resignation, removal by impeachment or otherwise. He discharges the functions of the President when the President is unable to perform his functions. The reasons may also include absence of the President from India or illness or some other cause.
- He is not a member of Rajya Sabha; he has no right to vote, but can exercise a "Casting Vote".
- The Vice-President shall, during, and in respect of the period while he is so acting as, or discharging the functions of the President, have all the powers and immunities of the President and be entitled to such emoluments, allowances, and privileges as may be determined by the Parliament by law and, until provision in that behalf is so made, such emoluments, allowances, and privileges as are specified in the Second Schedule.
- While he acts as the President, he will not draw the salary of the Chairman of the Council of State as he ceases to perform these duties as the Chairman.

PRIME MINISTER

- Article 75 provides that the Prime Minister shall be appointed by the President
- But the President has no choice except to appoint as Prime Minister the leader of the party which has absolute majority in the Lok Sabha.
- However, in case no single party enjoys an absolute majority in the House, the President may use discretion to appoint any person as the Prime Minister in whom he has confidence that he can muster majority support of Lok Sabha.
- A person who is not a member of either House of Parliament can be appointed as the Prime Minister provided he gets elected to one of the Houses of Parliament within **6 months**.
- **Article 74** states that there is a Council of Ministers with the Prime Minister at the head to aid and advise the President, the President may require the Council of ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.
- The advice tendered by Ministers to the President shall not be inquired into any court of law.
- **Article 75** states that:
 - ▶ The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime Minister;
 - ▶ The ministers shall hold office during the pleasure of the President; and
 - ▶ The council of ministers shall be collectively responsible to the House of the People

■ Powers and Functions of the Prime Minister

1. In Relation to the Council of Ministers

- Recommends persons who can be appointed as ministers by the President. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
- Allocates and reshuffles various portfolios.
- Can ask a minister to resign or advise the President to dismiss him.
- Presides over the meeting of Council of Ministers.
- Guides, directs, controls, and coordinates the activities of all the ministers.
- Can bring about the collapse of the Council of Ministers by resigning from office.

2. In Relation to the President

- To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation.
- To furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- 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.
- He is the principal channel of communication between the President and the Council of Ministers.

3. In Relation to the Parliament

- The Prime Minister is the leader of the Lower House. **In this capacity, he enjoys the following powers:**
 - ▶ He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
 - ▶ He can recommend dissolution of the Lok Sabha to President at any time.
 - ▶ He announces government policies on the floor of the House.

4. Other Powers & Functions

The Prime Minister:

- Is the chairman of the NITI Aayog, National Development Council, National Integration Council, Inter- State Council and National Water Resources Council .

- Plays a significant role in shaping the foreign policy of the country.
- Is the chief spokesman of the Union government .
- Is the crisis manager-in-chief at the political level during emergencies .
- Is the leader of the party in power

■ Deputy Prime Minister

- He is a member of the cabinet.
- The post is **not a constitutional post** and seldom carries any specific powers.
- Generally, a Deputy PM also holds other key portfolios like Home Minister or Finance Minister.
- DPM is sometimes used by governments to bring political stability and strength by including a powerful individual, or in times of National emergency, when a proper chain of command is necessary.
- Three interlinked political circumstances have created Deputy PMs:
 - ▶ Near equal political stature of two political leaders,
 - ▶ To obviate political competition by accommodation, and
 - ▶ Compulsions of coalition politics.

■ Prime Minister's Office (PMO)

- PMO is a Staff agency to the Prime minister.
- The PMO is headed by the **Principal Secretary**.
- It is a Non-constitutional, non-statutory body.
- It is for providing secretarial assistance and crucial advice to the PM. Allocation of Business Rule, 1961 has given it the status of a Department. It has no attached and subordinate office under it

UNION COUNCIL OF MINISTER

■ Article 74—Council of Ministers to aid and advice President

- There shall be a Council of Ministers with the PM, as the head, to aid and advise the President.
- The advice tendered by Ministers to the President shall not be inquired into in any court.

■ Article 75—Other Provisions as to Ministers

- The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.
- The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. The provision was added by the 91st Amendment Act of 2003. A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a Minister. This provision was also added by the 91st Amendment Act of 2003.
- The Ministers shall hold office during the pleasure of the President.
- The council of ministers shall be collectively responsible to the Lok Sabha, Article 75(3), even though some of the ministers may belong to the Rajya Sabha.
- The President shall administer the oaths of office and secrecy to a Minister.
- A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.
- The salaries and allowances of Ministers shall be determined by the Parliament.

■ Article 77- Conduct of Business of the Government of India

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

■ Article 78 - Duties of the Prime Minister

- To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation.
- 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.
- To furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for.

■ Nature of Advice by the Ministers

- The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President.
- Further, the nature of advice tendered by ministers to the President cannot be enquired by any court.
- In 1971, the Supreme Court held that even after the dissolution of the Lok Sabha, the council of ministers does not cease to hold office.

■ Strength of the Council

- The Constitution did not lay down the number of ministers that may constitute the Council of Ministers.
- However, a ceiling has been put on the strength of the Council of Ministers both in the union as well as in the states by 91st Amendment Act, 2003.
- Total number of ministers including the PM shall not exceed 15% of the total members of the Lok Sabha in case of the Union Council of Ministers and 15% of the state legislative assembly in case of State Council of Minister.
- All the members of the Council of Ministers do not belong to the same rank. The Constitution does not classify minister into different ranks but in practice 4 ranks have come to be recognized:
 - ▶ Cabinet Ministers have the right to be present and participate in every meeting of the Cabinet. For proclamation of an emergency, under A-352, the advice must come from the Prime Minister and other ministers of cabinet rank.
 - ▶ Minister of State with independent charge is a Minister of State who does not work under a Cabinet Minister. When any matter concerning his department is on the agenda of the Cabinet, he is invited to attend the meeting.
 - ▶ Minister of State is a Minister who does not have independent charges of any department and works under a Cabinet Minister. The work to such minister is allotted by his Cabinet Minister.
 - ▶ Deputy Minister is a minister who works under a Cabinet Minister or a minister of State with independent charge. The work to him is allotted by the minister under whom he is working.

■ Collective Responsibility of the Ministers

- The principle of collective responsibility finds place in A-75(3) where it is stated that the Council of Ministers shall be collectively responsible to the Lok Sabha.

- In other words, this provision means that a Council of Ministers which loses confidence of the Lok Sabha is obliged to resign. The ministers fall and stand together.

■ Individual Responsibility of Ministers

- The rule regarding individual responsibility is to be found in A-75(2)
- It is stated that ministers shall hold office during the pleasure of the President.
- Collectively the ministers survive so long as they have the required support in the Lok Sabha.
- An individual minister may continue to be a member of the council of ministers as long as he has the confidence of the Prime Minister.
- Refusal to oblige the Prime Minister may lead to his dismissal by the President.

■ Cabinet

- It is an informal body (Extra-constitutional) of senior ministers who form the inner circle.
- It is the cabinet, which meets as and when summoned by the PM, for taking important decision of the government.
- Cabinet is the real policy making body of CoM (Council of Ministers).
- It's the Chief Coordinator of central Administration.
- It is the advisory body to the President and its advice is binding on him.
- It is chief crisis managerial team. It deals with all the legislative and financial matter



UNION LEGISLATURE

- Part-V (Article 79 – 122) of the Constitution deals with the organization, composition, duration, officers, procedures, privileges and powers of the Parliament.
- Article 79 provides for a Parliament consisting of the President and the two houses:
 - ▶ **Lower House** is called the House of the People (Lok Sabha). Lok Sabha (LS) represents the people of India as a whole.
 - ▶ **Upper House** is called the Council of States (Rajya Sabha). The Rajya Sabha (RS) represents the states and union territories of the Indian Union.
- The President is a part of the Legislature but he is not a member of either House of Parliament.
- Since GoI Act, 1919, the central legislature has been a bi-cameral body consisting of lower House (Lok Sabha) and an upper House (Rajya Sabha).

■ Qualifications and disqualifications for being a Member of Parliament

- To be qualified to become a Member of Parliament a person must be:
 - ▶ A citizen of India;
 - ▶ Not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years in the case of the Lok Sabha
 - ▶ A voter for any parliamentary constituency in India,

■ Session of Parliament, Summoning Prorogation and Dissolution

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

■ Sessions of the Parliament

- A session of Indian Parliament is the time period during which a House meets almost every day continuously to transact business.
- There are usually three sessions in a year.
 - ▶ the Budget Session (February to May)
 - ▶ the Monsoon Session (July to September)and
 - ▶ the Winter Session (November to December).
- A session contains many meetings. Each meeting has two sittings – morning sitting from 11 am to 1 pm and post-lunch sitting from 2 pm to 6 pm.

- A sitting of Parliament can be terminated by adjournment, adjournment sine die, prorogation or dissolution.
- The period between the prorogation of a House and its reassembly in a new session is called 'recess'.

■ Summoning

- Summoning is the process of calling all members of the Parliament to meet.
- It is the duty of Indian President to summon each House of the Parliament from time to time.
- The maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice a year.

■ Adjournment

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

■ Adjournment Sine Die

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

■ Prorogation

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

■ Dissolution

- 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 – five years or the terms as extended during a national emergency.
 - ▶ **Order of President:** If President is authorized by CoM, he can dissolve Lok Sabha, even before the end of the term. He may also dissolve Lok Sabha if CoM loses confidence and no party is able to form the government. Once the Lok Sabha is dissolved before the completion of its normal tenure, the dissolution is irrevocable.
- When the Lok Sabha is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committees lapse.

■ Other Terms Related To the Parliamentary Functioning

Quorum

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

Question Hour

- The day's business normally begins with the Question Hour during which question asked by the members are answered by the Minister. The different types of questions are:
- **Starred Question:** It is one for which an oral answer is required to be given by the Minister on the floor of the House. Supplementary question may be asked based on the Minister's reply.
- **Unstarred Question:** It is one for which the Minister lays on the table a written answer. A 15 day notice has to be given to ask such question and no supplementary questions can be asked with regard to such questions.
- **Short Notice Question:** This type of question which can be asked by members on matters of public importance of an urgent nature. It is for the speaker to decide whether the matter is of urgent nature or not. The member has also to state reasons for asking the question while serving notice.

Zero Hour

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

Cut Motions

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

Calling Attention Motion

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

Privilege Motion

- It is motion moved by a member if he feels that a minister has committed a breach of privilege of the House or of any one or more of its members by with-holding facts of a case or by giving a distorted version of acts.

Vote on account

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

Guillotine

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

Censure Motion

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

■ Houses of the Parliament

Rajya Sabha

- **Composition :**
 - ▶ The Rajya Sabha is the permanent upper House and not subject to dissolution.
 - ▶ It is composed of not more than 250 members.
 - ▶ Out of these 238 are to be the representatives of the State and the Union Territories and 12 are to be nominated by the President.
 - ▶ Persons to be so nominated are required to have special knowledge or practical experience in respect of literature, science, art or social service.
 - ▶ The object of this nomination is to provide distinguished persons a place in the Rajya Sabha without going through the process of election.
- **Election:**
 - ▶ The representatives of the States are elected indirectly by the elected members of State Legislative Assemblies in accordance with the system of proportional representation by means of a single transferable vote.

Lok Sabha

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

- ▶ The division of the State into territorial constituencies shall be done on the basis of the census figures of 2001 census.

■ Important Offices

Speaker

- The House of the people is presided over by the Speaker who is elected by the House from among its own members.
- He has to discharge his responsibilities as a presiding officer. He brings the detachment and objectivity to bear upon all his decision.
- He presides over the meetings of the House. He adjourns the House or suspends its meeting if there is no quorum.
- Article 94 (c) provides for the removal of the Speaker by a resolution of the House passed by a majority of all the then members of the House. Removal of officers from their position in this manner, namely, by such special resolutions and by such special majorities is restricted to only a few officers such as the President, the Vice-President, the Presiding Officers of both House of Parliament, Judges of the Supreme Court, etc, as these officers are expected to discharge their responsibilities without political and party considerations.

Deputy Speaker

- The Deputy Speaker who presides over the House in the absence of the Speaker is elected in the same manner in which the Speaker is elected by the House.
- He can be removed from office also in the same manner.
- When he sits in the seat of the Speaker, he has all the powers of the Speaker and can perform all his functions. One of his special privileges is that when he is appointed as a member of a Parliamentary Committee, he automatically becomes its Chairman.
- By virtue of the office that he holds, he has a right to be present at any meeting of any Committee if he so chooses and can preside over its deliberations. His rulings are generally final in any case, so far as they are related to the matter under discussion, but the Speaker may give guidance in the interest of uniformity in practice. Whenever the Deputy Speaker is in doubt, he reserves the matter for the ruling of the Speaker.
- The Deputy Speaker, however, is otherwise like any ordinary member when the Speaker presides over the House. He may speak like any other member, maintain his party affiliation and vote on propositions before the House as any ordinary member.
- The Deputy Speaker is entitled to a regular salary.

■ Chairman and Deputy Chairman of the Council of States

- While presiding officers of the Lok Sabha are called the Speaker and the Deputy Speaker, their opposite officers in the Council of States are called the Chairman and the Deputy Chairman respectively.
- The Vice-President of India is the ex-officio Chairman of the Council of States. As the presiding officer of the Rajya Sabha, his functions and powers are the same as those of the Speaker. He is however not a member of the House.
- **Duties**
 - ▶ In the absence of the Chairman, the Council is presided over by the Deputy Chairman. He is a member of the House and is elected by the members of the House. When he ceases to be a member of the Council, he automatically vacates the office of the Deputy Chairman. He can resign his office by writing to the Chairman.
 - ▶ The Deputy Chairman is empowered to discharge all the functions and to perform all duties of the office of the Chairman, whenever Chairman's office is vacant or when the Vice-President is acting as the President.

- ▶ As a presiding officer of the Council he is also given a regular salary and other allowances that Parliament by law has fixed. The Council of States also has a panel of members, called Vice Chairman, nominated by the Chairman for the purpose of presiding over the House in the absence of both the Chairman and the Deputy Chairman
- **Removal** - He may be removed from his office by a resolution passed by a majority of all the member of the Council.

■ Leaders in Parliament

Leader of the House

- Under the Rules of Lok Sabha, the Leader of the House 'means the prime minister, if he is a member of the Lok Sabha, or a minister who is a member of the Lok Sabha and is nominated by the prime minister to function as the Leader of the House.
- There is also a Leader of the House 'in the Rajya Sabha. He is a minister and a member of the Rajya Sabha and is nominated by the prime minister to perform such function.

Leader of the Opposition

- In each House of Parliament, there is the Leader of the Opposition'.
- The leader of the largest Opposition party having not less than one-tenth seats of the total strength of the House is recognized as the leader of the Opposition in that House.
- In a parliamentary system of government, the leader of the opposition has a significant role to play. His main functions are to provide a constructive criticism of the policies of the government and to provide an alternative government. Therefore, the leader of Opposition in the Lok Sabha and the Rajya Sabha were accorded statutory recognition in 1977.
- They are also entitled to the salary, allowances and other facilities equivalent to that of a cabinet minister. It was in 1969 that an official leader of the opposition was recognized for the first time. The same functionary in USA is known as the minority leader.

Whip

- The offices of the leader of the House and the leader of the Opposition are not mentioned in the Constitution of India, they are mentioned in the Rules of the House and Parliamentary Statute respectively.
- The office of whip, on the other hand, 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.
- Every political party, whether ruling or opposition has its own whip in the Parliament.
- He is appointed by the political party to serve as an assistant floor leader.
- 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 regulates and monitors their behavior in the Parliament.
- The members are supposed to follow the directives given by the whip. Otherwise, disciplinary action can be taken.

Legislative Procedure in Parliament

- The legislative procedure is identical in both the Houses of Parliament. Every bill has to pass through the same stages in each House. A bill is a proposal for legislation and it becomes an act or law when duly enacted.
- The bills introduced in the Parliament can also be classified into four categories:
- **Ordinary Bills**, which are concerned with any matter other than financial subjects and amendment to Constitution.

- **Money Bills** (Art 110), which are concerned with the financial matters like taxation, public expenditure, etc.
- **Financial Bills** (Art 117), which are also concerned with financial matters (but are different from money bills).
- **Constitution amendment bills**, which are concerned with the amendment of the provisions of the Constitution.

Ordinary Bill

- A Bill other than Money Bill and Financial Bill is called or Ordinary Bill. Such a Bill may originate in either House of Parliament. When Passed by both the houses and signed by the President, it becomes a law.
- An ordinary Bill may be introduced either by a minister or by any other member.
- When a Bill is introduced by a member other than a minister then it is called Private Member's Bill.
- The prescribed period of notice is one month for a private member's Bill. For its introduction by ministers, notice is not required.
- Ordinary Bill passes through three stages in the originating House:
 - First reading,
 - Second reading,
 - Third reading
- **First Reading:** On the day on which any of the above motions is made, the principles of the Bill and its provisions may be discussed. Generally at this stage no amendments to the Bill may be moved. This is called the first reading.
- **Second Reading (Clause by Clause Consideration):** After the first reading is over the Bill is referred to a select committee or a joint select committee. When a motion for referring the Bill to a committee is carried the committee considers the Bill clause by clause and suggests omission, insertions and additions to the Bill. When the report of the committee is presented to the House, the bill is taken up for consideration of the House. After the bill has been taken into consideration the House takes up clause-by-clause consideration of the bill. At this stage, amendment to clauses of the bill is admitted. This is called the second reading of the bill.
- **Third Reading (Passing of the Bill):** After the second reading the bill is ready for voting: This is called the third reading. Consideration in second House: When a Bill is passed by one House it is transmitted to the other House for concurrence, in the second House the Bill passes through all the stages except introduction.
- The second House may adopt any of the following courses:
 - ▶ It may pass the Bill without amendment
 - ▶ It may pass the Bill with amendment
 - ▶ If the originating House accepts the Bill as amended by the second House, it is presented to the President for assent.
 - ▶ If the originating House does not concur in the amendment and the disagreement is final, the President may summon a joint sitting to resolve the deadlock (Art.108).
- **Joint Session:** This session is presided over by the Speaker of Lok Sabha. Due to its numerical majority, the Lok Sabha has an upper hand during joint session.
- **Assent of the President** - Once a bill has been duly passed by both the Houses, it is sent to the President for his assent. The President can give his assent, withhold his assent or return the bill to Parliament for reconsideration. If the bill is again passed by both Houses with or without amendments suggested by the President and is presented to the President again, he is obliged to give his assent (Art. 111). (This is called the second passage of the same bill).

Money Bill

- Parliament has the sole power to authorize expenditure for specified purposes.

- Article 110 states that a Bill is deemed to be a money bill if it contains provisions dealing with all or any of the following matters:
 - ▶ The imposition, abolition, remission, alteration or regulation of any tax.
 - ▶ The regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations.
 - ▶ The custody of the Consolidated Fund or the Contingency Fund of India, the payment of money into or the withdrawal of money from any such fund.
 - ▶ The appropriation of money out of the Consolidated Fund of India.
 - ▶ The declaring of any expenditure to be charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure.
- The receipt of money on account of the Consolidated Fund of India or the Public Accounts of India or the custody or issue of such money or the audit of the accounts of the Union or of a State.
- Whether a Bill is a Money Bill or not, is decided by the Speaker. It shall not be open to question either in a Court of Law or in either House or even by President.
- Under Art 110(3), it has been specified that, if any question arises whether a bill is a money bill or not, the decision of the Speaker shall be final.
- Whenever a money bill is transmitted to the Rajya Sabha and when it is presented to the President, a certificate by the speaker that it is a money bill is required to be given.

Procedure Followed in the passage of a Money Bill:

- A Money Bill can be introduced only in the Lok Sabha (and not in Rajya Sabha).
- A Money Bill can be introduced only on the prior recommendation of the President. (Speaker only decides whether it's a Money Bill or not)
- A Money Bill after being passed by the Lok Sabha is sent to the Rajya Sabha for recommendations.
- The Rajya Sabha must return the Bill within a period of 14 days (with or without recommendations) from the date of the receipt of the Bill. (Rajya Sabha cannot amend the Bill). It is the discretion of the Lok Sabha whether to accept or reject recommendations made by the Rajya Sabha.
- If the Bill is not returned within 14 days it is deemed to have been passed by both Houses
- **Assent:** A Money Bill passed in the manner stated above is presented to the President for his assent. The President may either give assent or withhold assent. As the Money Bill is introduced on the prior recommendations of the President it is improbable that he will refuse to give his assent.
- There is no provision for a joint sitting in the case of Money Bills. The Lok Sabha decision is the final say.

Financial Bills

- Under Art. 117, a Financial Bill is defined as a Bill containing provisions of general legislation along with one or more matters mentioned in Art.110.
- There are 3 types of Financial Bills:
 - ▶ Money Bills: It contains any of the provisions of a Money Bill mentioned in Art.110 plus some other matters.
 - ▶ Other Financial Bills: A Bill which is like an ordinary bill but which also contains provisions involving expenditure from the Consolidated Fund of India is called a Financial Bill class II.
 - ▶ Bills involving Expenditure.
- A financial bill, apart from dealing with one or more matters mentioned in Art 110(1) regarding Money Bill, deals with other matters also. Therefore all money bills are financial bills but all financial bills are not money bills.
- Under Article 117, the Financial Bills which do not receive the Speaker's certificate, to the effect that they are money bills are of 2 kinds:
 - A bill which contains any of the matters, specified in Art 110 but does not consist solely of those matters, for example, a bill which contains a taxation clause, but does not deal solely with taxation.

- Any ordinary bill which contains provisions involving expenditure from the consolidated fund.

Lapsing of Bills

- In case of lapse, it has to be introduced again and all steps are required to be taken again.
- Article 107 enumerates the following conditions under which a Bill may lapse.
 - ▶ A bill pending in the Lok Sabha lapses (Whether originating in the Lok Sabha or transmitted to it by the Rajya Sabha).
 - ▶ A bill passed by the Lok Sabha but pending in Rajya Sabha lapses.
 - ▶ A bill not passed by the two Houses due to disagreement and if the President has notified the holding of a joint sitting before the dissolution of Lok Sabha, does not lapse.
 - ▶ A bill pending in the Rajya Sabha but not passed by the Lok Sabha does not lapse.
 - ▶ A bill passed by both the House but pending assent of the President does not lapse.
 - ▶ A bill passed by both Houses but returned by the president for reconsideration of Houses does not lapse.
 - ▶ All constitutional amendments (Except mentioned above)

Annual Financial Statement: Budget (Art. 112)

- The term 'Budget' has nowhere been used in the Constitution. It is the popular name for the 'Annual Financial Statement' that has been dealt with in Article 112 of the Constitution.
- The budget is a statement of the estimated receipts and expenditure of the Government of India in a financial year. Currently, the financial year, begins on 1 April and ends on 31 March of the following year).

Vote on Account (VoA)

- The Union Budget is nothing but a projected income and expenditure statement for the coming year.
- As per the Constitution, all the revenue received and the loans raised by the Union government are placed in the Consolidated Fund of India (CFI).
- Article 266 mandates that Parliamentary approval is required to draw money from the CFI
- So the Budget has to be approved by Parliament before the commencement of the new financial year.
- But the discussion and passing of Budget generally goes beyond the current financial year.
- So a special provision "Vote on Account" is used, where the government obtains the vote of Lok Sabha to withdraw money from CFI to keep the money flowing for the government's day to day functions, until the Budget is passed. (Article 116). E.g. Salary to government employees, loan interest payments, subsidies, pension payments etc.

Demand of Grants

- On recommendation of the President, the estimates of expenditure (other than those charged on the Consolidated Fund of India) are presented to the Lok Sabha in the forms of demands for grants.
- Under Article 113, the Lok Sabha has the power to assent to or to reject, any demand, or to assent to any demand/subject to a reduction of the amount specified. These demands are not presented to the Rajya Sabha, though a general debate on the budget takes place there too.

Appropriation Bill

- According to Article 114, when the demand for grants has been voted for, the Appropriation Bill authorizes the withdrawal of the funds from the Consolidated Fund of India as regards both votable and charged items. No amendments can be proposed to this bill because that would amount to altering the once decided amount.

- The budget consists of two types of expenditure- the expenditure 'charged' upon the Consolidated Fund of India and the expenditure 'made' from the Consolidated Fund of India. The charged expenditure is non-votable by the Parliament, that is, it can only be discussed by the Parliament, while the other type has to be voted by the Parliament.

Various Cut Motions as Moved in Lok Sabha

- **Disapproval of Policy Cut:** it states that amount of demand be reduced to Re 1.
- **Economy Cut:** Demand is reduced by a specified amount/lump-sum.
- **Token Cut:** Demand is reduced by Rs 100. It aims to ventilate specific grievance.
- Cut Motions have only symbolic value, for they have no chance of being carried unless the Government loses the support of the majority in the House. Cut motions are generally moved by the members from the opposition and if carried amount to a vote of Censure against Government.

■ Other Grants

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

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

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

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

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

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

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

■ Functions of Parliament

Law making functions

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

GOVERNOR

- Articles 153 to 167 in Part VI of the Constitution deal 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.
- Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.
- He is appointed by the president by warrant under his hand and seal.
- A governor holds office for a term of five years from the date on which he enters upon his office.
- He can resign at any time by addressing a resignation letter to the President.

■ POWERS AND FUNCTIONS OF GOVERNOR

A. Executive Powers

- Governor being the head of the state executive, all executive action is expressed to be taken in the name of the Governor.
- Appointments –
 - ▶ The Chief Minister and other ministers with the advice of the Chief Minister. He has to appoint the leader of the party having absolute majority in the legislative assembly as the Chief Minister. However, in case of no party having a clear cut majority in the House, the Governor may use his discretion.
 - ▶ Advocate-General
 - ▶ Chairman and the members of the State Public Service Commission.
 - ▶ Members of the subordinate judiciary (District Judge and below).
 - ▶ Vice-Chancellors of state universities.
- The Governor is the Chancellor of the universities run by the state.
- Though the Governor has no power to appoint the Judges of the state High Court, he may be consulted by the President in such appointment.

B. Legislative powers

- The Governor is a part of the legislature (Art. 168). In this capacity he performs the following legislative functions:
 - ▶ To summon, prorogue and dissolve the legislative Assembly.
 - ▶ Right to address the legislature and to send messages to it.
 - ▶ No Bill can become a law unless the Governor gives assent to it. He can give his assent, withhold his assent or use the pocket veto to a state Bill.
 - ▶ He nominates one member of the Anglo-Indian community to the state assembly and one-sixth of the members of the legislative council from among persons having special experience in art, science, literature, social service or cooperative movement.
- **Art. 200: Assent to Bills**

- ▶ When a Bill has been passed by the Legislature of a State, it shall be presented to the Governor who may accept or reject the Bill.
- ▶ In the case of Bills other than Money Bills, he may return to the legislature for reconsideration.
- ▶ Governor may also reserve the Bill for consideration of the President.
- ▶ When a Bill is returned to legislature by the Governor, it must be passed again to be accepted by the Governor.
- ▶ In essence as per the Article 200, when a Bill passed by the Legislature of a State is presented to the Governor, he has four options
 - ◆ he assents to the Bill when it becomes an Act
 - ◆ he withholds assent
 - ◆ he returns the Bill to the Legislature for reconsideration
 - ◆ he reserves the Bill for the consideration of the President
- **Art. 201 Bills reserved for consideration**
 - ▶ When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent in case of a Money Bill.
 - ▶ In other Bills, he may return the Bill for repassage— the third option for the President.
 - ▶ The repassed Bill need not be assented to by the President and he may return it again and again. Thus, it is an absolute veto
 - ▶ Also, there is no time limit within which the President should take a decision.
 - ▶ There have been instances where Bills have been pending with the President for periods up to six years or more.
 - ▶ The most recent Bill to be reserved by the Governor for the Presidential assent is the GUCOC Bill Gujarat Control of Organised Crime Bill for which the President has expressed the need for three changes and returned it.

C. Financial Power

- He causes to be laid before the legislature annual financial statement (Art-202)
- Money bill cannot be introduced in the State Legislative Assembly without the prior permission of the Governor.
- The annual and supplementary budgets are introduced in the Assembly in the name of the Governor.
- No demand for grant can be made except on his recommendation.
- The Governor has the control over the State Contingency Fund, without his assent the fund cannot be drawn upon.

D. Judicial Power

- He is consulted by president while appointing judges to the State High Court.
- According to the Article 161, the Governor possesses the power to suspend, remit or commute the sentence of any person convicted of any offence against any law to which executive power of state extends.
- Pardon: completely absolve offender from all punishments.
- Reprieves: stay on the execution of the sentence for a temporary period.
- Respite: awarding lesser punishment on special grounds.
- Remission: reduction of sentence without changing its character
- Commutation: Substitution of one form of punishment for another form which is of a lighter character.

E. Discretionary powers of the Governor

- Art. 163 - There shall be a Council of Ministers headed by the Chief Minister to aid and advise the Governor and the Governor shall exercise his powers according to such advice except where the

Constitution requires him to act in his discretion.

- There are two types of situations in which the Governor is expected to use his discretion
 - ▶ Those, which are implied by the nature of Parliamentary democracy and the Constitution.
 - ▶ Those where the Constitution has expressly imposed special responsibility on the Governor.

■ SPECIAL RESPONSIBILITY POWERS OF GOVERNOR

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

Chief Minister And Council Of Minister

- In parliamentary system of government provided by the Constitution, the governor is the **nominal executive** authority and the Chief Minister is the **real executive** authority.
- Before the Chief Minister enters his office, **the governor** administers to him the oaths of office and secrecy.

■ Appointment

- The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister
- Article 164 only says that the Chief Minister shall be appointed by the governor.
- 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 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.
- A person who is not a member of the state legislature can be appointed as Chief Minister for **six months**, within which time, he should be elected to the state legislature, failing which he ceases to be the Chief Minister.

■ Powers and Functions of Chief Minister

In Relation to 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

- 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 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; 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 Legislature

- He advises the Governor with regard to the summoning and proroguing of the sessions of the State Legislature.
- 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

- 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 National Development Council, 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

Council of Minister

- The total number of Minister, including the Chief Minister, in the Council of Minister in a state shall not exceed 15 percent of the total strength of the Legislative Assembly of that state. But, the number of Ministers, in a state shall not be less than 12 (including Chief Ministers).
- This provision was added by the **91st Amendment Act of 2003**.
- They are determined by the Chief Minister according to the exigencies of the time and requirements of the situation.

- The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the Chief Minister- supreme governing authority in the state.
- The Cabinet Ministers head the important departments of the state government like home, education, finance, agriculture and so forth. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of state government.
- The ministers of state can either be given independent charge of departments or can be attached to Cabinet Ministers. However, they are not members of the Cabinet and do not attend the Cabinet meetings unless specially invited when something related to their departments are considered by the Cabinet.
- Next in rank are the Deputy Ministers. They are not given independent charge of departments. They are attached to the Cabinet Ministers and assist them in their administrative, political and parliamentary duties. They are not members of the Cabinet and do not attend Cabinet meetings.



STATE LEGISLATURE AND UNION TERRITORIES

- Articles 168 to 212 in Part VI of the Constitution deal with the State Legislatures’.
- Legislature of every state consists of a Governor and a Legislative setup.
- Legislature in certain states like Maharashtra, Karnataka, Bihar, UP, Telangana, Andhra Pradesh and J&K are Bicameral (consisting of 2 Houses). In the other states it is unicameral (consisting of one House)

■ Legislative Assembly

- It is the popular House of the State. Members are chosen by direct election on the basis of adult suffrage from territorial constituencies (Article 170).
- The member strength varies between 60 and 500. However certain states like Sikkim, Goa, Mizoram and Arunachal Pradesh have less than 60 members.
- The Governor may nominate one Anglo-Indian to the Assembly, if the community is not adequately represented in the assembly.
- Reservation of seats has been provided for SCs & STs on basis of their population.
- According to Article 172, duration of Assembly in normally 5 years. But it may be dissolved earlier by the Governor.
- Its term may also be extended by **one year** at a time by Parliament during National Emergency, though this can in no case be extended beyond 6 months after the proclamation has ceased to operate.
- Legislative assembly alone has power to originate money bills. Legislative council can make only recommendations in respect of changes it considers necessary within a period of fourteen days after receiving the money bills from the Assembly. Assembly can accept or reject these recommendations.

■ Powers and Functions

- It can make laws on any subject provided in the State List. It can also make a law on a subject of the Concurrent List in case it is not in conflict with a law already made by the Parliament.
- It has control over the State Council of Ministers. Its members may ask questions to the Minister, introduce resolutions or motions, and may pass a vote of censure to dismiss the Government. The Ministry is collectively responsible to the Assembly. The defeat of the Ministry in the Assembly amounts to the passing of a vote-of-no-confidence against it.
- It controls the finances of the State. A money bill can originate in the Assembly and it is taken as passed by the Legislative Council after a lapse of 14 days after reference made to it by the Assembly. It may pass, reject the demands or reduce their amount implying adoption or rejection of the budget and there by leading to the victory or defeat of the Government. Thus, no tax can be imposed or withdrawn without the approval of the Legislative Assembly.
- It has constituent powers too. According to **Article 368**, a bill of constitutional amendment first passed by the Parliament shall be referred to the states for ratification. It is here that the Assembly has its role to play. It has to give its verdict by passing a resolution. It is also provided that the President shall refer to the Assembly of the concerned state a bill desiring alteration in its territory

for eliciting its views in this regard before he recommends that such a bill be introduced in the Parliament.

- The Assembly also elects its own Speaker and Deputy Speaker and may remove them by a vote of no confidence. **It takes part in the election of the President of India.** It considers reports submitted by various independent agencies like the State Public Service Commission, Auditor-General, and others.

■ Speaker & Deputy Speaker

- Every Legislative Assembly chooses two members of the Assembly to be the Speaker and the Deputy Speaker respectively whenever these offices become vacant. They vacate their offices if they cease to be the members of the Assembly. The Speaker or the Deputy Speaker as the case may be resigns his office by writing to the Deputy Speaker in the case of the Speaker and to the Speaker in the case of the Deputy Speaker.
- They may be removed from office by a resolution of the Assembly passed by an effective majority. No resolution for the purpose of the removal of the Speaker or the Deputy Speaker is moved unless at least 14-days notice is given of the intention to move such a resolution. While any resolution for the removal of the Speaker from the office is under consideration, the Speaker though he is present, will not preside over such a meeting.
- Speaker is vested with powers to ensure orderly discussion in the House, to enforce the rules of procedure, to control disorder and to take disciplinary action against members indulging in unruly behavior.

■ Parliament's Control over State Legislature

- There are many restrictions on the powers of the state legislature, which make them subservient to the will of the Parliament. The restriction on the powers of the state legislatures are as follows:
 - ▶ State legislatures can neither legislate on an item of the Union List nor a residuary subject.
 - ▶ Though it can enact laws on a subject mentioned in the Concurrent List, if it is Central law, which shall prevail and to the extent to which the state law is violative of Central law it will be voided.
 - ▶ Article 249 provides that Rajya Sabha may pass a special resolution by two thirds majority of members, present and voting, to transfer any item from the State List to the Union or Concurrent Lists for the period of one year on the plea that it is expedient in the national interest.
 - ▶ There are some categories that require that a bill passed by the state legislature shall be reserved by the Governor for the consideration of the President. Bill dealing with compulsory acquisition of private property, being derogatory to the powers of the High Court, or seeking imposition of tax on a commodity 'essential' by an act of Parliament, or any other bill likely to conflict with some Union law, already in force fall within this category.
 - ▶ The state legislatures cannot override the veto of the President.
 - ▶ There are some kinds of bills that cannot be introduced in the state legislatures without the prior permission of the President. Bills seeking to impose restrictions on trade, commerce or intercourse with other States or within the State fall within this category.
 - ▶ The President is empowered to declare a state of emergency in the country without consulting the states. But once such an emergency has been declared, the Parliament is empowered to legislate on the subject mentioned in the State List.

■ Legislative Council (Article 169)

- Parliament may by Law create or abolish Legislative Council.
- It can be created, if the Legislative Assembly of the State passes a resolution to the effect by special majority.
- It is not an Amendment to the constitution and therefore it can be passed like an ordinary piece of Legislation
- Article 171 contains various categories of members according to this:

- ▶ 1/3 rd of its members are elected by Legislative Assembly
- ▶ 1/3 rd by local bodies
- ▶ 1/6 th nominated by the Governor
- ▶ 1/12th is elected by teachers of 3 years standing in the state not lower in standard than secondary school.
- ▶ 1/12th by university graduates of 3 years Standing and residing within the State.
- Nominated by Governor are from among those who have distinguished themselves in literature, science, art, co-operative movement and social service.
- The maximum strength of Legislative Council can be 1/3rd of the total membership of Legislative Assembly, but in no case less than 40 (Legislative Council of J&K has 36 members).
- Parliament has the final powers to decide about its composition.
- It is not subject to dissolution, But 1/3rd of its members retire on the expiry of every 2nd year.
- Bihar, Jammu & Kashmir, Karnataka, Maharashtra, Telangana, Andhra Pradesh and Uttar Pradesh have two houses, that is, these states have a Legislative Council also.

■ Qualifications

- Article 173 mentions the qualifications of members as:
 - ▶ A citizen of India.
 - ▶ Not less than 25 years of age for Legislative Assembly and not less than 30 years of age for Legislative Council.
 - ▶ Possesses such other qualification as may be prescribed by the Parliament.
 - ▶ Not hold any office under the Union or State Governments.
- Article 190: No person shall be a member of both Houses of State Legislative and if anyone gets elected to both Houses, he has to vacate one seat.
- No person can become a member of Legislature of 2 or more states.

■ Powers and Functions of Legislative Council

- As regards with its powers, the Legislative Council plays a more advisory role.
- A Bill, other than a Money Bill, may originate in either House of the Legislature.
- Over legislative matters it has only a suspensive veto for a maximum period of 4 months. 3 months in the first instance and 1 month in Second instance. In other words, the Council is not even a revising body like Rajya Sabha it is only a dilatory chamber or an advisory body.
- Over financial matters, its powers are not absolute. A Money Bill originates only in the Assembly and the Council may detain it only for a period of 14 days.
- As similar to the case of the Parliament at the Centre, there is no provision for a joint sitting of both the Houses of the States Legislature to resolve a deadlock between them, over legislative matters, if any. Thus, the Legislative Council is only a subordinate component of the Legislature.

■ The Advocate General (Article 165)

- In India, an Advocate General is a legal adviser to a State Government .The post is created by the Constitution of India and corresponds to that of Attorney General of India at the federal or central or Union Government level. The Advocate General of the state is a constitutional post and is an Authority duly appointed under **Article 165** of the Constitution of India.
- The Advocate General is appointed by Governor of the State and holds office during the pleasure of the Governor.
- A person who is qualified to be appointed as a judge of the High Court is appointed as the Advocate General for the State.
- The office of Advocate General is the Supreme Law officer of the State.

- It is the duty of the Advocate General to advise the Government of the State upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred upon him by or under the Constitution of India or any other law for the time being in force.
- The Advocate General have the right to speak in, and otherwise take part in the proceedings of, any Committee of the Legislature of which he may be named as Member. But he shall not be entitled to vote.
- The Advocate General and his office defends and protects the interest of the State Government and gives invaluable legal guidance to the State Government in formulation of its policy and execution of its decision.

Union Territories

■ Union Territories

- Under Article 1 of the Constitution, the territory of India comprises three categories of territories:
 - ▶ Territories of the states
 - ▶ Union territories
 - ▶ Territories that may be acquired by the Government of India at any time.
- At present, there are twenty-nine states, nine union territories (including newly added- J&K and Ladakh) and no acquired territories.
- The states are the members of the federal system in India and share a distribution of power with the Centre.
- The union territories, on the other hand, are those areas which are under the direct control and administration of the Central government. Hence, they are also known as 'centrally administered territories'.
- The union territories have been created for a variety of reasons. These are as follows :
 - ▶ Political and administrative consideration—Delhi and Chandigarh.
 - ▶ Cultural distinctiveness—Puducherry, Dadra and Nagar Haveli, and Daman and Diu.
 - ▶ Strategic importance—Andaman and Nicobar Islands and Lakshadweep.
 - ▶ Special treatment and care of the backward and tribal people—Mizoram, Manipur, Tripura and Arunachal Pradesh which later became states.

■ Administration of Union Territories

- Articles 239 to 241 in Part VIII of the Constitution deal with the union territories. Even though all the union territories belong to one category, there is no uniformity in their administrative system. Every union territory is administered by the President acting through an administrator appointed by him.
- An administrator of a union territory is an agent of the President and not head of state like a governor.
- The President can specify the designation of an administrator; it may be Lieutenant Governor or Chief Commissioner or Administrator. At present, it is Lieutenant Governor in the case of Delhi, Pondicherry and Andaman and Nicobar Islands and Administrator in the case of Chandigarh, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep.
- The President can also appoint the governor of a state as the administrator of an adjoining union territory. In that capacity, the governor is to act independently of his council of ministers. The Union Territories of Pondicherry (in 1963) and Delhi (in 1992) are provided with a legislative assembly and a council of ministers headed by a chief minister.
- The remaining five union territories do not have such popular political institutions. But, the establishment of such institutions in the union territories does not diminish the supreme control of the President and Parliament over them.

- The Parliament can make laws on any subject of the three lists (including the State List) for the union territories. This power of Parliament also extends to Puducherry and Delhi, which have their own local legislatures.
- This means that, the legislative power of Parliament for the union territories on subjects of the State List remain unaffected even after establishing a local legislature for them. But, the legislative assembly of Puducherry can also make laws on any subject of the State List and the Concurrent List.
- 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. The President can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, and Daman and Diu.
- In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved. A regulation made by the President has the same force and effect as an act of Parliament and can also repeal or amend any act of Parliament in relation to these union territories.
- The Parliament can establish a high court for a union territory or put it under the jurisdiction of the high court of adjacent state. Delhi is the only union territory that has a high court of its own (since 1966). The Bombay High Court has got jurisdiction over two union territories—Dadra and Nagar Haveli, and Daman and Diu.
- Andaman and Nicobar Islands, Chandigarh, Lakshadweep and Puducherry are placed under the Calcutta, Punjab and Haryana, Kerala, and Madras High Courts respectively. The Constitution does not contain any separate provisions for the administration of acquired territories. But, the constitutional provisions for the administration of union territories also apply to the acquired territories.

■ Special Provisions for Delhi

- The 69th Constitutional Amendment Act of 1991 provided a special status to the Union Territory of Delhi, and redesignated it the National Capital Territory of Delhi and designated the administrator of Delhi as the lieutenant governor. It created a legislative assembly and a council of ministers for Delhi.
- Previously, Delhi had a metropolitan council and an executive council. 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 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. But, the laws of Parliament prevail over those made by the Assembly.
- 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 is appointed by the President (not by the 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 council of ministers headed by the chief minister aid and advise the Lt. Governor in the exercise of his functions except in so far as he is required to act in his discretion. In the case of difference of opinion between the Lt. Governor and his ministers, the Lt. Governor is to refer the matter to the president for decision and act accordingly.
- When a situation arises in which the administration of the territory cannot be carried on in accordance with the above provisions, the president can suspend their operation and make the necessary incidental or consequential provisions for administering the territory.
- In brief, in case of failure of constitutional machinery, the president can impose his rule in the territory. This can be done on the report of the governor or otherwise. This provision resembles Article 356 which deals with the imposition of President's Rule in the states.
- The lieutenant governor is empowered to promulgate ordinances during recess of the assembly. An ordinance has the same force as an act of the assembly. Every such ordinance must be approved by the assembly within six weeks from its reassembly. He can also withdraw an ordinance at any time.
- But, he cannot promulgate an ordinance when the assembly is dissolved or suspended. Further, no such ordinance can be promulgated or withdrawn without the prior permission of the President.

LOCAL BODIES

Panchayati Raj and Urban Local Bodies

- In 1989, the central government introduced two constitutional amendments. These amendments aimed at strengthening local governments and ensuring an element of uniformity in their structure and functioning across the country.
- In 1992, the 73rd and 74th constitutional amendments were passed by the Parliament.
- **The 73rd Amendment is about rural local governments** (which are also known as Panchayati Raj or PRIs) and the **74th amendment made the provisions relating to urban local government** (Nagar palikas).
- The 73rd and 74th Amendments came into force in 1993.
- **73rd Amendment act added a new Part-IX** to the Constitution of India and consists of provisions from **Articles 243 to 243 O**.
- In addition, the act has also added a new Eleventh Schedule to the Constitution. This schedule contains **29 functional items** of the panchayats. **It deals with Article 243-G.**

■ Salient Features of 73rd Amendment Act of 1992

1. Three Tier Structure

- A Gram Panchayat covers a village or group of villages. it is the lowest tier of Panchayati Raj Institution (PRI).
- The intermediary level is known as the Mandal (also referred to as Block or Taluka). The intermediary level body need not be constituted in smaller States. At the apex is the Zilla Panchayat covering the entire rural area of the District.
- The amendment also made a provision for the mandatory creation of the Gram Sabha. The Gram Sabha would comprise all the adult members registered as voters in the Panchayat area. Its role and functions are decided by State legislation.

2. Elections

- All members of the three levels of Panchayati Raj institutions are elected directly by the people. The term of each Panchayat body is five years.
- If the State government dissolves the Panchayat before the end of its five year term fresh elections must be held within six months of such dissolution.

3. Reservations

- One third of the positions in all panchayat institutions are reserved for women. Reservations for Scheduled Castes and Scheduled Tribes are also provided for at all the three levels, in proportion to their population.
- If the States find it necessary, they can also provide for reservations for the other backward classes (OBCs). It is important to note that these reservations apply not merely to ordinary members in Panchayats but also to the positions of Chairpersons or 'Adhyakshas' at all the three levels.

- Further, reservation of one-third of the seats for women is not merely in the general category of seats but also within the seats reserved for Scheduled Castes, Scheduled Tribes and backward castes. This means that a seat may be reserved simultaneously for a woman candidate and one belonging to the Scheduled Castes or Scheduled Tribes. **Thus, a Sarpanch would have to be a Dalit woman or an Adivasi woman.**

4. Transfer of Subjects

- Twenty-nine subjects, which were earlier in the State list of subjects, are identified and listed in the Eleventh Schedule of the Constitution. These subjects are to be transferred to the Panchayati Raj institutions.
- These subjects were mostly linked to development and welfare functions at the local level.
- The actual transfer of these functions depends upon the State legislation. Each State decides how many of these twenty-nine subjects would be transferred to the local bodies.

5. State Election Commissioners

- The State government is required to appoint a State Election Commissioner who would be responsible for conducting elections to the Panchayati Raj institutions. Earlier, this task was performed by the State administration which was under the control of the State government.
- Now, the office of the State Election Commissioner is autonomous like the Election Commissioner of India.
- However, the State Election Commissioner is an independent officer and is not linked to nor is this officer under the control of the Election Commission of India.

6. State Finance Commission

- The State government is also required to appoint a State Finance Commission once in five years. This Commission would examine the financial position of the local governments in the State.
- It would also review the distribution of revenues between the State and local governments on the one hand and between rural and urban local governments on the other.

7. Disqualifications

- A person shall be disqualified for being chosen as or for being a member of panchayat if he is so disqualified, (a) under any law for the time being in force for the purpose of elections to the legislature of the state concerned, or (b) 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.

■ PESA (Panchayat Extension to Scheduled Areas) Act 1996

- The provisions of the 73rd amendment were not made applicable to the areas inhabited by the Adivasi populations (5th Scheduled Areas) in many States of India. In 1996, a separate act called PESA Act, 1996 was passed extending the provisions of the Panchayat system to these areas.
- Many Adivasi communities have their traditional customs of managing common resources such as forests and small water reservoirs, etc. Therefore, the new act protects the rights of these communities to manage their resources in ways acceptable to them.
- For this purpose, more powers are given to the Gram Sabhas of these areas and elected village panchayats have to get the consent of the Gram Sabha in many respects. The idea behind this act is that local traditions of self-government should be protected while introducing modern elected bodies.
- At present Scheduled V areas exist in 10 States viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.

■ PESA empowers Gram Sabha/ Panchayat at appropriate level with

- right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons
- panchayat at an appropriate level is entrusted with planning and management of minor water bodies
- mandatory recommendations by Gram Sabha or Panchayat at appropriate level for prospective licenses/ lease for mines and concession for the exploitation of minor minerals
- regulate sale/consumption of intoxicants ownership of minor forest produce
- prevent land alienation and restore alienated land
- manage village markets
- control over money lending to STs
- control over institutions and functionaries in social sector, local plans including Tribal sub plans and resources

■ Salient Features of 74th Amendment Act of 1992

- 74th Amendment Act has added a new Part IX-A to the Constitution of India. **This part 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.

1. Composition

- All the members of a municipality shall be elected directly by the people of the municipal area. For this purpose, each municipal area shall be divided 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) .

2. Wards Committees

- There shall be constituted a wards committee, consisting of one or more wards, within the territorial area of a municipality having population of three 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. It may also make any provision for the constitution of committees in addition to the wards committees.

3. Metropolitan Planning Committee

- 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.

4. Bar to Interference by Courts in Electoral Matters

- The act 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.
5. All the provisions of the 73rd amendment relating to direct elections, reservations, transfer of subjects, State Election Commission and State Finance Commission are incorporated in the 74th amendment also and thus apply to Nagarpalikas as well.



JUDICIARY

The Supreme Court

- The Indian Constitution has established an integrated judicial system which places Supreme Court at the top and the High Courts below it, followed by a hierarchy of Subordinate Courts.
- The Constitutional provisions related to the Supreme Court are contained in Part V from Art 124 to 147.
- Initially, there was a Chief Justice and seven other Judges in the Supreme Court and now the number has increased to 31 judges including the Chief Justice of India in 2009. The Parliament has been given the power to increase the number of Supreme Court judges, according to the needs and circumstances. Recently, President gave his assent to the Supreme Court (Number of Judges) Amendment Bill, which will increase the number of Supreme Court Judges.

■ Chief Justice of India

- The Chief Justice of India (CJI) is the highest judicial officer of the country.
- The nature of work of CJI is largely administrative and that includes allocating work amongst the judges of the Supreme Court.

■ Acting Chief Justice of India

- Under Article 126, when the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

■ Appointment of Supreme Court Judges

- The Judges of the Supreme Court are appointed by the President.
- The Chief Justice is appointed by the President after consultation with such Judges of the Supreme Court and High Court as he/she deems necessary.
- The other judges are appointed by the President after consultation with the Chief Justice and such other judges of the Supreme Court, and High Courts as he/she deems necessary.
- The consultation with the Chief Justice is obligatory in the case of appointment of judge other than Chief Justice.

■ Qualifications for Supreme Court Judges

- A person shall not be qualified for appointment as a Judge of the Supreme Court unless he/she
 - ▶ Is a citizen of India, and
 - ▶ Has been for at least five years a judge of a High Court or a two such Courts in succession; or
 - ▶ Has been for at least ten years an advocate of a High Court or of two or more such Courts in succession or is, in the opinion of the President, a distinguished jurist.

- Every person appointed to be a Judge of the Supreme Court shall, before he/she enters upon his/her office, make and subscribe before the President an oath of affirmation according to the form set out in the Third Schedule of the Constitution.
- The Constitution does not prescribe minimum age limit for a judge to occupy his/her office.
- A Judge of the Supreme Court continues to hold the office till he/she attains the age of 65 yrs.
- A Judge of the Supreme Court may tender his/her resignation to the President even before he/she reaches age of 65 years.
- A Judge of Supreme Court, after retirement, shall not do legal practice in any court in the territory of India and shall not plead before any authority under the Government

■ Process of Impeachment

- A judge may be removed from office through a motion adopted by Parliament on grounds of 'proven misbehavior or incapacity'.
- The Constitution does not use the word 'impeachment' for this purpose.
- 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 Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:
 - ▶ A motion for removal supported by at least 100 members in Lok Sabha or 50 members in Rajya Sabha is required for admission of motion for removal of the judge.
 - ▶ The Presiding officer/Chairman of Lok Sabha or Rajya Sabha constitutes an inquiry committee to verify the charges of accusation. The inquiry committee consists of CJI/Supreme Court judge, a High Court Chief Justice, and a distinguished jurist to probe the charges.
- If the inquiry committee is satisfied that the judge has been guilty, it may recommend for removal of that judge.
- Both the Houses shall have to pass a resolution to this effect by a special majority in the same session i.e. majority of the total membership of the house and two-third members to the house present and voting.
- The judge stands evicted by an order of the President.
- No case of removal of SC judge has happened so far. The case of Justice vs. Ramaswamy in (1991-93) was not passed because of absence of majority in Lok Sabha when Congress MPs abstained from voting.

■ Adhoc and Retired Judges

- Article 127 says that if at any time there may not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India can appoint a Judge of a High Court as an adhoc Judge of the Supreme Court for a temporary period.
- He can do so only with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned.
- The Judge so appointed should be qualified for appointment as a Judge of the Supreme Court.
- It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

■ Retired Judges

- Article 128 says that the Chief Justice of India may at any time, with the previous consent of the President request a retired judge of the Supreme Court or a Retired Judge of 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.

- Such judge while so sitting and acting be entitled to such allowances as the President may determine and has all the jurisdiction, powers and privileges of a Judge of Supreme Court.
- But he/ she will not otherwise be deemed to be a Judge of the Supreme Court.

Jurisdiction of the Supreme Court

■ Original Jurisdiction

- Under Article 131, subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction any dispute:
 - ▶ Between the Government of India and States;
 - ▶ Between the Government of India and any State or States on one side and one or more other States on the other; or
 - ▶ Between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.
- The Supreme Court has exclusive original jurisdiction in the above cases. Exclusive means, no other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal.
- The said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.
- There are certain provisions in the Constitution which exclude from the Original Jurisdiction of the Supreme Court, Disputes specified in the provision to Art 363(1).
 - ▶ Complaints as to interference with Inter-State water supplies, referred to the statutory tribunal mentioned in Art 262 (since the Parliament has enacted the Inter-State Water Disputes Act 1956).
 - ▶ Matters referred to the Finance Commission (Art 280)
 - ▶ Adjustment of certain expenses between the Union and the State (Art 290).

■ Writ Jurisdiction

- Article 32 imposes duty on the Supreme Court to enforce the Fundamental Rights. Under this Article, every individual has a right to move the Supreme Court provided there has been any infringement on his/ her Fundamental Rights.
- The Supreme Court is empowered to issue writs, including Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari to enforce Fundamental Rights.
- The Supreme Court has **original jurisdiction** in the sense that an aggrieved citizen can directly go 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.

■ Appellate Jurisdiction

- The Supreme Court enjoys a wide appellate jurisdiction which can be classified under four heads:
 - ▶ Appeals in constitutional matters.
 - ▶ Appeals in civil matters.
 - ▶ Appeals in criminal matters.
 - ▶ Appeals by special leave.
- **Constitutional Matters** :In the constitutional cases, an appeal can be made to the Supreme Court against the judgment of a high court if the high court certifies that the case involves a substantial

question of law that requires the interpretation of the Constitution. Based on the certificate, the party in the case can appeal to the Supreme Court on the ground that the question has been wrongly decided.

- **Civil Cases** -In civil cases, an appeal lies to the Supreme Court from any judgment of a high court if the high court certifies:
 - ▶ That the case involves a substantial question of law of general importance.
 - ▶ That the question needs to be decided by the Supreme Court. Originally, only those civil cases that involved a sum of 20,000 could be appealed before the Supreme Court. But this monetary limit was removed by the 30th Constitutional Amendment Act of 1972.
- **Criminal Matters**- The Supreme Court hears appeals against the judgment in a criminal proceeding of a high court if the high court:
 - ▶ Has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
 - ▶ Has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to death; or
 - ▶ Certifies that the case is a fit one for appeal to the Supreme Court.
 - ▶ In the first two cases, an appeal lies to the Supreme Court as a matter of right (i.e without any certificate of the high court). But if the high court has reversed the order of conviction and has ordered the acquittal of the accused, there is no right to appeal to the Supreme Court. In 1970, the Parliament had enlarged the Criminal Appellate Jurisdiction of the Supreme Court. Accordingly, an appeal lies to the Supreme Court from the judgment of a high court if the high court:
 - ▶ Has on appeal, reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or for ten years; or
 - ▶ Has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to imprisonment for life or for ten years. Further, the appellate jurisdiction of the Supreme Court extends to all civil and criminal cases in which the Federal Court of India had jurisdiction to hear appeals from the high court but which are not covered under the civil and criminal appellate jurisdiction of the Supreme Court mentioned above.
- **Appeal by Special Leave:** The Supreme Court is authorized to grant in its discretion special leave to appeal from any judgment in any matter passed by any court or tribunal in the country (except military tribunal and court martial). This provision contains the four aspects as under:
 - ▶ It is a discretionary power and hence, cannot be claimed as a matter of right.
 - ▶ It can be granted in any judgment whether final or interlocutory.
 - ▶ It may be related to any matter—constitutional, civil, criminal, income tax, labour, revenue, advocates, etc.
 - ▶ It can be granted against any court or tribunal and not necessarily against a high court (of course, except a military court).

■ Advisory Jurisdiction

- One of the Salient features of the Supreme Court is its consultative role (Article 143). The President can refer to the Court either a question of law or a question of fact, provided that it is of public importance. However, it is **not compulsory** for the Court to give its advice.
- The President is empowered to refer to the Supreme Court for its opinion, disputes arising out of any treaty, agreement etc., which had been entered into or executed before the commencement of the Constitution. Here the Supreme Court **must tender** its opinion to the **President**.

■ Judicial Independence

- The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. Judges are generally appointed on the basis of seniority and not on political preference.

- Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members Present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehavior or incapacity.
- The salaries and allowances of a judge of the Supreme Court cannot be reduced after appointment.
- A person who has been a Judge of the Supreme Court is debarred from practicing in any court of law or before any other authority in India.

■ A Court of Record

- Article 129 states that the Supreme Court of India shall be a Court of Record. As a Court of Records, the Supreme Court has following powers:-
- The Judgments, processing and acts of the Supreme Court are recorded for perpetual memory and testimony. These are recognized as legal precedents and legal references.
- The Supreme Court has power to punish for contempt of court, either with simple imprisonment or with fine. In 1991, the Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.
- Contempt of court may be civil or criminal. Civil contempt means willful disobedience to any judgment, order, writ or other process of a court or willful breach of an undertaking given to a court.
- Criminal contempt means the publication of any matter or doing an act which scandalizes or lowers the authority of a court or prejudices or interferes with the due course of a judicial proceeding or interferes or obstructs the administration of justice in any other manner.

■ Important Terms

- **Judicial Review:** Judicial review is the power of the judiciary to review the laws made and executed by the legislature and executive to make sure they are in line with Constitution and the Statues enacted. If they contravene with any provision of the Constitution, the Judiciary strikes them down.
- **Judicial Activism:** Judicial activism is phenomena wherein the Judiciary assumes an extraordinary position of directing the executive to undertake such policies and measures as the judiciary deem fit citing insufficient policies or administrative lacunae.
- **Judicial Overreach:** When Judiciary in exercise of its judicial activism, encroaches the domain of the executive and legislature, it is called judicial overreach.
- **Public Interest Litigation (PIL) :** Although the proceedings in the Supreme Court arise out of the judgments or orders made by the Subordinate Courts including the High Courts, but of late the Supreme Court has started entertaining matters in which interest of the public at large is involved and the Court can be moved by any individual or group of persons either by filling a Writ Petition at the Filling Counter of the Court or by addressing a letter to Hon'ble the Chief Justice of India highlighting the question of public importance for invoking this jurisdiction. Such concept is popularly known as 'Public Interest Litigation' and several matters of public importance have become landmark cases. This concept is unique to the Supreme Court of India only and perhaps no other Court in the world has been exercising this extraordinary jurisdiction. The concept of PIL emerged for the first time in the Mumbai Kamgar Sabha case where Justice Krishna Iyer allowed the petition even if the litigant had no locus standi in the case. Justice Bhagwati later gives much momentum to the PIL movement. A Writ Petition in the form of PIL filed at the Filling Counter is dealt with like; any other Writ Petition and processed as such. In case of a letter addressed to Hon'ble the Chief Justice of India the same is dealt with in accordance with the guidelines framed for the purpose.

The High Court

- The High Court's stands at the head of the judiciary in a State. There shall be a High Court for each State (Article 214).
- The Judiciary in the States consists of a High Court and the Subordinate Courts. The Parliament can, however, establish by law, a common High Court for one or more State(s) and one or more Union Territory (Art 231).
- Every High Court shall be a Court of record (Art 215).
- The High Courts in India find their roots in the British Period when three High Courts namely Bombay, Madras and Calcutta were set-up in 1862.

■ Appointments of the Judges

- The judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned.
- For appointment of other judges, the chief justice of the concerned high court is also consulted.
- In case of a common high court for two or more states, the governors of all the states concerned are consulted by the president.

■ Additional and Acting Judges

- The President can appoint duly qualified persons as additional judges of a high court for a temporary period not exceeding two years when:
 - ▶ There is a temporary increase in the business of the high court; or
 - ▶ There are arrears of work in the high court.
- The President can also appoint a duly qualified person as an acting judge of a high court when a judge of that high court (other than the chief justice) is:
 - ▶ Unable to perform the duties of his office due to absence or any other reason; or
 - ▶ Appointed to act temporarily as chief justice of that high court .
- An acting judge holds office until the permanent judge resumes his office. However, both the additional and acting judge cannot hold office after attaining the age of 62 years.

■ Acting Chief Justice:

- The President can appoint a judge of a high court as an acting chief justice of the high court when:
 - ▶ The office of chief justice of the high court is vacant; or
 - ▶ The chief justice of the high court is temporarily absent; or
 - ▶ The chief justice of the high court is unable to perform the duties of his office

■ Removal of Judges

- Removal of a High Court Judge is governed by Articles 217 (1) (b) and 218 of the Constitution on the ground of proven misbehavior or incapacity. The words misbehavior or incapacity has neither been defined nor clarified in the Constitution.
- The complaint about misbehavior or incapacity against a judge has to be probed under the Judges (Inquiry) Act, 1968.

■ Qualifications for Judges

- The qualifications required under the Constitution for a person to be appointed as a Judge of a High Court :

- ▶ Must be a citizen of India; and
- ▶ Must have held a judicial office in the territory of India for at least ten years; or
- ▶ Must have been an advocate of a High Court or two or more such Courts in succession for at least ten years.

■ Transfer of a Judges between High Courts

- A Judge of a High Court can be transferred without his/her consent by the President (Article 222).
 - ▶ Consultation with the Chief Justice of India must be full and effective.
 - ▶ All relevant facts relating to the transfer of a Judge of a High Court must be provided to the Chief Justice of India.
 - ▶ The opinion provided by the Chief Justice shall have primacy and is binding on the President.

Jurisdiction of the High Courts

■ Original Jurisdiction

- It means the power of a high court to hear disputes in the first instance, not by way of appeal. It extends to the following:
 - ▶ Matters of admiralty, will, marriage, divorce, company laws and contempt of court
 - ▶ Disputes relating to the election of members of Parliament and state legislatures.
 - ▶ Regarding revenue matter or an act ordered or done in revenue collection.
 - ▶ Enforcement of fundamental rights of citizens.
 - ▶ Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.

■ Appellate Jurisdiction

- As Courts of appeal, all High Courts entertain appeals in civil and criminal cases from their subordinate courts as well as on their own.
- They have, however, no jurisdiction over tribunals established under the laws relating to the Armed Forces of the Country.
- The appellate jurisdiction of a high court is wider than its original jurisdiction.

Civil Matters: The civil appellate jurisdiction of a high court is as follows:

- First appeals from the orders and judgments of the district courts, additional district courts and other subordinate courts lie directly to the high court, on both questions of law and fact, if the amount exceeds the stipulated limit.
- Second appeals from the orders and judgments of the district court or other subordinate courts lie to the high court in the cases involving questions of law only (and not questions of fact).
- The Calcutta, Bombay and Madras High Courts have provision for intra court appeals. When a single judge of the high court has decided a case (either under the original or appellate jurisdiction of the high court), an appeal from such a decision lies to the division bench of the same high court.
- Appeals from the decisions of the administrative and other tribunals lie to the division bench of the state high court. In 1997, the Supreme Court ruled that the tribunals are subject to the writ jurisdiction of the high courts. Consequently, it is not possible for an aggrieved person to approach the Supreme Court directly against the decisions of the tribunals, without first going to the high courts.

Criminal Matters: The criminal appellate jurisdiction of a high court is as follows:

- Appeals from the judgments of session's court and additional session's court lie to the high court if the sentence is one of imprisonment for more than seven years. It should also be noted here

that a death sentence (popularly known as capital punishment) awarded by a sessions court or an additional sessions court should be confirmed by the high court before it can be executed, whether there is an appeal by the convicted person or not.

- In some cases specified in various provisions of the Criminal Procedure Code (1973), the appeals from the judgments of the assistant session's judge, metropolitan magistrate or other magistrates (judicial) lie to the high court.

■ Writ Jurisdiction

- Under Article 226 of the Constitution, the High Courts are given powers of issuing writs not only for the enforcement of the Fundamental Rights, but also for other purposes. In exercise of this power, a Court may issue the same type of writs, orders or directions which the Supreme Court is empowered to issue under Article 32.
- The jurisdiction to issue writs under this Article is larger in the case of High Courts, for which the Supreme Court can issue them only where a Fundamental Right has been infringed, a High Court can issue them not only in such cases, but also where an ordinary legal right has been infringed.

■ A Court of Record

- Every High Court shall be a Court of Record (Article 215). As a court of record, a High Court has two powers. There are as follows:
- The Judgments, proceedings and acts of the High Courts are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any subordinate Court.
- It has power to punish for contempt of Court, either with simple imprisonment or with fine as with both.

■ Administrative Functions

- The High Court control and supervise the working of the courts subordinate to them and frame rules and regulations for the transaction of their business. Under Article 227, every High Court has the power of superintendence over all the Courts and tribunals except those dealing with the Armed Forces functioning within its territorial jurisdiction.
- In exercise of this power, the High Court may
- call for returns from such Courts;
- make an issue general rules and prescribe forms for regulating the practice and proceedings of such Courts;
- Prescribe forms in which books and accounts shall be kept by the offices of any such Courts, and transfer cases from one Court to another.
- Under Article 235, the High Court exercise control over the District Courts and the subordinate courts in matters of posting, promotion etc. According to Article 229 of the Constitution, every High Court has been ensured a complete control over the members of its staff. The Chief Justice of the High Court is empowered to appoint officers and servants of the Court.

■ Control over Subordinate Courts

- Apart from above Jurisdiction the High Court also enjoys supervisory Jurisdiction over the subordinate Courts. These includes followings
 - ▶ Governor in consultation with High Courts appoints the district judges.
 - ▶ The administrative control of the High Courts over the District Courts and other lower courts is full in as much as postings, promotions and grant of leave etc. to any person belonging to the judicial service of a state and holding any post inferior to the post of judges is vested in High Court.
 - ▶ Article 236 is the interpretation clause and explains terms like district judge, judicial service etc.

- ▶ The High Court's Law is binding on all subordinate Courts functioning within its territorial's Jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

■ Independence of the High Court

- The Constitution seeks to secure the independence of Judges of the High Courts in the following ways:
 - ▶ A Judge of a High Court can only be removed by the President on an address of each House of the Parliament, passed by not less than two-third of the members present and voting and by a majority of that House only on the ground of proved misbehavior or incapacity.
 - ▶ After retirement, a Judge of a High Court cannot serve in any Court or before any authority in India except in the Supreme Court and a High Court other than the High Court in which he had held the office.
 - ▶ Their salaries and allowances cannot be changed to their disadvantage after their appointment except during a Financial Emergency.
 - ▶ Their salaries and allowances are charged on the Consolidated Fund of State and are not subject to vote in the State Legislature.
 - ▶ The conduct of the Judges of the High Court's cannot be discussed in the Parliament, except on a resolution for the removal of the Judges.

■ Subordinate Courts

- Under Art 235, of the Constitution of India, administrative control over members of the Subordinate Judicial Service rests with the concerned High Courts. Further, in exercise of powers conferred under provision to Art 309 read with Art 233 and 234 of the Constitution, State Government frames rules and regulations in consultation with the High Court in their state to administer Subordinate Courts. Members of the State Judicial Services are governed by these rules and regulations.
- As per the direction of the Supreme Court in the All India Judges Association case a uniform designation has been given to be Subordinate Judiciary's judicial officers all over the country, viz. District or Additional District Judge, Civil Judge (Senior Division) and Civil Judge (Junior Division on the civil side and on criminal side, Session Judge, Additional Sessions Judge, Chief Judicial Magistrate and Judicial Magistrate, etc, as laid down in the Code of Criminal Procedure (CrPC) 1973.

■ Alternative Dispute Resolution

- It encompasses arrange of means to resolve conflict without formal litigation, It seeks to reduce cost and delay and avoid the adversarial nature of litigation. ADR today falls into two broad categories- Court-driven Options and community based dispute resolution mechanisms (Lok Adalats)
- Court-driven options include mediation/conciliation where a neutral third party assists disputants in reaching a mutually acceptable solution.
- Conciliation is informal process designed to create an environment where negotiations can take place. If the parties fail to reach an agreement the case is referred to mediation.
- Mediation is a voluntary and confidential process where a neutral third party assists negotiations. The parties are responsible for reaching an agreement and the negotiator cannot impose settlement. If the mediation fails to reach agreement, the case is referred to arbitration.
- Arbitration is a form of private adjudication where a mutually acceptable third party hears arguments from either side in a dispute, and renders a judgment. The judgment is known as award and is confidential and binding.

■ Lok Adalat

- Community-driven resolution mechanism (Lok Adalat) literally means Peoples Court. It is an alternative dispute settlement Mechanism which settles disputes through conciliation and mediation. It helps in quick disposal of cases and the process is simple and carries no fees. Lok Adalats are statutory forums since the enactment of the Legal Services Authorities Act, 1987.

- All legal disputes pending in civil, criminal, revenue courts and tribunals can be taken to a Lok Adalat for amicable settlement except criminal cases which are - non-compoundable.
- The Lok Adalat is 'presided over by a sitting or retired judicial official or another person of respect and legal knowledge as the chairman, with two other members.
- Lok Adalats generally consist of judicial member a legal-practitioner and a social worker. The first Lok Adalat was held on 14 March, 1982, at Juragarh in Gujarat.
- They follow their own procedure. They have the power of Civil Court in respect of summoning of evidence, examination of Witnesses, requisitioning of public records etc. No lawyers are involved in the process. The awards passed have to be complied within a month.
- In the State of Punjab vs Jalour Singh (2008) case verdict the Supreme Court ruled that Lok Adalats have no adjudicatory or judicial functions and they are not courts.
- Their functions relate purely to conciliation. A Lok Adalat persuades the parties to come to an understanding and settlement and puts its seal of confirmation in terms of the compromise or settlement.
- These awards are final as there does not lie any appeal against the awards passed by a Lok Adalat.



COMMITTEES

Broadly, parliamentary committees are of two kinds—**Standing Committees and Ad Hoc Committees**.

The former are permanent (constituted every year or periodically) and work on a **continuous basis**, while the latter are temporary and cease to **exist on completion of the task assigned to them**.

■ Standing Committees

On the basis of the nature of functions performed by them, standing committees can be classified into the following six categories:

1. Financial Committees

- Public Accounts Committee
- Estimates Committee
- Committee on Public Undertakings

2. Departmental Standing Committees (24)

3. Committees to Inquire

- Committee on Petitions
- Committee of Privileges
- Ethics Committee

4. Committees to Scrutinize and Control

- Committee on Government Assurances
- Committee on Subordinate Legislation
- Committee on Papers Laid on the Table
- Committee on Welfare of SCs and STs
- Committee on Empowerment of Women
- Joint Committee on Offices of Profit

5. 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 Absence of Members from Sittings of the House

6. House-Keeping Committees or Service Committees (i.e., Committees concerned with the Provision of Facilities and Services to Members):

- General Purposes Committee
- House Committee
- Library Committee
- Joint Committee on Salaries and Allowances of Members



■ Committees in detail

Public Accounts Committee

- This committee was set up first in 1921 under the provisions of the **Government of India Act of 1919** and has since been in existence.
- At present, it 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 the single transferable vote.
- The term of office of the members is **one year**.
- **A minister cannot be elected as a member of the committee.**
- The chairman of the committee is appointed from amongst its members by the **Speaker**.
- **The chairman of the committee is selected from the Opposition.**
- The function of the committee is to examine the **annual audit reports of the Comptroller and Auditor General of India (CAG)**.
- **The CAG submits three audit reports to the President, namely, audit report on appropriation accounts, audit report on finance accounts and audit report on public undertakings.**
- The committee examines public expenditure not only from legal and formal point of view to discover technical irregularities but also from the point of view of economy, prudence, wisdom and propriety to bring out the cases of waste, loss, corruption, extravagance, inefficiency and nugatory expenses.
- Its recommendations are **advisory and not binding** on the ministries.

Estimates Committee

- The origin of this committee can be traced to the standing financial committee set up in 1921.
- It consists of **30 members**.
- All the thirty members are from **Lok Sabha only**.
- The chairman of the committee is **appointed by the Speaker** from amongst its members and he is invariably from the ruling party.
- The term of office is **one year**.
- It **examines every year only certain selected ministries and departments**. Thus, by rotation, it would cover all of them over a number of years.
- Its recommendations are **advisory and not binding** on the ministries.
- Its work is in the nature of a post-mortem.

Committee on Public Undertakings

- This committee was created in 1964 on the recommendation of the **Krishna Menon Committee**.
- It has **22 members** (15 from the Lok Sabha and 7 from the Rajya Sabha).
- Its members are elected according to the principle of **proportional representation** by means of a single transferable vote.
- The term of office of the members is **one year**.
- The chairman of the committee is appointed by the Speaker from amongst its members who are drawn from the **Lok Sabha only**.
- They examine the reports of the Comptroller and Auditor General on public undertakings.
- The committee is not to examine and investigate any of the following:
 - ▶ Matters of major government policy as distinct from business or commercial functions of the public undertakings
 - ▶ Matters of day-to-day administration
 - ▶ Matters for the consideration of which machinery is established by any special statute

Departmental Standing Committees

- On the **recommendation of the Rules Committee** of the Lok Sabha, Departmentally-Related Standing Committees (DRSCs) were set up in the Parliament in 1993.
- The main objective of the standing committees is to secure more accountability of the Executive to the Parliament, particularly financial accountability.
- The 24 standing committees cover under their jurisdiction all the ministries / departments of the Central Government.
- Each standing committee consists of 31 members (21 from Lok Sabha and 10 from Rajya Sabha).
- Out of the 24 standing committees, 8 work under the Rajya Sabha and 16 under the Lok Sabha.
- They consider the demands for grants of the concerned ministries / departments before they are discussed and voted in the Lok Sabha.
- Its report should not suggest anything of the nature of cut motions.
- They should not consider the matters of day-to-day administration of the concerned ministries / departments.

Consultative Committees

- Consultative committees are attached to various ministries / departments of the Central Government.
- They consist of members of both the Houses of Parliament.
- The Minister / Minister of State in charge of the Ministry concerned acts as the chairman of the consultative committee of that ministry.
- **These committees are constituted by the Ministry of Parliamentary Affairs.**
- These committees provide a forum for **informal discussions** between the ministers and the members of Parliament on policies and programmes.
- The maximum membership of a committee is 30 and the minimum is 10.
- These committees shall stand dissolved upon dissolution of every Lok Sabha and shall be reconstituted upon constitution of each Lok Sabha.
- In addition, separate Informal Consultative Committees of the members of Parliament are also constituted **for all the Railway Zones**.
- Unlike the Consultative Committees attached to various ministries / departments, the meetings of the Informal Consultative Committees are to be arranged during the **session periods only**.

Comptroller and Auditor General of India

- **Article 148** provides for an independent office of the Comptroller and Auditor General of India (CAG).
- He is the **head of the Indian Audit and Accounts Department**.
- He is the guardian of the public purse and controls the entire financial system of the country at both the levels—**the Centre and the state**.
- He is one of the **bulwarks of the democratic system of government in India**; the others being the Supreme Court, the Election Commission and the Union Public Service Commission.
- The CAG is appointed by the president of India by a warrant under his hand and seal.
- He holds office for a period of **six years or up to the age of 65 years**, whichever is earlier.
- He tables his resignation letter to the **president**.

■ Duties and Powers

- He audits the accounts related to all expenditure from the Consolidated Fund of India, consolidated fund of each state and consolidated fund of each union territory having a Legislative Assembly.

- He audits all expenditure from the Contingency Fund of India and the Public Account of India as well as the contingency fund of each state and the public account of each state.
- **He compiles and maintains the accounts of state governments.** In 1976, he was **relieved of his responsibilities with regard to the compilation and maintenance of accounts of the Central Government** due to the separation of accounts from audit, that is, departmentalization of accounts.
- He audits the accounts of any other authority when requested by the President or Governor.
- He advises the President with regard to prescription of the form in which the accounts of the Centre and the states shall be kept (Article 150).
- He submits his audit reports relating to the accounts of the Centre to President, and reports relating to state to Governor.

■ **Audit reports submitted by CAG to the President:**

- Audit report on appropriation accounts;
- Audit report on finance accounts; and
- Audit report on public undertakings;
- When President lays these reports before both houses of the Parliament, the Public Accounts Committee examines them and reports its findings to the Parliament



BASIC STRUCTURE OF THE CONSTITUTION

- Basic Structure means those basic fabrics of the Indian Constitution which cannot be hindered by an Act of Parliament.
- The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic structure' of the Constitution.
- There are series of cases which led to the emergence of Basic Structure in the Constitution.
- Following are the cases and their relevant outcomes:
 1. **Shankari Prasad case(1951)**
 - The Supreme Court ruled that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights.
 2. **GolakNath case(1967)**
 - The Supreme Court reversed its earlier stand.
 - The Supreme Court ruled that the Fundamental Rights are given a '**transcendental and immutable**' position and hence, the Parliament cannot abridge or take away any of these rights.
 3. **24th Amendment Act (1971).**
 - This was the reaction of Parliament to the Supreme Court judgment in GolakNath case.
 - **This Act amended Articles 13 and 368.**
 - It declared that under Article 368 the Parliament has the power to abridge or take away any of the Fundamental Rights and such an act will not be a law under the meaning of Article 13.
 4. **KesavanandaBharati case3 (1973)**
 - The Supreme Court overruled its judgment in the GolakNath case (1967).
 - It empowered the Parliament to abridge or take away any of the Fundamental Rights.
 - It also laid down a new doctrine of the '**basic structure**'.
 - **It ruled that under Article 368, the parliament is not empowered to amend the Basic Structure of the Constitution.**
 6. **42nd Amendment Act (1976)**
 - This Act amended Article 368 and declared that there is **no limitation** on the constituent power of Parliament.
 - It also widened its scope of amendment under Art.368. **No amendment can be questioned in any court** on any ground including that of the contravention of any of the Fundamental Rights.
 7. **Minerva Mills case**
 - Under this case, the Supreme Court invalidated the provisions mentioned in 42nd Amendment Act.
 - Supreme Court added that **Judicial Review** is the part of the Basic Structure of the Constitution.
 8. **WamanRao case(1981)**
 - Through this case, Supreme Court clarified that the doctrine of the 'basic structure' will apply to constitutional amendments enacted after April 24, 1973.

■ Elements of the Basic Structure

- There are no fixed elements as such under the Basic Structure of the Constitution.
- The Supreme Court is yet to decide and clarify it.
- But according to the various cases of Supreme Court, following list has been prepared under the Basic Structure:
 - ▶ Supremacy of the Constitution
 - ▶ Sovereign, democratic and republican nature of the Indian polity
 - ▶ Secular character of the Constitution
 - ▶ Separation of powers between the legislature, the executive and the judiciary
 - ▶ Federal character of the Constitution
 - ▶ Unity and integrity of the nation
 - ▶ Welfare state (socio-economic justice)
 - ▶ Judicial review
 - ▶ Freedom and dignity of the individual
 - ▶ Parliamentary system
 - ▶ Rule of law
 - ▶ Harmony and balance between Fundamental Rights and Directive Principles
 - ▶ Principle of equality
 - ▶ Free and fair elections
 - ▶ Independence of Judiciary
 - ▶ Limited power of Parliament to amend the Constitution
 - ▶ Effective access to justice
 - ▶ Principles (or essence) underlying fundamental rights.
 - ▶ Powers of the Supreme Court under Articles 32, 136, 141 and 142 & 20: Powers of the High Courts under Articles 226 and 227

Emergency Provisions

- The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360.
- This Part of the Constitution was added to help the Central Government to maintain the essence of the Constitution during abnormal situations.
- During an Emergency, the federal structure of the constitution turns unitary.
- The Constitution highlights three types of emergencies:
 - ▶ National Emergency (Article 352).
 - ▶ State Emergency/President's Rule (Article 356).
 - ▶ Financial Emergency (Article 360).

■ National Emergency

- Under Article 352, the President can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.
- This emergency can be declared even before the occurrence of the war, if President is satisfied that there is an imminent danger.
- The **38th Amendment Act of 1975** allowed the President to issue different proclamations on grounds of war, external aggression, armed rebellion, or imminent danger thereof, whether or not there is a proclamation already issued by him and such proclamation is in operation.

- The **42nd Amendment Act of 1976** enabled the president to limit the operation of a National Emergency to a specified part of India.
- The **44th Amendment Act of 1978** substituted the words 'armed rebellion' for 'internal disturbance'. It also introduced a safeguard to eliminate any possibility of the prime minister alone taking a decision to declare Emergency as happened in 1975.
- The President, can proclaim a national emergency **only after receiving a written recommendation from the cabinet.**
- The proclamation of Emergency must be approved by both the Houses of Parliament within **one month** from the date of its issue. This time limit was set by **44th Amendment Act of 1978.**
- If approved by both the Houses of Parliament, the emergency continues for **six months**, and can be extended to an indefinite period with an approval of the Parliament for every six months.
- Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority.
- A proclamation of emergency may be revoked by the President at any time by a subsequent proclamation. Such a proclamation **does not require the parliamentary approval.**
- Further, the President must revoke a proclamation if the Lok Sabha passes a resolution disapproving its continuation. Again, this safeguard was introduced by the 44th Amendment Act of 1978.

■ Effects of National Emergency

- While a proclamation of Emergency is in force, the normal fabric of the Centre–state relations undergoes a basic change. The federal structure is transformed into a unitary one.
- During a national emergency, the executive power of the Centre extends to directing any state regarding the manner in which its executive power is to be exercised. But the **state governments are not suspended.**
- During a national emergency, the Parliament becomes empowered to make laws on any subject mentioned in the State List. The laws made under such circumstances **become inoperative six months** after the emergency has ceased to operate.
- During a national emergency, the President can either reduce or cancel the transfer of finances from Centre to the states. Such modification **continues till the end of the financial year** in which the Emergency ceases to operate.
- While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond its normal term by a law of Parliament for **one year at a time** (for any length of time).
- **Articles 358 and 359** describe the effect of a National Emergency on the Fundamental Rights. **Article 358 deals with the suspension of the Fundamental Rights guaranteed by Article 19, while Article 359 deals with the suspension of other Fundamental Rights.**

■ President's Rule

- Article 355 imposes a duty on the Centre to ensure that the government of every state is carried on in accordance with the provisions of the Constitution.
- It is this duty in the performance of which the Centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in state.
- The President's Rule can be proclaimed under Article 356 on two grounds:
 - ▶ Article 356 empowers the President to issue a proclamation, if he is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the Constitution. Notably, the president can act either on a report of the governor of the state or otherwise too
 - ▶ Article 365 says that whenever a state fails to comply with or to give effect to any direction from the Centre, it will be lawful for the president to 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.

- A proclamation imposing President's Rule must be approved by both the Houses of Parliament within two months from the date of its issue
- If approved by both the Houses of Parliament, the President's Rule continues for **six months**.
- It can be extended for a maximum period of three years with the approval of the Parliament, every six months.
- **44th Amendment Act of 1978 brought the satisfaction of President's Rule under Judicial Review.**
- Every resolution approving the proclamation of President's Rule or its continuation can be passed by either House of Parliament only by a **simple majority**.

■ Consequences of President's Rule

- He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
- He can declare that the powers of the state legislature are to be exercised by the Parliament.
- He can take all other necessary steps including the suspension of the constitutional provisions relating to anybody or authority in the state.

■ Financial Emergency

- Article 360 empowers the president to proclaim a Financial Emergency.
- It arises under situation when the financial stability or credit of India or any part of its territory is threatened.
- A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
- Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely till it is revoked.
- A resolution approving the proclamation of financial emergency can be passed by either House of Parliament only by a **simple majority**.
- A proclamation of Financial Emergency may be revoked by the president at anytime by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

■ Effects of Financial Emergency

- The executive authority of the Centre extends to directions as the President may deem necessary and adequate for the purpose.
- Any such direction may include a provision requiring the reduction of salaries and allowances of all or any class of persons serving in the state; and the reservation of all money bills or other financial bills for the consideration of the President.
- The President may issue directions for the reduction of salaries and allowances of all or any class of persons serving the Union; and the judges of the Supreme Court and the high court.

CONSTITUTIONAL BODIES

■ Election Commission

- Article 324 deals with the Election Commission. It provides that the power of superintendence, direction and control of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India shall be vested in the election commission.
- It is a **permanent and an independent body**.
- It is common to both the Central government and the state governments.
- It consists of the chief election commissioner and other election commissioners, as the president may decide from time to time.
- **President appoints both the chief election commissioner and other election commissioners.**
- The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the president.
- The chief election commissioner and the two other election commissioners have **equal powers** and receive equal salary, allowances and other perquisites, which are similar to those of **a judge of the Supreme Court**.
- **They hold office for a term of six years or until they attain the age of 65 years, whichever is earlier.**

POWERS AND FUNCTIONS

- It determines the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.
- It prepares the electoral roll and registers all eligible voters.
- It grants recognition to the political parties and hence provides them with election symbols.
- It advises both the president and governor on matters relating to the disqualifications of the members of Parliament and member of state legislature respectively.
- It supervises the machinery of elections throughout the country to ensure free and fair elections.

■ Union Public Service Commission

- Articles 315 to 323 in Part XIV of the Constitution deals with Union Public Service Commission.
- It deals with the composition, appointment and removal of members along with the independence, powers and functions of the UPSC.
- The UPSC consists of a chairman and other members appointed by the **president of India**.
- The **President on his discretion** decides the number of members in the Commission.
- The chairman and members of the Commission hold office for a term of **six years or until they attain the age of 65 years**, whichever is earlier.
- The Constitution visualises the UPSC to be the '**watch-dog of merit system**' in India.
- UPSC is only a central recruiting agency.

- The role of UPSC is not only limited, but also recommendations made by it are only of advisory nature and hence, not binding on the government.
- The same structure exist in the state as well,consisting of sam organisational set up and ame kind of functions confined to that particular state.
- The **President** can remove the chairman or any other member of UPSC from the office under the following circumstances:
 - ▶ If he is adjudged an insolvent (that is, has gone bankrupt);
 - ▶ If he engages, during his term of office, in any paid employment outside the duties of his office; or
 - ▶ If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.

FUNCTIONS

- UPSC conducts the examination for appointments to the **all-India services, Central services and public services of the centrally administered territories.**
- It assists the states in recruiting candidates requiring special qualifications.(if asked for)
- 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 promotions and transfers from one service to another.
 - ▶ The suitability of candidates for appointments to civil services and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation. The concerned departments make recommendations for promotions and request the UPSC to ratify them.
 - ▶ Any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his official duties.
 - ▶ 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.

Joint State Public Service Commission (JSPSC)

- The **Constitution makes a provision** for the establishment of a Joint State Public Service Commission **for two or more states.**
- While the UPSC and the SPSC are created directly by the Constitution, a **JSPSC** can be created by an **act of Parliament** on the request of the state legislatures concerned. Thus, **a JSPSC is a statutory and not a constitutional body.**
- The chairman and members of a JSPSC are **appointed by the president.**
- They hold offi ce for a term of **six years or until they attain the age of 62 years**, whichever is earlier.
- They can be suspended or **removed by the president.** They can also resign from their offi ces at any time by submitting their resignation letters to the president.
- A **JSPSC presents its annual performance report to each of the concerned state governors.** Each governor places the report before the state legislature.

■ National Commission For SCs

- It's a constitutional body as it is directly established by **Article 338** of the Constitution.
- On the other hand, the other national commissions like the National Commission for Women (1992) etc are statutory bodies in the sense that they are **established by acts of the Parliament.**
- The separate National Commission for SCs came into existence in 2004.

- Originally, Article 338 of the Constitution provided for the appointment of a Special Officer for Scheduled Castes (SCs) and Scheduled Tribes (STs).
- But **89th Constitutional Amendment Act of 2003** bifurcated the combined National Commission for SCs and STs into two separate bodies, namely, National Commission for Scheduled Castes (under **Article 338**) and National Commission for Scheduled Tribes (under **Article 338-A**).
- It consists of a **chairperson, a vice-chairperson and three other members** who are appointed by the President.
- The commission **presents an annual report to the president.**

Functions and Power

- The Commission is vested with the power to regulate its own procedure.
- The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:
 - ▶ summoning and enforcing the attendance of any person from any part of India and examining him on oath;
 - ▶ requiring the discovery and production of any document;
 - ▶ receiving evidence on affidavits;
 - ▶ requisitioning any public record from any court or office issuing summons for the examination of witnesses and documents; and
 - ▶ Any other matter which the President may determine.
- The Central government and the state governments are required to consult the Commission on all major policy matters affecting the SCs.

■ National Commission for STs

- The **National Commission for Scheduled Tribes (STs) is also a constitutional body** in the sense that it is directly **established by Article 338-A** of the Constitution.
- The Commission was established under Article 338 of the Constitution with the objective of monitoring all the safeguards provided for the SCs and STs under the Constitution or other laws.
- It consists of a **chairperson, a vice-chairperson and three other members.**
- They are **appointed by the President** by warrant.
- Their **conditions of service and tenure of office are also determined by the President.**
- The **Commission presents an annual report to the President.**
- **Functions of the Commission**
- To investigate and **monitor all matters relating to the constitutional and other legal safeguards for the STs** and to evaluate their working;
- To **inquire into specific complaints with respect to the deprivation of rights and safeguards of the STs;**
- To participate and advise on the **planning process of socio-economic development** of the STs and to evaluate the progress of their development under the Union or a state;
- To present to the President, **reports upon the working of those safeguards;**
- To make recommendations for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the STs.

■ Finance Commission

- The Constitution has made an effort to allocate every possible source of revenue either to the Union or the States and for the purpose of allocation of certain sources of revenue, between them 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.
- Finance Commission is to be constituted by the President every 5 years. The Chairman must be a person having 'experience in public affairs'. Other four members must be appointed from amongst the following:-
 - ▶ A High Court Judge or one qualified to be appointed as High Court Judge;
 - ▶ A person having knowledge of the finances and accounts of the Government;
 - ▶ A person having work experience in financial matters and administration;
 - ▶ A person having special knowledge of economics.

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.

■ Attorney-General of India

- The Attorney-General of India is the **first Law Officer** of the Government of India.
- The Attorney-General is **appointed by the President** and he holds office during the **pleasure of the President**.
- In order to be appointed as the Attorney General of India, a person must have **qualified to be appointed as a Judge of the Supreme Court**.
- **Functions and Responsibilities**
- **To give advice** on such legal matters and to perform such other duties of a legal character as may, from time to time, be referred or assigned to him by the President; and
- To discharge the functions conferred on him by the Constitution or any other law for the time being in force **[Art. 76]**
- In the performance of his official duties, the Attorney-General shall have **a right of audience in all Courts in the territory of India**.
- He represents the Union & the States before the courts but is also **allowed to take up private practice** provided the other party is not the state. Because of this **he is not paid salary but a retainer to be determined by the President**. The Attorney-General gets a retainer equivalent to the salary of a Judge of the Supreme Court.
- It is a political appointment, and therefore, whenever there is a change in the party in power, the Attorney-General resigns from his post to enable the new government to appoint a nominee of its choice.
- The Attorney-General is **assisted by two Solicitors-General** and **four Additional Solicitors-General**.

■ Special Officer for Linguistic Minorities

- Originally, the **Constitution of India did not make any provision with respect to the Special Officer for Linguistic Minorities**.
- Later, the States Reorganisation Commission (1953-55) made a recommendation in this regard.

- Accordingly, the **Seventh Constitutional Amendment Act of 1956** inserted a new **Article 350-B** in **Part XVII** of the Constitution.
- 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.
- **Commissioner for Linguistic Minorities**
- Under the provisions of Article 350-B of the Constitution, the office of the Special Officer for Linguistic Minorities was created in 1957.
- He is designated as the Commissioner for Linguistic Minorities.
- He maintains liaison with the State Governments and Union Territories through nodal officers appointed by them.
- At the Central level, the Commissioner falls under the Ministry of Minority Affairs. Hence, he submits the annual reports or other reports to the President through the Union Minority Affairs Minister.

■ National Commission for Backward Classes (NCBC)

- Parliament in August 2018 has passed the Constitution (123rd Amendment) Act, which grants Constitutional status to the National Commission for Backward Classes.
- The act provides for the grant of constitutional status to the National Commission for Backward Classes (NCBC) on par with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes.
- It states that the President may specify the socially and educationally backward classes in the various states and union territories. He may do this in consultation with the Governor of the concerned state.
- The National Commission for Backward Classes is **not yet empowered to look into the grievances of persons of Other Backward Classes**. This responsibility continues to be vested with the **National Commission for Scheduled Castes**.
- The central and state governments will be required to consult with the NCBC on all major policy matters affecting the socially and educationally backward classes.
- The NCBC will be required to present annual reports to the President on working of the safeguards for backward classes.

Non Constitutional Bodies

■ NITI Aayog

- NITI Aayog (Policy Commission) or **National Institution for Transforming India** was established via a **Union Cabinet resolution** on January 1, 2015 as a premier **Policy Think Tank** of the Union Government.
- It's an extra-constitutional, non-statutory and advisory body.
- **Aims and Functions of Niti Aayog**
- The key **objectives to establish NITI Aayog** were as follows:
 - To work as an advisory body to give directional and strategic inputs to Union Government and also State governments on request.
 - Put an end to the slow and tardy implementation of the policy by fostering inter-ministry, inter-state and centre-state coordination.
 - To foster cooperative federalism on the principle of Strong states make a strong nation.
 - To replace the top-down development approach with bottom-top development approach.
 - To design policy framework for weaker section of society that may not have benefited from economic progress.

- To create a knowledge, innovation and entrepreneurial support system via a community of national and international experts, practitioners and partners.
- To serve as a platform for resolution of inter-sectoral and inter-departmental issues in order to accelerate the implementation of the development agenda.
- To monitor and evaluate the implementation of programmes, and focus on technology upgradation and capacity building.
- On the basis of above, functions of NITI Aayog can be divided into four categories viz.
 - ▶ To act as a Resource Centre & Knowledge Hub
 - ▶ Design Policy & Programme Framework
 - ▶ Foster Cooperative Federalism
 - ▶ Monitoring and Evaluation.

Composition of NITI Ayog

- **Chairperson**-Prime Minister
- **Governing Council**- Its members are **Chief Ministers and Administrators of the Union Territories**
- **Regional Councils**-These are created as per need and its members would be chief ministers and administrators of UTs of respective regions.
- **Vice-Chairperson**- The Vice-chairperson of the Niti Aayog is **appointed by Prime Minister**.
- Further, the NITI Aayog has full time members (number unspecified), part time members (maximum 2, these would be scholars from universities and research institutions), Ex-officio members (maximum 4, these are ministers from Union Council of Ministers), Special Invitees (appointed by PM for fixed tenure).
- Finally, there is a Chief Executive Officer (CEO) of the Niti Ayog, who is appointed by Prime Minister and has a rank similar to Secretary to the Government of India.

■ National Human Rights Commission

- The National Human Rights Commission is a statutory (and not a constitutional) body. It was established in 1993 under a legislation enacted by the Parliament, namely, the Protection of Human Rights Act, 1993. This Act was amended in 2006.

COMPOSITION OF THE COMMISSION

- The commission is a multi-member body consisting of a chairman and four members. The chairman should be a retired chief justice of India, and members should be serving or retired judges of the Supreme Court, a serving or retired chief justice of a high court and two persons having knowledge or practical experience with respect to human rights.
- In addition to these fulltime members, the commission also has four ex-officio members—the chairmen of the National Commission for Minorities, the National Commission for SCs, the National Commission for STs and the National Commission for Women.
- The chairman and members are appointed by the president on the recommendations of a six-member committee consisting of the prime minister as its head, the Speaker of the Lok Sabha, the Deputy Chairman of the Rajya Sabha, leaders of the Opposition in both the Houses of Parliament and the Central home minister. Further, a sitting judge of the Supreme Court or a sitting chief justice of a high court can be appointed only after consultation with the chief justice of India.
- The chairman and members hold office for a term of five years or until they attain the age of 70 years, whichever is earlier. After their tenure, the chairman and members are not eligible for further employment under the Central or a state government.
- The president can remove the chairman or any member from the office under the following Circumstances:
 - ▶ If he is adjudged an insolvent; or

- ▶ If he engages, during his term of office, in any paid employment outside the duties of his office; or
 - ▶ If he is unfit to continue in office by reason of infirmity of mind or body; or
 - ▶ If he is of unsound mind and stand so declared by a competent court; or
 - ▶ If he is convicted and sentenced to imprisonment for an offence.
- In addition to these, the president can also remove the chairman or any member on the ground of proved misbehavior or incapacity.
 - However, in these cases, the president has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the president can remove the chairman or a member.
 - The salaries, allowances and other conditions of service of the chairman or a member are determined by the Central government. But, they cannot be varied to his disadvantage after his appointment.

■ Central Bureau of Investigation

- Central Bureau of Investigation (CBI) was set up in 1963 by a resolution of the Ministry of Home Affairs.
- Later, it was transferred to the Ministry of Personnel and now it enjoys the status of an attached office.
- It comes under the administrative control of the Department of Personnel and Training (DoPT) of the Ministry of Personnel.
- The CBI is the main investigating agency of the Central Government. It plays an important role in the prevention of corruption and maintaining integrity in administration. It also provides assistance to the Central Vigilance Commission and Lokpal.

The Lokpal and Lokayuktas Act (2013) amended the Delhi Special Police Establishment Act (1946) and made the following changes with respect to the composition of the CBI:

- The Central Government shall appoint the Director of CBI on the recommendation of a three-member committee consisting of the Prime Minister as Chairperson, the Leader of Opposition in the Lok Sabha and the Chief Justice of India or Judge of the Supreme Court nominated by him.
- There shall be a Directorate of prosecution headed by a Director for conducting the prosecution of cases under the Lokpal and Lokayuktas Act, 2013. The Director of Prosecution shall be an officer not below the rank of Joint Secretary to the Government of India. He shall function under the overall supervision and control of the Director of CBI. He shall be appointed by the Central Government on the recommendation of the Central Vigilance Commission. He shall hold office for a period of two years.
- The Central Government shall appoint officers of the rank of SP and above in the CBI on the recommendation of a committee consisting of the Central Vigilance Commissioner as Chairperson, the Vigilance commissioners, the Secretary of the Home Ministry and the Secretary of the Department of Personnel.
- Later, the Delhi Special Police Establishment (Amendment) Act, 2014 made a change in the composition of the committee related to the appointment of the Director of C.B.I. It states that where there is no recognized leader of opposition in the Lok Sabha, then the leader of the single largest opposition party in the Lok Sabha would be a member of that committee.

■ Central Vigilance Commission

- 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 conceived to be the **apex vigilance institution**, free of control from any executive authority, monitoring all vigilance activity under the Central Government.
- It **advises various authorities** in Central Government organizations in **planning, executing, reviewing and reforming their vigilance work**.

- The **Central Vigilance Commission Act 2003** came into effect from 2003.
- 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
- CVC shall have all the **powers of a civil court** while conducting any inquiry under sec 11 of the Act.



CENTRE-STATE RELATIONS

- The distribution of powers is an essential feature of federalism.
- A federal constitution establishes the dual polity with the Union at the centre and the States at the periphery, each endowed with the sovereign powers to be exercised in the field assigned to them respectively by the constitution.
- The state is not subordinate to the centre in its own field; the authority of one is to co-ordinate with the other.
- In the Indian federal set-up, the constitution divides powers between centre and states as:
 - ▶ **Legislative**
 - ▶ **Administrative**
 - ▶ **Financial**

A. Legislative Relations (Article 245)

The various legislative dimensions shared between centre and states are mentioned below:

■ Related to Territorial Powers

- **Article 245(1):** Parliament is competent to make laws for whole or any part of territory of India. Legislature of State may make laws for whole or any part of State.
- Laws made by Parliament can have extra-territorial effect (outside of Indian Territory). Laws of Parliament also govern the Indian Subjects and their property in any part of the world. **Article 245 (2)**
- For certain UTs like Andaman & Nicobar, Lakshadweep and Dadra & Nagar Haveli, regulations made by the President have the same force as the Acts of Parliament and such regulations may repeal or amend a law made by Parliament in relation to such territory.
- The application of Acts of Parliament to any scheduled Area may be barred or modified by notifications made by the Governor.
- Governor of Assam may direct that any other Act of Parliament shall not apply to an autonomous district or tribal region. Similar powers have been vested with President regarding tribal region in the states of Meghalaya, Tripura and Mizoram.

■ Related to Legislative Powers

- In distributing subject matters between the Centre and States, our constitution makers followed Canadian scheme. However, they added one more list to it, Concurrent List. (GoI Act 1935 had 3 fold enumerations :(Federal, Provincial and Concurrent). **3 Lists are: Union List, State List and Concurrent List.**
- Subjects mentioned in the Union List are of national importance and only Parliament is competent to make laws on these subjects. For State List, only the States have exclusive power to make laws.
- Concurrent List is a "Twilight Zone", where both the Union and States are competent to make law, without any conflict. In case of a conflict between the Central law and the State law, the Central law prevails over the state law.

- Residuary Powers (Article 248): Parliament has exclusive power to make laws on the subjects not enumerated in any of the 3 Lists (Entry 97 of Union List). Such powers include the power of making any law imposing a tax not mentioned in any of the 3 Lists. Whether a particular subject falls under the residuary power or not is determined by courts.
- To determine whether a particular enactment falls under one Entry or the other, it is the Pith and Substance of such enactment and not its legislative level that is taken account of. Pith and Substance here means the true object of the legislation or statute, and the competence of Legislature, which enacts it.
- Colourable Legislation: The motives of the Legislature are, otherwise, irrelevant for determining whether it has transgressed the constitutional limits of the Legislative power. This principle is based on the maxim that you cannot do indirectly what you cannot do directly.

■ Related to Parliament's Powers to Make Laws in State

- **Under Article 249**, in the national interest, Parliament has the power to make laws w.r.t. any matter included in the State list, for a temporary period, if Rajya Sabha passes a resolution supported by **2/3rd of the members present and voting** in that respect. The resolution remains in force for one year; it can be renewed any number of times but not exceeding one year at a time. This provision does not restrict the power of a state legislature to make laws on the same matter. But, in case of inconsistency between a state law and a parliamentary law, the latter is to prevail.
- Under the Proclamation of Emergency, **Article 250** empowers that Parliament to make laws for the whole or any part of the territory of India w.r.t. all matters in the State list. Such a law however shall cease to effect on the expiration of 6 months after the proclamation of emergency has ceased to operate. Here also, the power of a state legislature to make laws on the same matter is not restricted. But, in case of repugnancy between a state law and a parliamentary law, the latter is to prevail.
- **Under Article 252**, if the Legislatures of two or more States pass a resolution to the effect that it is desirable to have a Law passed by Parliament on any matters in State List common to these States, Parliament can make Laws in that respect. Such a law can be amended or repealed only by the Parliament and not by the legislatures of the concerned states. The effect of passing a resolution under the above provision is that the Parliament becomes entitled to legislate with respect a matter for which it has no power to make a law. On the other hand, the state legislature ceases to have the power to make a law with respect to that matter. The resolution operates as abdication or surrender of the power of the state legislature with respect to that matter and it is placed entirely in the hands of Parliament which alone can then legislate with respect to it.
- Under **Article 253**, Parliament has power to make any law for the whole or any part of the territory of India for implementing treaties and international agreements and conventions.
- Under **Article 256**, Parliament is empowered to make laws w.r.t. all matters in the State list when there is failure of constitutional machinery of the State under Article 356. A law made so by the Parliament continues to be operative even after the President's rule. This means that the period for which such a law remains in force is not co-terminus with the duration of the President's rule.

■ Sarkaria Commission's Opinion on Legislative Relations

- The central theme of the criticism levelled before the Commission against the working of Union-State legislative relations is 'over-centralization'. Commission opined that:
- **Regarding Article 246 and 254:** If the principles of Union Supremacy are excluded from these articles, it is not difficult to imagine its deleterious results. There will be every possibility of our two-tier political system being stultified by interference, strife, legal chaos and confusion caused by a host of conflicting laws.
- **Regarding residuary powers:** Powers related to taxation should remain with Parliament, while the other residuary powers should be placed in Concurrent List.
- **Regarding Union List:** Commission feels that the proposed redistribution on powers would require drastic changes in the basic scheme and framework of the Constitution so dedicatedly designed to protect the independence and ensure the unity and integrity of the country.

- **Regarding Concurrent List:** Commission observes that the demand for abolition of the Concurrent List would be a retrograde step. Such abolition would involve a drastic change in the fundamental scheme and framework of the Constitution.

B. Administrative Relations

- During the time of Emergency, Indian constitutional works like a unitary Government. In normal times, there are constitutional provisions, which ensure the control of the Union over the states. Some of the mechanisms are:
 - **Distribution of Executive Powers**-The executive power has been divided between the Centre and the states on the lines of the distribution of legislative powers, except in few cases. Thus, the executive power of the Centre extends to the whole of India. Similarly, the executive power of state extends to its territory in respect of matters on which the state legislature has exclusive power of legislation (i.e., the subjects enumerated in the State List).
 - In respect of matters on which both the Parliament and the state legislatures have power of legislation (i.e., the subjects enumerated in the Concurrent List), the executive power rests with the states except when a Constitutional provision or a parliamentary law specifically confers it on the Centre.
 - Further **Article 257** provides that States must exercise their executive power in such a way so as not to impede or prejudice the exercise of the executive power of the Union in the State.
 - **Article 256** provides that the executive power of the State shall be so exercised as to ensure compliance with the laws made by the Parliament and executive power of the Union shall also extend to the giving of such directions to a state as it may deem essential for the purpose.
 - **Center's Directions to the States** - The Centre is empowered to give directions to the states with regard to the exercise of their executive power in the following matters:
 - ▶ The construction and maintenance of means of communication (declared to be of national or military importance) by the state;
 - ▶ The measures to be taken for the protection of the railways within the state;
 - ▶ The provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups in the state; and
 - ▶ The drawing up and execution of the specified schemes for the welfare of the Scheduled Tribes in the state.
 - Constitution prescribes coercive sanction for the enforcement of its directions through Article 356.
 - **Delegation of Union Functions to the States**
 - ▶ Under **Article 258(1)**, The President with the consent of the Governor of a state entrust either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive power of the Union extends.
 - ▶ Under **Article 258(2)**, Parliament is empowered to use State machinery for the enforcement of Union Laws. For such purpose, it can confer powers or impose duties on State functionaries.
 - ▶ The Constitution also makes provision for the entrustment of the executive functions of the centre to a state without the consent of the state. But, in this case the delegation is by the parliament and not by the President.
 - ▶ All India Services are common to both the Union and the States. The officers of these services are appointed and regulated by the Centre and are placed in various States.
 - ▶ Grants in-aid (**Article 275**): Parliament has power to make such grants as it may deem necessary to give financial assistance to any State, which is in need of such assistance (**Article 275**).
 - ▶ **Article 261** provides that full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and every State.
 - ▶ **Article 261(3)** declares that final judgment or orders delivered or passed by civil courts in any part of territory of India can be executed anywhere in the country.

- ▶ **Article 262:** Adjudication of disputes relating to waters of inter-state rivers or river valleys. **Article 262(2)** provides that Parliament may by Law provide that neither the SC nor any other court shall exercise jurisdiction in respect of any such dispute.
- ▶ Under **Article 263**, President has power to establish Inter-State Councils and define its duties, organization and procedure. These councils have duty of inquiring into and advising upon disputes, which arises between the States. These Councils also investigate and discuss the subjects of common interest between the Union and States or between two or more states and make recommendations on any such subject for better coordination of policy and action. The President has so far established Central Council of Health, a central Council of Local Self-Government and a Transport Development Council.
- ▶ Parliament has power to constitute an Inter-State Commerce Commission (Article 307) and empower it to execute such functions as it may deem fit.

■ Sarkaria Commission's Opinion on Administrative Relations

- In a two-tier system of government, where the administration of Union Law is largely secured through the machinery of the State, differences are bound to arise in regard to manner of implementation of Union laws. Article 256 and 257 are essential to ensure harmonious exercise of executive power by the Union and the States.
- Before issuing directions to a State under Articles 256 and 257, the Union should explore the possibilities of settling points of conflict by all other available means. A direction under these provisions and application of the sanction under Article 365 in the event of its non-compliance is a measure of last resort.
- Federalism is more a functional arrangement for co-operative action, than a static institutional concept. Article 258 provides a tool, by the liberal use of which, co-operative federalism can be substantially realized in the working of the system. The commission recommends a more extensive and generous use of this Article.

C. Financial Relations

- Articles 268 to 293 in Part XII of the Constitution deal with Centre-state financial relations.
- Finance Commission (Article 280) recommends to the President on the distribution of net proceeds of taxes between the centre and states.
- Constitution divides the taxing powers between the Central and states in following way:
 - ▶ Parliament has an exclusive power to levy taxes enumerated in the Union List.
 - ▶ State Legislature has exclusive power to levy the taxes enumerated in the state list. Both the Parliament and the state legislature can levy the taxes enumerated in the Concurrent List.
 - ▶ The residuary power of taxation (that is, the power to impose the taxes not enumerated in any of the three lists) is vested in the Parliament. Under this provision, the parliament has imposed gift tax, wealth tax and expenditure tax.
- Parliament can provide for grants-in-aid to states by the Centre. Such sums are charged on the Consolidated Fund of India (Article 275).
- The Union can make public purpose grants to states and to any institution within the states (Article 282).
- **Grants-in-Aid to the States** - Besides sharing of taxes between the Centre and the states, the Constitution provides for grants-in-aid to the states from the Central resources. There are two types of grants-in-aid, viz, statutory grants and discretionary grants:
 - ▶ **Statutory Grants** - Article 275 empowers the Parliament to make grants to the states which are in need of financial assistance and not to every state. These sums are charged on the Consolidate Fund of India every year.
- Apart from this general provision, the Constitution also provides for specific 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.

- The statutory grants under **Article 275** (both general and specific) are given to the states on the recommendation of the Finance Commission.
 - ▶ **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.
 - ▶ **Other Grants** - The Constitution also provided for a third type of grants-in-aid, but for a temporary period.
- Thus, a provision was made for grants in lieu of export duties on jute and jute products to the States of Assam, Bihar, Orissa and West Bengal. These grants were to be given for a period of ten years from the commencement of the Constitution. These sums were charged on the Consolidated Fund of India.
- **Borrowing by the Centre and the States**
 - ▶ The centre can grant loans to states and also give guarantee in respect of loans raised by them
 - ▶ **(Article 293).**
 - ▶ 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.
 - ▶ 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.
- Parliament can impose restrictions on Inter-state trade and commerce in the public interest (**Article 302**).
- The accounts of the states shall be kept in such form as prescribed by the president on the advice of the Comptroller and Auditor-General of India (Article 150).

Inter-Governmental Tax Immunities

- ▶ **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.

■ Goods and Services tax

- GST (101st amendment of the constitution) aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level. By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it would mitigate the ill effects of cascading, improve competitiveness and improve liquidity of the businesses. GST is a destination based tax. It follows a multi-stage collection mechanism. In this, tax is collected at every stage and the credit of tax paid at the previous stage is available as a set off at the next stage of transaction. This shifts the tax incidence near to the consumer and benefits the industry through better cash flows and better working capital management.
- The important changes made to the Constitution are:
 - ▶ Article 246 (A) This is a new article inserted in the constitution. It says that (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, has power to make laws with respect to goods and services tax imposed by the Union or by such State. (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.
 - ▶ **Article 269A:** Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.
 - ▶ Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.
- Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.
 - ▶ **Article 279-A:** This article provides for constitution of a GST council by president within sixty days from this act coming into force. **The GST council will constitute the following members:**
- **Union Finance Minister** as chairman of the council
- **Union Minister of State** in charge of Revenue or Finance
- **One nominated member from each state who is in charge of finance or taxation.**
- **The GST would replace the following taxes currently levied and collected by the Centre:**
 - ▶ Central Excise Duty
 - ▶ Duties of Excise (Medicinal and Toilet Preparations)
 - ▶ Additional Duties of Excise (Goods of Special Importance)
 - ▶ Additional Duties of Excise (Textiles and Textile Products)
 - ▶ Additional Duties of Customs (commonly known as CVD)
 - ▶ Special Additional Duty of Customs (SAD)
 - ▶ Service Tax
 - ▶ Central Surcharges and Cesses so far as they relate to supply of goods and services
- **State taxes that would be subsumed under the GST are:**
 - ▶ State VAT
 - ▶ Central Sales Tax
 - ▶ Luxury Tax
 - ▶ Entry Tax (all forms)
 - ▶ Entertainment and Amusement Tax (except when levied by the local bodies)

- ▶ Taxes on advertisements
- ▶ Purchase Tax
- ▶ Taxes on lotteries, betting and gambling
- ▶ State Surcharges and Cesses so far as they relate to supply of goods and services
- The list of exempted goods and services would be common for the Centre and the States.
- **An Integrated tax (IGST)** would be levied and collected by the Centre on inter-State supply of goods and services. Accounts would be settled periodically between the Centre and the States to ensure that the SGST/UTGST portion of IGST is transferred to the destination State where the goods or services are eventually consumed.

Zonal Councils

- Zonal Councils aim at promoting cooperation & coordination between States, UTs and the Centre.
- They discuss & make recommendations regarding common matters.
- They are only deliberative and advisory bodies.
- These are statutory bodies created by States Reorganization Act of 1956.
- The Act divided the country into 5 zones:
 - ▶ Northern Zone
 - ▶ Central Zone
 - ▶ Eastern Zone
 - ▶ Western Zone
 - ▶ Southern Zone
- **Each zonal council consist of:**
 - ▶ From Centre – Home Minister (acts as a chairman)
 - ▶ From States - CM of all States in Zone + 2 other ministers (Each CM acts as a Vice-Chairman by rotation, holding office for a period of 1 year at a time)
 - ▶ Administrators of all UTs in the zone
 - ▶ Following can be associated as advisors (without right to vote)
 - ▶ One person nominated by Planning Commission.
 - ▶ Chief Secretary of each state in the zone.
 - ▶ Development Commissioner of each state in the Zone.
- **North-Eastern Council**
 - ▶ In addition to the above Zonal Councils, a North-Eastern Council was created by a separate Act of Parliament—the North-Eastern Council Act of 1971.
 - ▶ Its members include Assam, Manipur, Mizoram, Arunchal Pradesh, Nagaland, Meghalaya, Tripura and Sikkim. Its functions are similar to those of the zonal councils, but with few additions.
 - ▶ It has to formulate a unified and coordinated regional plan covering matters of common importance.
 - ▶ It has to review from time to time the measures taken by the member states for the maintenance of security and public order in the region.

POLITICAL DYNAMICS

Political Parties

- Political parties are **voluntary associations or organised groups** of individuals who share the **same political views** and who try to gain political power through **constitutional means** and who desire to work **for promoting the national interest**.
- There are four types of political parties in the modern democratic states, viz.,
 - ▶ **Reactionary parties** which cling to the old socio-economic and political institutions;
 - ▶ **Conservative parties** which believe in the status-quo;
 - ▶ **Liberal parties** which aim at reforming the existing institutions; and
 - ▶ **Radical parties** which aim at establishing a new order by overthrowing the existing institutions.
- According to the political scientists, the radical parties are known as the left wing, the liberal parties the central wing and reactionary and conservative parties clubbed into the right wing group.
- There are three kinds of party systems in the world, viz.,
 - ▶ **One party system** in which only one ruling party exists and no opposition is permitted, as for example, in the former communist countries like the USSR and other East European countries;
 - ▶ **Two-party system** in which two major parties exist, as for example, in USA and Britain; and
 - ▶ **Multi-party system** in which there are a number of political parties leading to the formation of coalition governments, as for example, in France, Switzerland and Italy.

The various characteristics of the Multi-Party system are mentioned below:

- Multi-Party System
- One-Dominant Party System
- Lack of Clear Ideology
- Personality Cult
- Based on Traditional Factors
- Emergence of Regional Parties
- Factions and Defections
- Lack of Effective Opposition

■ Recognition of National and State Parties

- The Election Commission registers political parties for the purpose of elections and grants them recognition as national or state parties on the basis of their poll performance.
- The other parties are simply declared as **registered unrecognised parties**.

Conditions for Recognition as a National Party

- At present (2016), a party is recognised as a **national party** if any of the following conditions is fulfilled:

- ▶ If it secures six per cent of valid votes polled in any four or more states at a general election to the Lok Sabha or to the legislative assembly; and, in addition, it wins four seats in the Lok Sabha from any state or states; or
- ▶ If it wins two per cent of seats in the Lok Sabha at a general election; and these candidates are elected from three states; or
- ▶ If it is recognised as a state party in four states.

Conditions for Recognition as a State Party

- At present (2016), a party is recognised as a state party in a state if any of the following conditions is fulfilled:
- If it secures six per cent of the valid votes polled in the state at a general election to the legislative assembly of the state concerned; and, in addition, it wins 2 seats in the assembly of the state concerned; or
- If it secures six per cent of the valid votes polled in the state at a general election to the Lok Sabha from the state concerned; and, in addition, it wins 1 seat in the Lok Sabha from the state concerned; or
- If it wins three per cent of seats in the legislative assembly at a general election to the legislative assembly of the state concerned or 3 seats in the assembly, whichever is more; or
- If it wins 1 seat in the Lok Sabha for every 25 seats or any fraction thereof allotted to the state at a general election to the Lok Sabha from the state concerned; or
- If it secures eight per cent of the total valid votes polled in the state at a General Election to the Lok Sabha from the state or to the legislative assembly of the state. This condition was added in 2011.

Electoral Reforms

There are various committees and commissions which have examined our electoral system, election machinery as well as election process since 1988 and suggested certain reforms which are mentioned below:

- **Lowering of voting Age:** The 61st Constitutional Amendment Act of 1988 reduced the voting age from 21 years to 18 years for the Lok Sabha as well as the assembly elections.
- **Increases in number of Proposers:** In 1988, the number of electors who are required to sign as proposers in nomination papers for elections to the Rajya Sabha and state legislative council has been increased to 10% of the electors of the constituency or 10 such electors, whichever is less. This was done in order to prevent frivolous candidates from contesting.
- **Electronic voting Machines:** In 1989, a provision was made to facilitate the use of EVMs in elections. The EVMs were used for the first time in 1998 on experimental basis in selected constituencies in the election to the Assemblies of Rajasthan, Madhya Pradesh and Delhi. The EVMs were used for the first time in the general elections (entire state) to the Assembly of Goa in 1999.
- **Booth Capturing:** In 1989, a provision was made for adjournment of poll or countermanding of elections because of booth capturing. Booth capturing includes: (i) Seizures of a polling station and making polling authorities surrender ballot papers or voting machines; (ii) taking possession of polling station and allowing only one's own supporters to exercise their franchise; (iii) threatening and preventing any elector from going to polling station; and (iv) seizure of a place for counting of votes.
- **Presidential and Vice-Presidential Elections:** In 1997, the number of electors as proposers and secondary for contesting election to the office of the President was increased from 10 to 50 and to the office of the vice-president from 5 to 20. Further, the amount of security deposit was increased from Rs. 2,500 to Rs. 15,000 for contesting election to both the offices of president and vice-president to discourage frivolous candidates.
- **Voting Through Postal Ballot:** In 1999, a provision was made for voting by certain classes of persons through postal ballot. Thus, any class of persons can be notified by the election Commission, in consultation with the government, and the persons belonging to such notified class can give their votes by postal ballot, and not in any other manner, at elections in their constituency or constituencies. In 1990, the National Front Government appointed a Committee on Electoral Reforms under the chairmanship of **Dinesh Goswami**. The Committee was asked to study the electoral system in detail and suggest measures for remedying the drawbacks in the system. The committee, its report submitted in 1990 itself, made a number of proposals on electoral reforms. Some of these recommendations were implemented in 1996.
- **Increase in Security Deposit:** The amount of security deposit to be paid by the candidates contesting elections to the Lok Sabha was increased from Rs. 500 to Rs. 10,000 for the general candidates and from Rs. 250 to Rs. 5,000 for SC and ST

candidates. Similarly, the security deposit in the case of elections to the state legislative assembly was increased from Rs. 250 to Rs. 5,000 for the general candidates and from Rs. 125 to Rs. 2,500 for the SC and ST candidates. This was done in order to check the multiplicity of non serious candidates.

- **Listing of Names of Candidates:** The candidates contesting elections are to be classified into three categories for the purpose of listing of their names. They are:
 - ▶ Candidates of recognized political parties;
 - ▶ candidates of registered unrecognized political parties; and
 - ▶ other (independent) candidates -Their names in the list of contesting candidates and in the ballot papers has to appear separately in the above order and in each category they have to be arranged in the alphabetical order.
- **Disqualification for Insulting the National Honour Act:** A person who is convicted for the following offences under the Prevention of Insults to National Honour Act of 1971 is disqualified to contest in the elections to the Parliament and state legislature for 6 years: Offence of insulting the National Flag; Offence of insulting the Constitution of India; and Offence of preventing the singing of National Anthem.
- **Offence on the sale of Liquor:** No liquor or other intoxicants are to be sold or given or distributed at any shop, eating place, hotel or any other place whether public or private within a polling area during the period of 48 hours ending with the hour fixed for the conclusion of poll. Any person who violates this rule is to be punished with imprisonment upto 6 months or with fine up to Rs. 2,000 or with both.
- **Number of Proposers:** The nomination of a candidate in a Parliamentary or assembly constituency should be subscribed by 10 registered electors of the constituency as proposers, if the candidate is not sponsored by a recognized political party. In the case of a candidate sponsored by a recognized political party, only one proposer is required. This was done in order to discourage the disinterested people from contesting the elections.
- **Death of a Candidate:** Earlier, in case of death of a contesting candidate before the actual polling, the election used to be countermanded. Consequently, the election process had to start all over again in the concerned constituency. But now, the election would not be countermanded on the death of a contesting candidate before the actual polling. However, if the deceased candidate belonged to a recognized political party, the party concerned would be given an option to propose another candidate within 7 days.
- **Time Limit for Bye-elections:** Now, bye-elections are to be held within 6 months of occurrence of the vacancy in any House of Parliament or a state legislature. But, this condition is not applicable in two cases:—
 - ▶ Where the remainder of the term of the member whose vacancy is to be filled is less than one year; or
 - ▶ When the Election commission, in consultation with the Central Government, certifies that it is difficult to hold the bye-elections within said period.
- **Holding to Employees on the polling Day:** The registered voters, employed in any trade, business, industry or any other establishment are entitled to a paid holiday on the polling day. This rule applies even to the daily wagers. Any employer who violates this rule to be punished with a fine up to Rs. 500. However, this rule is not applicable in the case of a voter whose absence may cause danger or substantial loss in respect of the employment in which he is engaged.
- **Restricted to Two Constituencies:** A candidate would not be eligible to contest from more than two Parliamentary or assembly constituencies at a general election or at the bye-elections, which are held simultaneously. Similar restrictions are imposed for biennial elections and bye-elections to the Rajya Sabha and the state legislative councils.
- **Prohibition of Arms:** Entering into the neighbourhood of a polling station with any kind of arms is to be a cognizable offence. Such an act is punishable with imprisonment up to 2 years or with fine or with both. Further, the arms found in possession of the offender are to be confiscated and the related license is to be cancelled. However, these provisions are not applicable to the returning officer, presiding officer, any police officer or any other person appointed to maintain peace and order at the polling station.
- **Effective Campaigning Period Reduced:** The minimum gap between the last date for withdrawal and the polling date has been reduced from 20 to 14 days. In 1998, the BJP-led Government appointed an 8-member committee on State Funding of Elections under the chairmanship of Indrajit Gupta. The Committee submitted its report in 1999. It upheld the cause for introduction of state funding of elections. It stated that state funding of elections is constitutionally and legally justified and is in public interest.
- **Declaration of Criminal Antecedents, Assets, etc., by Candidates**
 - ▶ In 2003, the election Commission issued an order directing every candidate seeking election to the Parliament or a State Legislature to furnish on his nomination paper the information on the following matters:

- ▶ Whether the candidate has been convicted or acquitted or discharged in any criminal offence in the past?
 - ▶ Whether he/she was imprisoned or fined?
 - ▶ Prior to six months of filing nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charges were framed or cognizance was taken by a court; if so, the details there of
 - ▶ The assets (immovable, movable, bank balances, etc.) of a candidate and his/her spouse and that of dependents
 - ▶ Liabilities, if any, particularly whether there are any dues of any public financial institution or government dues
 - ▶ The educational qualifications of the candidate
- Furnishing of any false information in the affidavit is now an electoral offence punishable with imprisonment upto six months or fine or both.
- **Changes in Rajya Sabha Elections:**

In 2003, the following two changes were introduced with respect to elections to the Rajya Sabha:

 - ▶ Domicile or residency requirement of a candidate contesting an election to the Rajya Sabha was removed. Prior to this, a candidate had to be an elector in the state from where he was to be elected. Now, it would be sufficient if he is an elector in any parliamentary constituency in the country.
 - ▶ Introducing open ballot system, instead of secret ballot system, for elections to the Rajya Sabha. This was done to curb cross-voting and to wipe out the role of money power during Rajya Sabha elections. Under the new system, an elector belonging to a political party has to show the ballot paper after marking his vote to a nominated agent of that political party

ANTI DEFECTION LAW

- The Tenth Schedule was inserted in the Constitution in 1985 by the 52nd Amendment Act.
- It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any other member of the House.
- The decision on question as to disqualification on ground of defection is referred to the Chairman or the Speaker of such House, and his decision is final.
- The law applies to both Parliament and state assemblies.

■ Features of Anti Defection Law

If a member of a house belonging to a political party:

- Voluntarily gives up the membership of his political party, or
- Votes, or does not vote in the legislature, contrary to the directions of his political party. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified. If an independent candidate joins a political party after the election.
- If a nominated member joins a party six months after he becomes a member of the legislature.

■ Disqualification

- The Chairman or the Speaker of the House takes the decision to disqualify a member.
- If a complaint is received with respect to the defection of the Chairman or Speaker, a member of the House elected by that House shall take the decision.
- A person shall not be disqualified if his original political party merges with another, and: He and other members of the old political party become members of the new political party, or He and other members do not accept the merger and opt to function as a separate group.
- This exception shall operate only if not less than two-thirds of the members of party in the House has agreed to the merger.

MISCELLANEOUS

1. Citizen Charter

- The Citizens' Charter is an instrument which seeks to make an organization transparent, accountable and citizen friendly.
- A Citizens' Charter is basically a set of commitments made by an organization regarding the standards of service which it delivers.

■ Benefits of Citizen Charter

- It enhances accountability by providing citizens with a clear understanding of service delivery standards, including timetables, user fees for services, and options for grievance redress.
- It increases organizational effectiveness and performance by making a public commitment to adhere to measurable service delivery standards.
- It creates a way for both internal and external actors to objectively monitor service delivery performance.
- It creates a more professional and client-responsive environment for service delivery.
- It fosters improvements in staff morale. It decreases opportunities for corruption and graft by increasing transparency and educating citizens about their rights.
- It increases government revenues by ensuring that the money citizens pay for services goes into the government's coffers (and not into employees' pockets).

■ Problems Faced in Implementing the Charters

As pointed out, the Citizens' Charters initiative in India had started in 1997 and the Charters formulated are in a nascent stage of implementation. Introduction of a new concept is always difficult in any organization. Introduction and implementation of the concept of Citizens' Charter in the Government of India was much more difficult due to the old bureaucratic set up/procedures and the rigid attitudes of the work force. The major obstacles encountered in this initiative were:

- The general perception of organizations which formulated Citizens' Charters was that the exercise was to be carried out because there was a direction from the top. The consultation process was minimal or largely absent. It thus became one of the routine activities of the organization and had no focus.
- For any Charter to succeed the employees responsible for its implementation should have proper training and orientation, as commitments of the Charter cannot be expected to be delivered by a work force that is unaware of the spirit and content of the Charter. However, in many cases, the concerned staff were not adequately trained and sensitized.
- Sometimes, transfers and reshuffles of concerned officers at the crucial stages of formulation/implementation of a Citizens' Charter in an organization severely undermined the strategic processes which were put in place and hampered the progress of the initiative.
- Awareness campaigns to educate clients about the Charter were not conducted systematically.

- In some cases, the standards/time norms of services mentioned in Citizens' Charter were either too lax or too tight and were, therefore, unrealistic and created an unfavorable impression on the clients of the Charter.
- The concept behind the Citizens' Charter was not properly understood. Information brochures, publicity materials, pamphlets produced earlier by the organizations were mistaken for Citizens' Charters.

■ Steps to Improve Citizen Charters

- **Internal restructuring should precede Charter formulation:** As a meaningful Charter seeks to improve the quality of service, mere stipulation to that effect in the Charter will not suffice. There has to be a complete analysis of the existing systems and processes within the organization and, if need be, these should to be recast and new initiatives adopted.
- **One size does not fit all:** This huge challenge becomes even more complex as the capabilities and resources that governments and departments need to implement Citizens' Charters vary significantly across the country. Added to these are differing local conditions. The highly uneven distribution of Citizens' Charters across States is clear evidence of this ground reality.
- **Involve customers in the creation of guarantees, standards, redress policies, complaint systems, and customer service agreements:** This is necessary to know what is important to the customer. It is prudent not to assume what the customer wants. Customer surveys are useful here, but face-to-face contact with customers is even more important. Customer councils and different types of customer voice tools can be used for this.
- **Educate customers about the services that an organization provides, so they will have realistic notions of what is possible and will understand their own responsibilities:** Often services won't work unless customers uphold their end of the deal. e.g., tax agencies can't send speedy refunds if taxpayers don't fill out their returns completely and accurately.
- **Firm commitments to be made:** Citizens' Charters must be precise and make firm commitments of service delivery standards to the citizens/consumers in quantifiable terms wherever possible.
- **Redressal mechanism in case of default:** Citizens' Charter should clearly lay down the relief which the organization is bound to provide if it has defaulted on the promised standards of delivery.
- **Periodic evaluation of Citizens' Charters:** Every organization must conduct periodic evaluation of its Citizens' Charter preferably through an external agency. This agency while evaluating the Charter of the organization should also make an objective analysis of whether the promises made therein are being delivered within the defined parameters.
- **Benchmark using end-user feedback:** Systematic monitoring and review of Citizens' Charters is necessary even after they are approved and placed in the public domain. Performance and accountability tend to suffer when officials are not held responsible for the quality of a Charter's design and implementation.
- **Hold officers accountable for results:** All of the above point to the need to make the heads of agencies or other designated senior officials accountable for their respective Citizens' Charters. The monitoring mechanism should fix specific responsibility in all cases where there is a default in adhering to the Citizens' Charter.
- **Include Civil Society in the process:** Organizations need to recognize and support the efforts of civil society groups in preparation of the Charters, their dissemination and also facilitating information disclosures.

■ Sevottam Model

- Sevottam is a Service Delivery Excellence Model which provides an assessment-improvement framework to bring about excellence in public service delivery.
- The need for a tool like Sevottam arose from the fact that Citizens' Charters by themselves could not achieve the desired results in improving quality of public services.
- Besides, the absence of a credible grievances redressal mechanism within organizations was also becoming a major impediment in improving service delivery standards.

- Thus, it was felt that unless there is a mechanism to assess the outcomes of various measures, the reform initiatives would not yield the desired results.
- The Sevottam model works as an evaluation mechanism to assess the quality of internal processes and their impact on the quality of service delivery.
- The Sevottam model has three modules.
 - ▶ The first component of the model requires effective Charter implementation thereby opening up a channel for receiving citizens' inputs into the way in which organizations determine service delivery requirements. Citizens' Charters publicly declare the information on citizens' entitlements thereby making citizens better informed and hence empowering them to demand better services.
 - ▶ The second component of the model, 'Public Grievance Redress' requires a good grievance redressal system operating in a manner that leaves the citizen more satisfied with how the organization responds to complaints/grievances, irrespective of the final decision.
 - ▶ The third component 'Excellence in Service Delivery', postulates that an organization can have an excellent performance in service delivery only if it is efficiently managing well the key ingredients for good service delivery and building its own capacity to continuously improve service delivery.
- An organization which meets Indian Standard 15700:2005 will be entitled for "Sevottam" certification, "Sevottam" being the Indian name for excellence in service delivery. **This is known as Charter Mark Scheme.**
- Given the largely negative opinion prevalent about the quality of government services in the country, the implementation of "Sevottam" is going to be a challenging exercise.

2. Competition Commission of India (CCI)

Established on: 14th October 2003 under the Competition Act, 2002

Headquarter: New Delhi

Composition: A Chairperson and 6 Members appointed by the Central Government.

Functions of CCI:

- To eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade.
- Give opinion on competition issues on a reference received from any statutory authority, competition advocacy, create public awareness and impart training.

Powers of CCI:

- Inquire into certain agreements and abuse of dominant position of enterprises likely to have adverse effect on competition.
- Summoning and enforcing the attendance of any person and examining him on oath.
- Requiring the discovery and production of documents, receiving evidence on affidavit.
- In discharge of its functions, the Commission shall be guided by the **principles of natural justice** and shall have the powers to regulate its own procedure.

3. Tribunals

- The original Constitution did not contain provisions with respect to tribunals. The 42nd Amendment Act of 1976 added a new Part XIV-A to the Constitution. It consists of only two Articles—Article 323 A dealing with administrative tribunals and Article 323 B dealing with tribunals for other matters.
- In pursuance of Article 323 A, the Parliament has passed the Administrative Tribunals Act in 1985. The act authorizes the Central government to establish one Central administrative tribunal and the state administrative tribunals

■ Central Administrative Tribunal (CAT)

- The CAT is a multi-member body consisting of a chairman and members. Earlier, the CAT consisted of a Chairman, Vice-Chairmen and members.
- With the amendment in Administrative Tribunals Act, 1985 in 2006, the members have been given the status of judges of High Courts. At present (2016), the sanctioned strength of the Chairman is one and sanctioned strength of the Members is 65.
- They are drawn from both judicial and administrative streams and are appointed by the president. They hold office for a term of five years or until they attain the age of 65 years, in case of chairman and 62 years in case of members, whichever is earlier.
- The appointment of Members in CAT is made on the basis of recommendations of a high powered selection committee chaired by a Sitting Judge of Supreme Court who is nominated by the Chief Justice of India.
- After obtaining the concurrence of Chief Justice of India, appointments are made with the approval of Appointments Committee of the Cabinet (ACC).
- The CAT exercises original jurisdiction in relation to recruitment and all service matters of public servants covered by it. Its jurisdiction extends to the all-India services, the Central civil services, civil posts under the Centre and civilian employees of Defence services. However, the members of the defence forces, officers and servants of the Supreme Court and the secretarial staff of the Parliament are not covered by it.

■ State Administrative Tribunals

- The Administrative Tribunals Act of 1985 empowers the Central government to establish the State Administrative Tribunals (SATs) on specific request of the concerned state governments
- Like the CAT, the SATs exercise original jurisdiction in relation to recruitment and all service matters of state government employees.
- The chairman and members of the SATs are appointed by the president after consultation with the governor of the state concerned.
- The act also makes a provision for setting up of joint administrative tribunal (JAT) for two or more states. A JAT exercises all the jurisdiction and powers exercisable by the administrative tribunals for such states.
- The chairman and members of a JAT are appointed by the president after consultation with the governors of the concerned states.
