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MODULE V

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# MODULE V-SYLLABUS

- Relation between Union and States, legislative relation, administrative relation, financial relations, Inter state council, Finance commission
- Emergency provision, freedom of trade and commerce and intercourse, comptroller and auditor general of India, Public Services, Public Service Commission, administrative tribunals
- Official language, elections, special provisions relating to certain classes, amendment of the constitution

# THE INDIAN FEDERAL SYSTEM

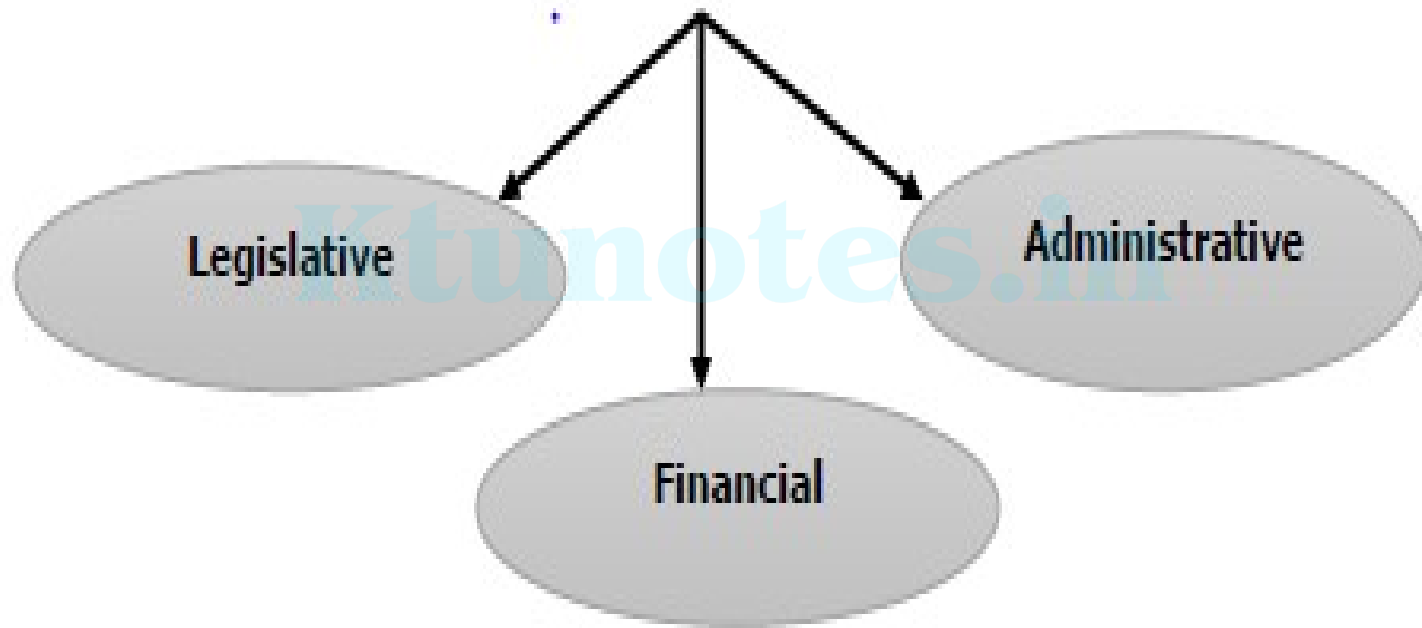
# Relation between Union and the States

- Before formation of federation the states were not 'sovereign' entities (unlike USA). The Indian model of federation is called '**Quasi-Federal system**'
  - The residuary powers are assigned to the Union. (similar to Canadian system)
  - Union has power to exercise control over the legislature of the states.** The legislation can be disallowed by the President if they please.
  - No state has power to determine its own constitution.
  - The states need not be always consulted for the amendment of the constitution. (can be done by the Parliament by special majority)

# Relation between Union and the States

- The Union is indestructible, but the States are not. The Parliament can reorganise the states or their boundaries by simple majority.
- In the Council of States, no equality of representation is safeguarded (all states have equal representation regardless of the population)
- No state can leave the federation.
- The relation between Union and State are under
  - Legislative relations
  - Administrative Relations
  - Financial Relations

## Center State Relation



# Legislative Relations

- This includes

- Territorial jurisdiction of laws made by the parliament and by the state legislatures
- Distribution of legislative subjects
- Power of Parliament to legislate with respect to a matter in the state list.
- Centre's control over state legislation.



# 1.Territorial extent of Central and state legislation

- **The Parliament (Central legislature)** can make laws for the whole or any part of the territory of India. The Parliament alone can make 'extraterritorial legislation'. Thus, the laws of the Parliament are also applicable to the Indian citizens and their property in any part of the world.
- **A state legislature** can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable outside the state.

## 2. Distribution of legislative subjects

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- ☐ Union list
- ☐ State list
- ☐ Concurrent list

# Union List

Only Union Parliament is empowered to make laws on the subjects given in the Union List. 98 subjects (after 42<sup>nd</sup> Constitution Amendment Act, 1976) (few important subjects listed below)

Defense, Foreign Relations, Post and Telegraph, International War and Peace, International Trade, Commerce, Citizenship, Coinage, Railway, Reserve Bank, International Debt, Atomic Energy, etc.

# State List

Only State Legislature is empowered to make laws on the subjects given in the State List. 61 subjects (after 42<sup>nd</sup> Constitutional Amendment Act, 1976) (few important subjects listed below)

Public Health, Roads, Agriculture, Irrigation, Prisons, Local Administration, Distribution of Water, Police, etc..

**Exception** : In the case of Emergency, Union Parliament automatically grabs the power of legislation on the subjects given in the State List.

# Concurrent List

Both, Union Parliament as well as State Legislatures, have the power of legislation on subjects given in the Concurrent List. 52 subjects (After the 42<sup>nd</sup> Constitutional Amendment Act, 1942) (few important subjects listed below)

Marriage, Divorce, News Papers, Trade Unions, Books, Press, Eatable Items, etc..

In case of disagreement, the legislation passed by Union Parliament shall prevail over the law passed by State Legislatures.

### 3.Parliamentary Legislation in the State Field

- The Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following **five extraordinary circumstances:**
- **When Rajya Sabha Passes a Resolution** : If the Rajya Sabha declares that it is necessary in the national interest that Parliament should make laws with respect to goods and services tax or a matter in the State List
- **During a National Emergency:** The Parliament acquires the power to legislate with respect to goods and services tax or matters in the State List, while a proclamation of national emergency is in operation.

# Cont.....

- **When States Make a Request:** When the legislatures of two or more states pass resolutions requesting the Parliament to enact laws on a matter in the State List.
- **To Implement International Agreements: The** Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions.
- **During President's Rule:** When the President's rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state.

## 4. Centre's Control Over State Legislation

- The governor can reserve certain types of bills passed by the state legislature for the consideration of the President.
- Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the president.
- The Centre can direct the states to reserve money bills and other financial bills passed by the state legislature for the President's consideration during a financial emergency.



# Administrative Relations

- Article 256 -executive power of states shall be in compliance with the laws made by Parliament. The Union can extend their power in that direction.

## Cooperation between the Union and States

- Article 261: Faith and credit shall be given to public Acts and Judicial proceedings.
- Article 262: The parliament can decide upon a dispute with respect to usage of inter-state river.
- Article 263: empowers President to establish Inter-state Council and to advice upon disputes between state

# Administrative Relations

- Administrative authority is divided between the Centre and the states. In emergency, the Union Government will have complete control over the State.
- **Articles 256 to 263 in Part XI** of the Constitution deal with the administrative relations between the Centre and the states.
- These Articles empowers the Union to control the State even during the **normal times** through the;
  - ◆ **Directions to the state government**
  - ◆ **Delegations of Union functions**
  - ◆ **All- India Services**
  - ◆ **Grants in Aid**
  - ◆ **Full faith and credit clause**
  - ◆ **Disputes relating to water**
  - ◆ **Inter state council**

# Contd....

## □ **Direction to state government**

- ◆ The state has to ensure compliance with the laws made by the Parliament and any existing law which apply in the state.
- ◆ The state should not impede or prejudice the exercise of executive power of the Centre in the state.

## □ **Delegations of Union functions**

- ◆ The president with the permission of governor of the state, can entrust conditionally or unconditionally the state government officers to perform functions which are related to any matter which is included in the ambit of the executive power of the union.

## □ **All India Services**

- ◆ Apart from UPS, there is an All India service common to the union and states for the purpose of appointment of persons to any service.
- ◆ The objective is to manage important and crucial sectors of administration in the country Ex : IAS, IPS etc

# Contd....

## □ **Disputes relating to water**

- ◆ Parliament may formulate laws to provide for the adjunction of any dispute or complaint with reference to the use, distribution or control of water or any in any inter state river – or any inter state river valley.
- ◆ If the water disputes cannot be settle by negotiations, water dispute tribunal will be established for the adjunction of the disputes.
- ◆ If any matter is referred by tribunal, decision by the tribunal will be final.

# Contd....

## □ Inter state Council:

**Article 263:** empowers the **President** to establish Inter-State Council.

• The Inter State Council of India was **established in 1990**. Thereafter,

five Zonal Council have been set up.

• **PM is the president** of the council

# Contd.....

**Functions:** The Inter State council Council has duty of ;

- Inquiring and advising upon disputes between states.
- Investigating subjects of common interest.
- Making recommendations upon any subjects of common interest.

# Contd....

## □ **Grant in Aid**

- ◆ Union (Parliament) has the power to make grants in aid to any State which is in need of financial assistance.
- ◆ Union government may impose restrictions/ conditions for these types of grants.
- ◆ By means of this the union government can interfere with state financial matters and exercise control and co-ordination over the welfare schemes of the States on a national scale.

## □ **Full faith and credit clause**

- ◆ Full faith and credit must be given to all public acts, records and judicial proceedings of the union and every state, through out the territory of India.

# Financial Relations

- Constitution provides Union and States with independent sources of revenue.
  - The Parliament has exclusive power to levy taxes on the subjects in Union List
  - State can levy taxes on State List.
  - The Union and States can levy taxes on Concurrent List.
  - The Union can levy taxes on the residuary subjects (which are not in all the three lists).
  - Some matters the taxes are collected by states and transferred to the Union.
  - Some cases, the collection is done by the Union and is distributed among the states.



# Financial Relations

- **Articles 268 to 293 in Part XII** of the Constitution deal with Centre state financial relations.
- Distribution of powers between union and state is one of the essential features of a federal union. Financial authority is divided between the union(Centre) and the States.
- The scheme of distribution of sources of revenue between state and central is based on the scheme laid down by Government: of India Act 1935
- Can be **classified under 4 heads**
  - ◆ **Taxation & Law**
  - ◆ **Distribution of tax revenue between centre and state**
  - ◆ **Grants in Aid**
  - ◆ **Contingency fund of India**

# Financial Relations

## □ **Taxation & Law**

- ◆ No tax can be collected except by the authority of valid law
- ◆ No double taxation
- ◆ So there is a limitation on the taxing power of the state, The state shall not collect a tax, except by authority of law.

# Financial Relations

## □ Distribution of Tax Revenue between centre and state

- ◆ The Parliament (Central Government:) has exclusive power to levy taxes on subjects enumerated in the Union List and state legislature has exclusive power to levy taxes on subjects enumerated in the State List.
- ◆ There are no tax entries in the Concurrent List.
- ◆ Some of the taxes in the union list may be allowed wholly or partially to the states.

# Contd.....

- Taxes Levied by the Centre but Collected and Appropriated by the States (Article 268) E.g. Stamp duties
- Taxes Levied and Collected by the Centre but Assigned to the States (Article 269)
- Levy and Collection of Goods and Services Tax in Course of Inter-State Trade or Commerce (Article 269-A) (E.g. GST)
- Taxes Levied and Collected by the Centre but Distributed between the Centre and the States (Article 270)
- Taxes Levied and Collected and Retained by the States . E.g. Agricultural income, taxes on lands and buildings etc.,

# Financial Relations

## ■ Grants in Aid

- ◆ Parliament has the power to make such grants in need of assistance to states
- ◆ Union government may impose restrictions/ conditions for these types of grants.
- ◆ Hence union government can interfere with state financial matters up to an extent.

## □ Contingency fund of India

- ◆ Money maintained for specific purpose
- ◆ Fund is held by finance secretary on behalf of the President of India
- ◆ For disasters or unforeseen matters.
- ◆ If contingency fund is used, an equivalent amount is transferred to the contingency fund and maintained constant.
- ◆ Similarly for state governments

# Emergency Provisions

- This is a unique feature of Indian Constitution that allows the Centre to assume wide powers in order to handle special crucial situations.
  - During Emergency, Centre can assume the legislative and executive power of any state.
  - This provision also empowers the Centre to curtail freedom and rights.
  - Because of emergency provisions, scholars are hesitant to call Indian Constitution to be fully Federal.
  - The President of India has the power to impose emergency rule in any or all the Indian states if the security of part or all of India is threatened by "war or external aggression or armed rebellion"
  - An emergency can be proclaimed only on the basis of written advice tendered to the President by the Cabinet

# Emergency Provision

## □ 1. National Emergency(Article 352)

- Whenever there is a threat for peace, security, stability and governance of the country:

- War

- External Aggression

- Internal rebellion

(These may not really happen, but if there is a possibility of happening, then the president can declare emergency)

- The president can make proclamation of emergency if they are 'satisfied' that grave emergency exists. (Article 352).

- Many fundamental rights are curtailed.

- Freedom for media is curtailed during emergency.

# Emergency Provision

- Procedure for Proclamation of National Emergency:
  - To be done by **written advice from Union Cabinet.**
  - Each house of Parliament should approve within one month of declaration. (by 2/3 majority).
  - Once approved, emergency will remain for a period of six months.
- Procedure for Revocation National Emergency:
  - Done by the President by another proclamation.
  - **10 %** or more members in Lok Sabha can disapprove or revoke emergency by simple majority.
  - Then immediately the emergency become inoperative



# Emergency Provision

## □ Effects of National Emergency

- Federal form of governance changes into **Unitary**.
- **Parliament makes laws** on the state list.
- President exercises the executive power of the states.
- Lok Sabha can extend tenure by 1 year.
- **Fundamental Rights** are automatically **suspended**.

# Emergency Provision

## □ 2. State Emergency (Article 356)

- President can proclaim emergency on a state if they are satisfied with a report from the Governor that the governance of the state cannot be carried out smoothly.
- This is called 'Proclamation on account of failure of Constitutional machinery' (or in common language Presidents Rule).
- Then the President can
  - Assume themselves any function of the State (other than High Court).
  - Declare that the state legislature is exercised through the Parliament.
  - Make any desirable decisions.

# Emergency Provision

- Procedure for Proclamation of State Emergency:
  - **The Governor shall give satisfactory report** to the President regarding the necessity.
  - Both houses of Parliament shall approve within two months.
  - Once approved, emergency will remain for a period of six months.
  - If not revoked, this can be extended several times up to 3 years.

# Emergency Provision

## □ 3. Financial Emergency (Article 360)

- If President is identified that financial stability or credit or any of its part is in danger.
- The executive and legislative powers will be then exercised by the Union.
- Should be approved by the both houses of Parliament within two months.

# Contd.....

## Procedure for Revocation of State Emergency:

- By Presidents proclamation.

## Effects of National Emergency

- President assumes all the power over the state.
- President may dissolve Legislative Assembly
- President may make any other consequential decisions

# Contd.....

## □ Procedure for Proclamation of Financial Emergency

- President shall proclaim
- Approved by Parliament in two houses by simple majority
- Automatically comes to an end on the end of financial year (31st March)

### Procedure for Revocation

- By simple proclamation by the President

# Trade, Commerce and Intercourse

- Adopted from Australian Constitution – freedom of trade, commerce and intercourse, carried out within the country.
  - **Free flow of goods** is ensured within different states (Person from one state can sell goods in other states).
  - This ensures unity of nation **removing geographical barriers**.
  - This freedom is not absolute and can be restricted.
  - **Parliament can impose restrictions** if necessary for public interest.
  - This restriction cannot be imposed in favour of any state over the other.
  - States can impose taxes on goods imported from other states.
  - States can impose reasonable restrictions out of public interest.

# CONSTITUTIONAL BODIES



# Constitutional Bodies

- Constitutional bodies derive their powers and authorities from the Constitution of India. They are mentioned in the Constitution. Since they get their power from the Indian Constitution, any change in the mechanism of the constitutional bodies would require constitutional amendment.

- Examples:

- Attorney General of India
- Comptroller and Auditor General (CAG)
- Election Commission
- Finance Commission
- National Commissions for Scheduled Castes and Scheduled Tribes
- Union and State Public Service Commissions
- Inter-state Council
- Administrative Tribunal

# Inter-State Council

- Article 263: empowers the **President** to establish **Inter-State Council**.
  - **The Council has duty** of
    - Inquiring and advising upon disputes between states.
    - Investigating subjects of common interest.
    - Making recommendations upon any subjects of common interest.
  - The Inter State Council of India was established in 1990. Thereafter, five Zonal Council have been set up.
  - **PM is the president** of the council
  - **Composition:**
    - Prime Minister, Chair
    - Chief Ministers of all states.
    - Chief Ministers of the union territories having legislative assemblies.
    - Administrators of the union territories not having legislative assemblies.
    - 6 Union Cabinet Ministers, including Home Minister.
    - Governors of the states being administered under President's rule.

# Finance Commission

- **Article 280:** Finance Commission aid the President for taking financial decisions.

- **Functions**

- **Distribution of 'net proceeds' of taxes** between Center and the States, to be divided as per their respective contributions to the taxes.
- **Determine factors governing Grants-in-Aid** to the states and the magnitude of the same.
- **To make recommendations to the president** as to the measures needed to augment the Fund of a State to supplement the resources of the panchayats and municipalities in the state on the basis of the recommendations made by the finance commission of the state.
- **Any other matter related to it by the president in the interest of sound finance**

# Finance Commission

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- Finance commission is an autonomous body which is governed by the government of India.

# Finance Commission-Chairman



**Nand Kishor Singh, IAS (Chair of Finance Commission)**

# Election Commission

- The Constitution of India has established a permanent and independent body to ensure free and fair elections in the country known as the Election Commission. The commission is responsible for holding Lok Sabha elections of India.

# Election Commission

- The Constitution provides the Election Commission of India with the power of direction, superintendence, and control of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India.
- The Election Commission is an all-India body that is common to both the Central government and the State governments. It must be noted here that the commission does not deal with the elections to the Municipalities and Panchayats in the states. Hence, a separate State Election Commission is provided by the Constitution of India.

# The National Commission for Scheduled Castes

- The National Commission for Scheduled Castes (NCSC) is a constitutional body that works to safeguard the interests of the scheduled castes in India. It seeks to offer the SC community protection from discrimination and exploitation, as well as providing facilities to uplift the SC community.
- Article 338 of the constitution of India deals with this commission.



# The National Commission for Scheduled Tribes

- The National Commission for Scheduled Tribes is a constitutional body that was established by the Constitution (89th Amendment) Act, 2003.
- The Commission is an authority working for the economic development of Scheduled Tribes in India.

# Comptroller and Auditor General

□ Ambedkar said CAG is the “Guardian of Public Purse”

- Appointed by the President.

## Duties and Powers

- Advices the Presidents regarding the accounts of the Country
  - Checks the accounts of Union and States
  - Conduct account audits for both Union and States
- Audits accounts concerned with the Contingency Fund, the Consolidated Fund of India and states, and the Public Accounts Fund of the states and centre.

# **Shri Girish Chandra Murmu**

## **Comptroller and Auditor General of India**



# Public Services

- Public Services (alternatively known as **government services**) play a key role in **smooth functioning of democracy in India**.
- The public services in India are classified into three categories – **all-India services, Central services and state services**.

## All-India Services (AIS)

All-India services are those services which are **common to both Central and state governments**. The members of these services occupy top positions (or key posts) under both the Centre and the states and serve them by turns.

- **Indian Administrative Service (IAS)**
- **Indian Police Service (IPS)**
- **Indian Forest Service (IFS)**

# Public Services

## □ Central Services

The personnel of Central services work under the **exclusive jurisdiction of the Central government.**

- They hold specialized (functional and technical) position in various departments of the Central government.

Examples:

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- Central Engineering Service
- Central Health Service
- Central Information Service
- Indian Economic Service
- Indian Foreign Service
- Indian Revenue Service

# Public Service-State Services

The personnel of state services work under the **exclusive jurisdiction of the state government**. They hold different positions (general, functional and technical) in the departments of the state government. However, they occupy lower positions (in the administrative hierarchy of the state) than those held by the members of all-India services.



Examples:

- Civil Service
- Police Service
- Forest Service
- Agricultural Service
- Medical Service
- Engineering Service

# State Services

- Create appropriate standards to select personnel to public services.
  - **Three types of PSCs:**
    - Union Public Service Commission (UPSC)
    - State Public Service Commission (SPSC). Ex.: KPSC
    - Joint Public Service Commission (JPSC)
  - Union Public Service Commission (UPSC) to conduct examinations for recruitment to the "All India Services"(AIS) and the "Higher Central Services"(HCS) and to advise the President on disciplinary matters.
  - State Public Service Commission in every state to conduct examinations for recruitment to state services and to advise the governor on disciplinary matters

# Public Service Commission

## □ UPSC Exams Examples:

### –Gazetted group

- Civil Services Examination (India) (CSE)
- Combined Defence Services Examination (CDSE)
- Combined Medical Services Examination (CMSE)

### –Non-Gazetted group

- Railway Recruitment Control Board (RRCB)
- Staff Selection Commission (SSC)



# Administrative Tribunals

- In Administrative law, the term 'tribunal' is used in a significant sense and refers to only **the adjudicatory bodies which lie outside the sphere of the ordinary judicial system.**
- **To institute an effective system of the judiciary with fewer complexities, the judicial powers are delegated to the administrative authorities,** thus, giving rise to administrative tribunals or administrative adjudicatory bodies which holds quasi-judicial features.
- Established to avoid regular court approach by public servants.
- It deals with service matters and is vested with limited jurisdiction to decide a particular issue.

# Administrative Tribunals

## □ Characteristics

Administrative tribunals must have statutory origin i.e. they must be created by any statute.

They must have some features of the ordinary courts but not all.

An administrative tribunal **performs the quasi-judicial and judicial functions** and is bound to act judicially in every circumstance.

They are not adhered by strict rules of evidence and procedure.

Administrative tribunals are **independent and not subject to any administrative interference**.

# Administrative Tribunals

- In the procedural matters, an administrative tribunal possesses the powers of a court to summon witnesses, to administer oaths and to compel the production of documents, etc.

These tribunals are bound to abide by the principle of 'natural justice'.

The prerogative writs of certiorari and prohibition are available against the decisions of administrative tribunals

# Administrative Tribunals

□ **Central Administrative Tribunal (CAT)**

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□ **State Administrative Tribunals (SATs)**

□ **Joint Administrative Tribunal (JAT)**

# Central Administrative Tribunal (CAT):

- The Central Government establishes an administrative tribunal called the **Central Administrative Tribunal (CAT)**.
- The CAT was set-up on 1 November 1985.
- It has jurisdiction to deal with **service matters** pertaining to the Central Government employees or of any Union Territory, or local or other government under the control of the Government of India, or of a corporation owned or controlled by the Central Government.

# State Administrative Tribunals (SATs):

- The Administrative Tribunals Act, 1985, empowers the Central Government to establish State administrative tribunals 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.

## Joint Administrative Tribunal (JAT):

- Two or more States might ask for a joint tribunal, which is called the **Joint Administrative Tribunal (JAT)**, which exercises powers of the administrative tribunals for such States.

## Tribunal vs Court

Both tribunals and courts deal with settling disputes between parties that affect the subjects' rights. Tribunals are like courts in many respects but there are differences between the two. The following table summarises the difference between tribunals and courts.

Sl. No.	Court of Law	Tribunal
1	It is a part of the traditional judicial system wherein the powers are derived from the State.	It is an agency created by Statute and invested with judicial powers.
2	Civil courts have the power to try all civil suits unless there is an express or implied bar.	It has the power to try cases that are of the type that the Statute confers upon them. They are formed for adjudicating cases of a particular kind.
3	Judges of the courts are independent of the executive.	Tenure, terms and conditions of the services of the members of tribunals are entirely in the hands of the executive.
4	The presiding officer here is trained in law.	The presiding officer may or may not be trained in law.
5	The judge should be impartial and not interested in the subject matter of the dispute.	Here, the tribunal may be a party to the dispute.
6	Courts of law are bound by all rules of procedure and evidence.	Tribunals are bound by the principles of natural justice and not the civil procedure codes.
7	Courts can decide vires of legislation.	Tribunals cannot decide the vires of legislation.



# MISCELLANEOUS PROVISIONS

# Official Languages

- There is NO national language in India.
- Official Languages of the Union
  - **Hindi** in Devanagari script. Numerals shall be International type (Arabic numerals).
  - **English** is also official language indefinitely until the Parliament changes it.

Official Languages of a State Hindi or any other language decided by the legislature of the state.

# Official Language

- The Eighth Schedule of the Indian Constitution lists 22 languages which have been referred to as scheduled languages and given recognition, status and official encouragement.
- In addition, the Government of India has awarded the distinction of classical language to Kannada, Malayalam, Odia, Sanskrit, Tamil and Telugu. Classical language status is given to languages which have a rich heritage and independent nature.
- Hindi remains 'lingua franca' for almost all the northern and north-eastern states.

# Elections

- Superintendence, direction and control of all the elections (Parliament, LAs, President, Vice-president) is vested in Election Commission.
- No person to be ineligible in electoral roll in grounds of religion, race, caste or sex.
- Elections to House of the People and LAs are on the basis of **Universal Adult Franchise(Universal Suffrage)**.
- **Parliament may make rules** related to elections and constituencies.
- Courts shall not generally interfere in electoral matters.

# Special Provisions to Certain Classes

- Article 330 to 342 makes special provisions for safeguarding the SCs, STs, Anglo-Indians and Backward Classes.
  - Seats are reserved in House of People, MLAs in proportional to their population.
  - President nominates two members from Anglo-Indian community to the Lok Sabha.

# Special Provisions to Certain Classes

Constitution directs to establish **National Commission for Scheduled Castes and Scheduled Tribes.**

**Linguistic minority** is a class of people whose mother tongue is different from that of the majority in the State or part of a State.

Article 350-A, imposes a duty on the State to endeavor to provided adequate facilities for instructions in the mother tongue at the primary stage of education to children belonging to linguistic minority.

# Amendment of the Constitution

- Amending the Constitution of India is the process of making changes to the nation's fundamental law or supreme law.
  - This procedure ensures the sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India.
  - These are not easy provisions and require compliance with other provisions.
  - Three forms of amendments:
    - Simple majority in Parliament
    - Special majority in Parliament
    - Special majority of Parliament and the total state.
  - 105 amendments have been made in the Constitution till date.

THANK YOU

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