




FUNDAMENTAL RIGHTS

PART III OF THE INDIAN CONSTITUTION (Art 12-35)

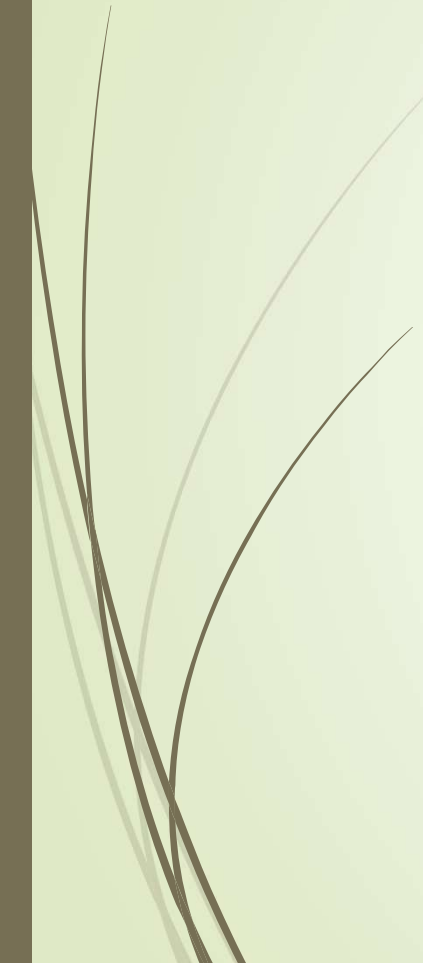


FUNDAMENTAL RIGHTS – Meaning & Objective

- Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens.
- Articles 12-35 of Indian Constitution deal with Fundamental Rights.
- F.Rs ensure the fullest physical, mental and moral development of every citizen.
- It establishes Rule of law.
- It generates a sense of security amongst the minorities in the country.
- It provides standards of conduct, citizenship, justice and fair play.



NATURE OF FUNDAMENTAL RIGHTS

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1. Basic Inherent human rights
 2. Guaranteed Rights
 3. Protected Rights
 4. Enforceable/ Justiciable Rights
 5. Distinguish between citizens and foreign nationals
 6. Not absolute (reasonable restrictions).
 7. Amendable.
 8. Cannot be waived
 9. Fundamental Rights are not all distinct.



Classification of Fundamental Rights

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1. Right to Equality (Article 14-18)
 2. Right to Freedom (Article 19-22)
 3. Right against Exploitation (Article 23-24)
 4. Right to Freedom of Religion (Article 25-28)
 5. Cultural and Educational Rights (Article 29-30)
 6. Right to Constitutional Remedies (Article 32-35)



REMOVAL OF RIGHT TO PROPERTY

- There was one more fundamental right in the Constitution, i.e., the right to property.
- However, this right was removed from the list of fundamental rights by the 44th Constitutional Amendment.
- This was because this right proved to be a hindrance towards attaining the goal of socialism and redistributing wealth (property) equitably among the people.
- **Therefore, right to property is now a legal right and not a fundamental right.**


DEFINITION OF STATE - (Article 12)

- Article 12 of the Indian Constitution states that,

"Definition in this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

- In other words, for the purposes of Part III of the constitution, the state comprises of the following:

1. Government and Parliament of India i.e the Executive and Legislature of the Union
2. Government and Legislature of each State i.e the Executive and Legislature of the various States of India
3. All local or other authorities within the territory of India
4. All local and other authorities who are under the control of the Government of India.




Therefore it refers to:-

1. Municipalities – Municipal Corporations, Nagar Palika, Nagar Panchayats
 2. Panchayats – Zila Panchayats, Mandal Panchayats, Gram Panchayats
 3. District Boards
 4. Improvement Trusts, etc.
- The term 'State' thus includes executive as well as the legislative organs of the Union and States. It is therefore the actions of these bodies that can be challenged before the courts as violating fundamental rights. {Except Art 15(2)(a)(b) and Art 17}.
 - Article 12 in itself is not a fundamental right technically, but it defines the term 'State' for the Fundamental Rights that are entailed in the Article 14-35.
 - There is no explicit mention of Judiciary (Supreme Courts, High Court, or State/District Courts) as a 'State' in Article 12. However, the organs of the judiciary cannot make rules that are in itself violative of the Fundamental Rights.
 - **Rupa Ashok Hurra v. Ashok Hurra Case** – SC reaffirmed that Fundamental Rights cannot be violated by any judicial proceedings and also that Superior Courts of Justice do not fall under the ambit of Article 12.

TEST TO DETERMINE LOCAL AUTHORITIES

- In Mohammad Yasin v. Town Area Committee, the Supreme Court held that to be characterized as a 'local authority' the authority concerned must;
 1. Have a separate legal existence as a corporate body
 2. Not be a mere government agency but must be legally an independent entity
 3. Function in a defined area
 4. Be wholly or partly, directly or indirectly, elected by the inhabitants of the area
 5. Enjoy a certain degree of autonomy (complete or partial)
 6. Be entrusted by statute with such governmental functions and duties as are usually entrusted to locally (like health, education, water, town planning, markets, transportation, etc.)
 7. Have the power to raise funds for the furtherance of its activities and fulfilment of its objectives by levying taxes, rates, charges or fees



Statutory and Non-Statutory Authorities

1. Statutory Authorities Examples:

1. National Human Rights Commission
2. National Commission for Women
3. National Law Commission
4. National Green Tribunal
5. National Consumer Disputes Redressal Commission
6. Armed Forces Tribunal

2. Non Statutory Authorities Examples

1. Central Bureau of Investigation
2. Central Vigilance Commission
3. Lokpal and Lokayuktas



CONTROL OF THE GOVT OF INDIA

- Under Article 12, the control of the Government does not necessarily mean that the body must be under the absolute direction of the government. It merely means that the government must have some form of control over the functioning of the body. Just because a body is a statutory body, does not mean that it is 'State'. Both statutory, as well as non-statutory bodies, can be considered as a 'State' if they get financial resources from the government and the government exercises a deep pervasive control over it.



LAWS INCONSISTENT WITH OR IN DEROGATION OF THE F.Rs – Art 13.

Art 13:- Laws inconsistent with or in derogation of the fundamental rights

1. All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void
2. The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void
3. In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law



RIGHT TO EQUALITY (ARTICLE 14 – 18)

Art 14: Equality before Law – “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

- Article 14 is one of the most important Articles of the Indian constitution and it is also regarded as part of the golden triangle of the Constitution along with Article 19 and 21.
- In India, this right is very important because there has been a widespread socio-economic difference which has been in existence from a long time. People have been discriminated on the basis of their gender or the religion they follow, therefore Article 14 was included in the Constitution to remove such inequalities and bring all the people under the equal protection of the law.
- It not only imposes a duty on the State to abstain from discriminating people but it also puts a positive duty to take such action by which the inequalities can be bridged between the people.

RULE OF LAW

- **Dicey** had given the concept of the rule of law. Rule of law means that no person is above the law. Equality of law is part of the Rule of Law which has been explained by **Dicey**.
- **Dicey** had given three meanings to this term:
 1. **The supremacy of law:** It means that the law is supreme and the Government cannot act arbitrarily. If a person has violated any law, he can be punished.
 2. **Equality before Law:** It means that all the people should be subject to the same provisions of law which is administered by the ordinary courts of the land. Thus, no person is above the law and has to follow the law. Dicey had given an exception to the Monarch under this rule because in England it is believed that the King can do no wrong.
 3. **Constitution originates from the ordinary law:** It means that the rights of the people is not granted by the constitution but instead it is the result of the law of the land which is administered by the courts.
- In India, the first and second rule has been adopted but the third rule has been omitted because the Constitution is the supreme law of the land and the rights of the people originate from it and all the other laws which are passed by the Legislature should not violate the provisions of the Constitution.




An exception to Equality before Law

- There is some exception to the rule of equality which has been provided under the Indian Constitution. Under Articles 105 and 194, the Members of the Parliament and the State Legislatures respectively are not held liable for anything which they say within the House.
- Under Article 359 when there is a proclamation of Emergency, the operation of Fundamental Rights including Article 14 can be suspended and if any violation of this right is done during such proclamation, it cannot be challenged in the Courts after the proclamation ends.
- Under Article 361 the President and the Governors are not liable to any court for any act which is done by them in exercising their power and duties of the office.



Article 14 and Reasonable Classification

- Article 14 has provided the provision for equality of all people before the law but every person is not the same and therefore it is not practically possible to have a universal application of equality. Like people being treated alike is followed under this rule and unlike should not be treated alike.
- This is because, if people who are under different position and circumstances are governed by the same rule then it will have a negative effect on the rule of equality.
- Thus, the laws cannot be of a general character and some classification is permitted under Article 14.
- Thus, the legislature has been allowed to identify and classify different people in groups because it has been accepted that treating the unequal in the same manner is likely to cause more problems instead of preventing them. So for the society to progress, classification is important.

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- This classification cannot be done arbitrarily because in such case, there will be no justification, so even though Article 14 allows for classification such classification should not confer special privileges to any group arbitrarily and such a classification has to be done on a rational basis.
 - For e.g. the Legislature cannot pass a law which favors a particular caste of people without any rational basis for it and if such a law is passed, it is bound to be held unconstitutional by the Judiciary.
 - Therefore, constitution allows for reasonable classification in which the legislation is passed on a rational basis for the purpose of achieving some specific objectives.

TEST FOR REASONABLE CLASSIFICATION

- **The classification should not be arbitrary, evasive and artificial in nature.**

This is the first test for checking the reasonability of a classification. This test is used to check whether the classification is based on some substantial distinction or not. The classification should be based on an intelligible differentia (which can be understood) and should not be some made up distinction.

For e.g. classification of people based on their income is a reasonable classification for the purpose of Article 14.


- **The differentia which has been applied in the classification should have some real and important connection with the objective which is sought to be achieved by the classification.**

For e.g., if the legislature has classified the people on the basis of their income, one of the objectives can be to provide some benefits to the people with low incomes such as exemption from tax.

Here the differentia for classification is connected with the objective of providing some benefits to the people earning low income and therefore, this classification is valid.




Air India v. Nargesh Meerza



In the case of **Air India v. Nargesh Meerza**, the regulation of the Indian Airlines provided that an Air Hostess had to retire from their services on attaining the age of 35 or if they married within 4 years of their service or on their first pregnancy whichever occurred earlier. The court held that terminating the services of an air hostess on the grounds of pregnancy amounted to discrimination as it was an unreasonable ground for termination. The regulations provided that after 4 years of service the air hostess could marry therefore the grounds of pregnancy was not reasonable. Thus, it was held that this regulation flagrantly violated Article 14 and such termination would not be valid.



Javed v. State of Haryana



In this case, the validity of Haryana Panchayati Raj Act was challenged as the statute stated that an individual would be automatically disqualified in contesting for Panchayat if the person has more than two children. The SC held that such provision is not discriminatory in nature as the classification made is based on an intelligible differentia having a nexus with the object sought to be achieved which is popularization of family planning.



India Council of Legal Aid and Advice v. Bar Council of India

In this case, Rule 9 in Chapter 3 of Part 6 of the Bar Council of India rules which was added by a resolution was challenged as the rule prohibited those above 45 years of age to submit an application for enrolment as an advocate to the State Bar Council. It was contended by the petitioner that the new rule violates the principle of equality enshrined in Article 14. The Supreme Court quashed the new rule and held that the rule is discriminatory in nature as there exists no reasonable nexus and hence violated the right to equality.

ARTICLE 15

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

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

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

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

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

ARTICLE 16

► 16. Equality of opportunity in matters of public employment

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

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State

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

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State

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



ARTICLE 17 AND 18

17. Abolition of Untouchability

Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

18. Abolition of titles

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





ARTICLE 19

19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right:

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) omitted
- (g) to practice any profession, or to carry on any occupation, trade or business

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- **Explanation - Article 19(1) (a)**
 - **Freedom Of Press** (There can be no pre-censorship in the press; No-pre stoppage of publication in newspapers of articles or matters of public importance; Freedom of circulation)
 - **Right to know and to obtain information** (RTI Act 2005).
 - **Right to silence** (*Bijoe Emmanuel v. State of Kerala – National Anthem*)
 - **Right to reply** (*LIC v. Prof. Manubhai D. Shah – Fraud on Policy holders – Reply Allowed*)

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- (2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence


- **Reasonable Restrictions**

Reasonable restrictions on the right to free speech and expression

The right to free speech and expression is not an absolute right and is subject to reasonable restrictions. As per Article 19(2), restrictions can be imposed upon the freedom of speech and expression in the interests of:


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

Case – Mohammad Ajmal Kasab v. State of Maharashtra (National security in jeopardy)



➤ Explanation - Article 19(1)(b)

- The object of holding an assembly or a meeting is the propagation of ideas and to educate the public. Hence, the right to assemble is a necessary corollary of the right to free speech and expression.
- Article 19(1)(b) provides for the right to assemble peaceably and without arms. This includes the right to hold **public meetings, hunger strikes, and the right to take out processions**. However, the assembly must be peaceful and without arms.
- It is pertinent to note that there is no right to hold an assembly on **government premises or private property** belonging to others.
- Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause
- **Reasonable Restrictions**
- According to Clause 3 of Article 19, the right to freedom of assembly could be restricted on the following grounds:
 1. In the interests of the sovereignty and integrity of India, or
 2. In the interests of public order.

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- Article 19(1)(c) provides for the right to form associations, unions or cooperative societies.

Eg. form companies, societies, trade unions, partnership firms and clubs, etc.

- **Art 19(4):** *Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause*

- **Explanation:**

- According to Article 19(4), reasonable restrictions can be imposed on the right to form associations, unions and co-operative societies, etc. on the following grounds:
 1. In the interests of the sovereignty and integrity of India, or
 2. In the interests of public order or morality.

Freedom of movement and residence [Article 19(1)(d), 19(1)(e) and 19(5)]

➤ Freedom of movement

- Article 19(1)(d) provides for the right to move freely throughout the territory of India. This means the right to locomotion, i.e., the right to move as per one's own choice. This right includes the right to use roads and highways.

➤ Freedom of residence

- Article 19(1)(e) states that it is the fundamental right of every citizen to reside and settle in any part of the territory of India.

➤ Reasonable restriction

19(5): Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

➤ Explanation:

As per Article 19(5), the right to freedom of movement and residence could be restricted on the following grounds:

1. In the interests of the general public, or
2. For the protection of the interests of any Scheduled Tribe.

Freedom of profession, occupation, trade or business [Article 19(1)(g) and 19(6)]

- **Article 19(1)(g)** provides for the fundamental right of the citizens to practice any profession or to carry on any occupation, trade or business.
- **Case Law:**
- The Hon'ble Supreme Court in *Vishaka v. State of Rajasthan (1997)* has observed that the sexual harassment of working women in workplaces violates the fundamental right under Article 19(1)(g). In this case, comprehensive guidelines and binding directions were issued by the court to prevent the incidents of sexual harassment of women at workplaces in both public and private sectors.
- **19(6):** Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,
 - (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
 - (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

Reasonable restrictions to 19(g)

- Reasonable restrictions on freedom of profession, occupation, trade or business
- Article 19(6) provides that the fundamental right under Article 19(1)(g) can be restricted in the following ways:
 1. By imposing reasonable restrictions in the **interest of the general public**.
 2. By state monopoly: Sub-clause (ii) of Article 19(6) enables the state to make laws for creating state monopolies either partially or completely in respect of any trade or business or industry or service. **The right of a citizen to carry on trade is subordinated to the right of the state to create a monopoly in its favor.**
 3. Also, Sub-clause (i) of Article 19(6) empowers the state to lay down, by law, “the **professional or technical qualifications** necessary for practicing any profession or carrying on any occupation, trade or business”.



➤ SUMMARY ART 19

- Available to citizens only
- Not absolute (detrimental to society if absolute)
- Reasonable Restrictions
 1. Discretion of the court (on merits and no standard pattern)
 2. Secure the object of law
 3. Normal reasonable man would regard the term reasonable.
 4. Restriction is prohibition in certain cases (trafficking in women, cultivation of narcotic plants, trade in liquor)
- Channels of Speech and Expression
 - Word of mouth, writing, printing, pictures, gestures, communication, media, visible thoughts , signs etc (Yours as well as others thoughts can be communicated.
 - Right to strikes and bandh are excluded from F.Rs as it creates chaos in Society.
 - Right to demonstrations if not violent.



ARTICLE 20

➤ 20. Protection in respect of conviction for offences

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (**Ex Post Facto Law**)

(2) No person shall be prosecuted and punished for the same offence more than once (**Double Jeopardy**)

(3) No person accused of any offence shall be **compelled** to be a witness against himself. (**Prohibition Against Self-incrimination**)



RIGHT TO LIFE AND LIBERTY

- **21. Protection of life and personal liberty.**

No person shall be deprived of his life or personal liberty except according to procedure established by law

- **22. Protection against arrest and detention in certain cases.**



RIGHT AGAINST EXPLOITATION

- **23. Prohibition of traffic in human beings and forced labor.**

Includes- Begar, bonded labour etc. It protects both citizens and non citizens against exploitation.

- **24. Prohibition of employment of children in factories, etc**

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



Right to Freedom of Religion ART (25 – 28)

- With a lot of diversity in the country, it becomes the **responsibility of the nation to equally protect and respect every religion** in the country. And thus Article 25-28 of the Indian Constitution fulfills this purpose.
- The **word religion has not been defined under the Indian Constitution**, but from time to time, the honorable supreme court has attempted to define the same in a broader sense. Religion is considered more to be a matter of personal belief and faith. It is a **matter of faith and belief** with individuals.
- Indian constitution allows every citizen the **fundamental right to entertain their respective religious beliefs** and exhibit such beliefs and ideas, but very within the boundaries of the law.

Aruna Roy v. Union of India

- In this landmark case, the supreme court held that secularism as under the Indian constitution should be understood with a positive meaning that is developing, understanding, and respect towards different religions. In this case, the New education policy, 2002 that provides for value-based education to school children based on basis of all religions, was questioned. It was alleged that the same policy is violative of Article 28 of the Indian Constitution, and is thus anti-secular. And focusing on the positive meaning of secularism, the court held that **it is not compulsory that the idea of secularism could be implemented only by way of neutral approach but can also be followed by way of making one section of a religious group understand and respect religion and faith of another section of people**. And thus, the court in its judgment upheld the validity of the New education policy, 2002.
- (Expl: all religions taught in school, does it violate secularism...India has no religion)

ARTICLE 25 – FREEDOM OF RELIGION

► 25. Freedom of conscience and free profession, practice and propagation of religion

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

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

(a) regulating or **restricting any economic**, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the **throwing open of Hindu religious institutions of a public character to all classes** and sections of Hindus.

Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

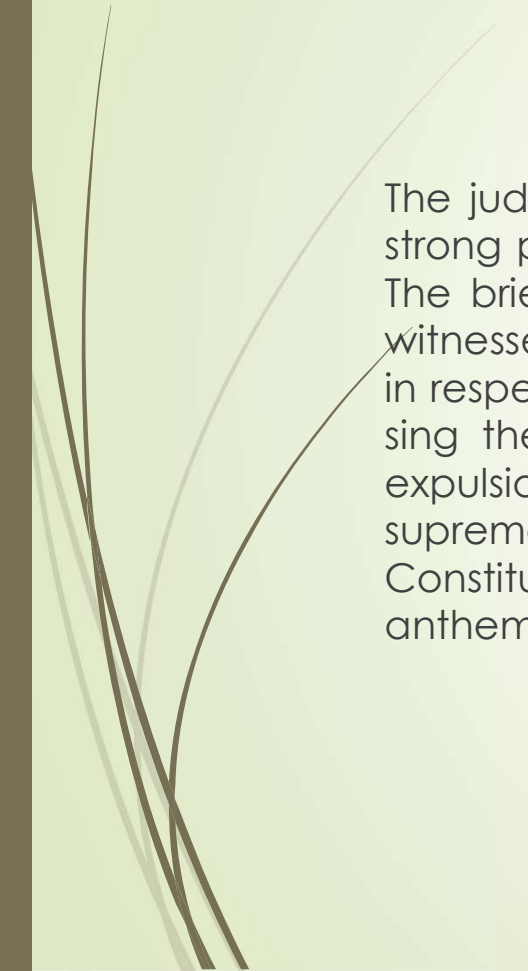


EXPLANATION

- Article 25 of the Indian Constitution grants to **all its citizens the freedom of conscience**, the freedom to **profess, practice, and propagate religion**. But this right is not absolute. And further, this right is subjected to public order, morality, health, and to other provisions as contained under part III of the Indian Constitution.
- **To practice** means to perform the duties, titles, etc. related to the religion and also includes exhibiting the religious beliefs and ideas of the religion, in which an individual believes.
- **To profess** means to freely and openly declares one's faith and belief with respect to his/her religion.
- And **to propagate** religion means spreading and publicizing religious views to the greater public and that too without any coercion. And this right to propagate must **not be confused with trying to convert any person to one's religion with force**, which is a wrong practice. And the fundamental right to freedom of religion neither approves the same.



The National Anthem case



The judgment of the case of **Bijoe Emmanuel v. the State of Kerala** holds a strong position in dealing with aspects of Article 25 of the Indian Constitution. The brief facts of the case were that three students belonging to Jehova's witnesses refused to sing the national anthem. Even though they stood straight in respectful silence, but still they were expelled from the school for refusing to sing the National Anthem. Further the aggrieved challenged this order of expulsion on the grounds of Article 25 and Article 19. And in this case, the supreme court found the order of expulsion as against Article 25 of the Indian Constitution and held that no person can be forced to sing the national anthem **if there is any genuine, conscientious religious objection.**

EXPLANATION

Article 26 of the Indian Constitution, provides every religious denomination with some rights to manage their religious affairs being subjected to public order, morality and health.

- Article 26 grants freedom to an organized body as compared to Article 25 which grants rights to an individual.
- Clause (a) of Article 26 of the Indian Constitution, grants every qualified religious denomination, the **right to establish and maintain the institution** for religious and charitable purposes.
- And clause (b) of the Article 26, allow religious denomination to **freely manage their own affairs in relation to matters of religion**. But such freedom is subject to public order, health and morality.
- And clause (c) and (d) of Article 26 grant religious denominations the **right to acquire and own property** and also the **right to administer such property** in accordance with the law.
- Note: Supreme Court had defined religious denomination as “a religious sect or body having common faith and organization and designated by a distinctive name”.



ARTICLE 26

- 26. Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right
 - (a) to establish and maintain institutions for religious and charitable purposes;
 - (b) to manage its own affairs in matters of religion;
 - (c) to own and acquire movable and immovable property; and
 - (d) to administer such property in accordance with law

ARTICLE 27

27. Freedom as to payment of taxes for promotion of any particular religion

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

(cannot compel taxes,. Can ask for charity)

EXPLANATION

- Article 27 of the Indian constitution lay focuses on the secular character of a state. And this article establishes that no person for the purpose of promotion or maintenance of any religion or religious denomination is forced or compelled to pay any tax. And the money which is collected by the state in the form of tax must not be spent for the purpose of promotion of any religion.
- And the reason behind the same principle is that being a secular state and also granting the fundamental right to freedom of religion to individuals and groups, it is completely against the principles of the Constitution to spend out any money from the public funds for the purpose of promotion or maintenance of any particular religion or religious denomination.
- **(Collected taxes cannot be spent on religious promotions)**

ARTICLE 28

► 28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions

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

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

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

RESTRICTION ON THE FREEDOM OF RELIGION

- The Constitution of India grants to all its citizens the fundamental right to freedom of religion. But just like all other fundamental rights, this freedom is not absolute. The freedom of religion is subject to **public order, health and morality**. Thus, it means no action should be done in name of freedom of religion that is against the public policy, health, or morality of the society. Further, these rights are subject to some reasonable restrictions as dealt with under clause (2) of Article 19 of the Indian Constitution. If any religious practice tends to violate public order, morality, or health or a policy of the state intending to uphold the integrity and sovereignty of the nation, then such religious practice **should be given up in the greater interest of people and the nation as a whole**.
- Some examples of valid restrictions are as follows:
 1. Cow slaughter or indecent exposure of one's person in a public place is prohibited as under Section 34 of the Police Act.
 2. Untouchability or trafficking of humans in name of religion is completely prohibited.
 3. Forcibly converting one's religion is a punishable offence.
- It is also the duty of the state to ensure that, the freedom to practice religion does not affect the exercise of this freedom by others.

RIGHTS OF MINORITIES – ART 29 & 30

INTRODUCTION

➤ Definition of Minority

- The term 'minority' is not defined anywhere in the Constitution of India but the judges have interpreted the meaning in many different cases which are mentioned below:
- In Re-Education Bill, Supreme Court through *J. S.R Das* held that "minority" means a community which is numerically less than 50% of the total population.
- A similar judgment was passed by the Kerala High Court in the case of **A.M Patroni v. Kesavan** in which it was held that "**any religious or linguistic community which is less than 50%** of the total population shall be considered as a "minority".

ARTICLE 29

► 29. Protection of interests of minorities

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

► **(Explanation:** Article 29(1) extends to all the citizens irrespective of the fact whether they are in **majority or minority**, the only condition being that such section must have a distinct language, script or culture of its own.

► It is an ***absolute right*** for the minorities to preserve its language and culture through educational institutions and cannot be subject to reasonable restrictions in the interest of the general public.

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



ARTICLE 30

■ **30. Right of minorities to establish and administer educational institutions**

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

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

Explanation

Article 30(1) is further divided into two parts, that is:

➤ Right to establish

To claim the benefit under article 30(1) it is *not* necessary-

- a) That the institution must seek to conserve the language, script or culture of the minority community; what is necessary is its establishment by the minority community, it may impart religious or secular education wholly unconnected with language, script, and culture.
- b) That admission into such institution must be confined exclusively to members of the minority community, and not a single member of the majority community or other minority communities should have its advantage.

➤ Right to administer

- The word "administer" under article 30(1) of the Constitution means the right to manage and conduct the affairs of the institution. It is open to a **university to impose reasonable conditions** upon a minority institution for **maintaining the requisite educational standard and efficiency** like-
 - Qualifications of teachers to be appointed in the institution;
 - Conditions of service e.g the age of superannuation of teachers;
 - Qualifications for entry of students;
 - Courses of study (subject to special subjects which the institution may seek to teach)
 - Hygiene and physical training of students

Case Laws

- In the case of **Azeez Basha v. Union of India**, the Supreme Court held that if an educational institution is not been established by the minority community then they have no right to administer it.
- In the case of **Dr. Naresh Agarwal v. Union of India**, where 50% of the seats to be filled on the basis of entrance examination conducted by Aligarh Muslim University and the other 50% of the seats was reserved for Muslim Candidates. The petitioners in this case, who are Hindu by caste have been deprived of their right to participate in the process of admission against that 50%. The Allahabad High Court followed the judgment of **Azeez Basha v. Union of India** and held that AMU is not a minority institution.
- (not established by Minority, hence not minority institute and therefore cannot reserve 50% seats)



ARTICLE 31A

Should be seen as not violating Art 13, 14 or 19 in cases of acquisition of any estate by state, amalgamation of two companies etc etc..(refers to laws made)

ARTICLE 32

■ 32. Remedies for enforcement of rights conferred by this Part

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

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of **habeas corpus, mandamus, prohibition, quo warranto and certiorari**, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

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

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



■ Types of Writs

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

■ 1. Habeas Corpus

■ When Issued? (Unlawful detention)

■ The court issues an order against prison warden who is holding an individual in custody in order to deliver that prisoner to the court so that a judge can decide whether or not the prisoner is lawfully imprisoned and if not then whether he should be released from custody.

■ 2. Quo Warranto

■ Writ of Quo Warranto implies thereby “**By what means**”. This writ is invoked in cases of public offices and it is issued to restrain persons from acting in public office to which he is not entitled to. **Appointment to public office can be challenged by any person irrespective of the fact whether his fundamental or any legal right has been infringed or not.**



Mandamus

- Writ of Mandamus
- Writ of Mandamus means “**We Command**” in Latin. **Writ of mandamus is one that is issued against an inferior court, a governmental body or officer by a superior court to rectify an action of the** past and to act along the lines of the responsibility that they are entitled to.

Certiorari

- Writ of Certiorari means to be certified. It is issued when there is a wrongful exercise of the jurisdiction and the decision of the case is based on it. The writ can be moved to higher courts like the High Court or the Supreme Court by the affected parties.
- Writ of certiorari is issued after the passing of the order.
- **that it can only be issued against judicial or quasi-judicial orders(To transfer pending case or quash the impugned order)**

5. Prohibition

► What does Writ of Prohibition mean?

It is a writ directing a lower court to stop doing something which the law prohibits it from doing. Its main purpose is to prevent an inferior court from exceeding its jurisdiction or from acting **contrary to the rules of Natural Justice**. (Audi Alterem partem- no one can be convicted without being heard)

► Prohibition is a writ of preventive nature. The principle of this is 'Prevention is better than cure'.


Under Article 32, the Supreme Court can dismiss a writ petition in the following circumstances:


Misrepresentation of facts

Inordinate delay

Malicious petition etc

Availability of alternative remedy etc

- 
- 33. Power of Parliament to modify the rights conferred by this Part in their application etc Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,
 - (a) the members of the Armed Forces; or
 - (b) the members of the Forces charged with the maintenance of public order; or
 - (c) persons employed in any bureau or other organization established by the State for purposes of intelligence or counter intelligence; or
 - (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organization referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them
 - 34. Restriction on rights conferred by this Part while martial law is in force in any area Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area



► 35. Legislation to give effect to the provisions of this Part Notwithstanding anything in this Constitution,

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

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

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

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

FUNDAMENTAL DUTIES (ARTICLE 51 A)

- **51A. Fundamental duties It shall be the duty of every citizen of India**
- (a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement



DIRECTIVE PRINCIPLES OF STATE POLICY

Introduction

- **Part IV** of the Indian Constitution defines the Directive Principle of State Policy (DPSP). Basically, the Directive Principles of State Policy have been borrowed from the **Irish Constitution**. The Directive Principles of State Policy are **guidelines to the State** which has been written in the Indian Constitution. But you can't compel the State for their enforceability in a Court of Law. While the Fundamental Right is enforceable in a court of law. Directive Principle is a **set of instructions** that have to be followed by the lawmakers while making the policy for the citizens.
- Directive Principle of State Policy reminds the **State to make good policies** for the betterment of the society so that it could develop the Socio-economic conditions of the citizens.



OBJECTIVE OF DPSP

- One of the important objectives behind the Directive Principles of State Policy is to achieve the goal of welfare state. The aim of the Directive Principle of State Policy is to **improve the social and economic condition of the citizen so that they can enjoy the good life.**
- The success and failure of the government can be judged by their Policies and Principles and if the government fails to implement the Directive Principle in the State in a proper way, then they can lose the upcoming election.



ARTICLES 36 - 51

- **36. In this Part, unless the context otherwise requires, the State has the same meaning as in Part III**
- 37. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws
- **38. State to secure a social order for the promotion of welfare of the people.**
 - (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice - social, economic and political - shall inform all the institutions of the national life.
 - (2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

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

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;


(b) that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good; (socialist state-Bharat Petroleum)


(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (egalitarian state)


(d) that there is equal pay for equal work for both men and women; eg:(equal remuneration act)


(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (MC Mehta Case-sivakasi Crackers)

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

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- **39A. Equal justice and free legal aid:** The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities
 - **40. Organization of village panchayats:** The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government
 - **41. Right to work, to education and to public assistance in certain cases:** The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want
 - **42. Provision for just and humane conditions of work and maternity relief:** The State shall make provision for securing just and humane conditions of work and for maternity relief

- 
- **43. Living wage, etc. for workers:** The State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co operative basis in rural areas.
 - **43A. Participation of workers in management of industries:** The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.
 - **44. Uniform civil code for the citizens:** The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.
 - **45. Provision for free and compulsory education for children:** The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.
 - **46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections:** The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

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- **47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health:** The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. (Food Security Bill)
 - **48. Organization of agriculture and animal husbandry:** The State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle
 - **48A. Protection and improvement of environment and safeguarding of forests and wild life.** The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country

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- **49. Protection of monuments and places and objects of national importance:** It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be
 - **50. Separation of judiciary from executive:** The State shall take steps to separate the judiciary from the executive in the public services of the State
 - **51. Promotion of international peace and security:** The State shall endeavor to-
 - (a) promote international peace and security; (UN peace keeping mission-Korean war)
 - (b) maintain just and honorable relations between nations;
 - (c) foster respect for international law and treaty obligations (Paris treaty-Global Warming) in the dealings of organized peoples with one another;
 - (d) and encourage settlement of international disputes by arbitration.

Shah Bano Case

- **The first issue regarding the Uniform Civil Code arose in the case of the Shah Bano case.** In the case of Shah Bano's case, her husband Ahmad Khan divorced her and denied to give maintenance. Shah Bano moved the Supreme Court for the maintenance under Section 125 of Cr.PC.
- The Supreme Court gave the judgment in favor of Shah Bano on the ground that Section 125 of Cr.PC. is applied to all citizens of the country irrespective of their Religion. But, the Muslim community was not ready to accept the judgment of the Supreme Court. Many protests were organized by the protesters against the judgment of the Supreme Court. Protester's contention was that the Supreme Court doesn't have any right to interfere in the personal laws.
- After this case the Rajiv Government came up with a new law that is Muslim Women (Protection of Right on Divorce) Act 1986, which nullified the judgement of the Supreme Court. The Act states that in the Divorce matter the Personal law will prevail.
- In the Act, it was also mentioned that in the Divorce matter Muslim men will have the right to give maintenance only till the time of Iddat Period, that is 90 days from the Divorce. After that, the liability of paying the maintenance will shift to the Waqf Board.
- In the appeal, SC held that husband is liable to pay maintenance even after the Iddat period is over. Apex Court also said that common civil code is needed for citizens of the country.

Sarla Mudgal Case

- There was an NGO named Kalyani, and Sarla Mudgal was the President of the Kalyani NGO who had fought for Meena Mathur. Under the Hindu Personal Law, Meena Mathur was married to Jitendar Mathur. As per Muslim Law, there is a provision that Muslim men can marry as many as four wives during his lifetime. After that Jitendra Mathur Converted into Islam and married another girl and that girl also converted into Islam.
- Sarla Mudgal filed a case against the Jitendar Mathur. The contention from the advocate of Jitendra Mathur was given that he has married under the Muslim law, which permits the second marriage.
- But the Supreme Court gave the Judgement in favor of Meena Mathur and held that Islamic Law permits four marriage but conversion for the purpose of marriage is an abuse of Personal Laws.
- Further Court clarified that Hindu marriage will be dissolved only under the Hindu Marriage Act. **In order to prevent such type of marriage Court also quoted that UCC should be implemented in order to prevent similar types of matters.**

Indian Judiciary

FEATURES

1. Single and Integrated Judicial System: – The Constitution establishes a single unified judicial system for the whole of India. The Supreme Court of India is the highest court of the country and below it are all the High Courts at the state level. Other courts (subordinate courts) operate under the High Courts. The Supreme Court controls and runs the judicial administration of India. All courts of India make a single judicial system.

2. Independence of the judiciary: – The Constitution of India makes the judiciary truly independent. It provides for: –

1. Appointment of judges by the President,
2. High qualification for appointment as judges,
3. Removal of judges by a difficult method of impeachment,
4. High salary, pension and other service benefits for judges
5. Independent establishment for the judiciary, and
6. Adequate powers and functional autonomy for the judiciary.

3. Judiciary as interpreter of the constitution: – The Supreme Court is empowered to *interpret and clarify the Constitution* and give *final decisions*.


4. Judicial review: – The constitution of India is the supreme law of the land. It is the protector of the fundamental rights and freedoms of the people. To play this role, Judiciary exercises the power of judicial review. The power to determine the constitutional validity of all laws is with the Supreme Court. It can reject any such law which is considered unconstitutional. High courts also exercise this power.

5. A provision for High Courts and Joint High Courts for each of the states: – The constitution states that there should be a High Court for each state. However, two or more states can make a joint High Court with mutual consent.

6. Supreme Court as arbitrator of legal disputes between the Union and the States: – The Constitution gives jurisdiction to the Supreme Court in all cases of disputes: –

1. Between the Government of India and one or more states,
2. Between the Government of India and a State or States on one side and one or more States on the other, and
3. Between two or more states.

7. Guardians of Fundamental Rights: – The Indian judiciary acts as a protector of fundamental rights and freedom of the people. People have the right to constitutional remedies under which they can seek the protection of the courts to prevent violations or to meet any threat to their rights. The Supreme Court and the High Courts have the **power to issue writ** for this purpose.



8. Separation of judiciary from executive: – The Constitution of India provides for separation between the judiciary and the other two organs of government. The judiciary is neither a branch of the executive nor it is in any way subordinate to it. In India, judicial administration is abandoned and carried out in accordance with the **rules and orders of the Supreme Court**.

9. Open trial: – Courts in India are independent. They conduct open trial. The accused is always given full opportunity to defend themselves. The state provides free legal aid to the poor and the needy.

10. Judicial activism: – The Indian judicial system is becoming more and more active. The Supreme Court is coming up with judicial decisions and directives aimed at the **active protection of the public interest and human rights**. The judiciary is instructing public officials to ensure a better protection for the rights of the public. **Public interest litigation** system is taking up.

11. Public Interest Litigation System: – Under this, any citizen or a group or a voluntary organization, or even a court by itself, can call for action to protect and satisfy the public interest, taking into account any matter. It provides an easy, simple, quick and inexpensive system to provide judicial relief to the aggrieved public.

With all these characteristics, the Indian judicial system is an independent, impartial, independent, powerful and efficient judicial system.

Functions of the Indian Judiciary

1. **Upholding and interpreting the Constitution:** The judiciary is responsible for protecting and upholding the Constitution and its ideals. The courts interpret the Constitution and strike down any law, ordinance, rule, or regulation which violates or infringes the Constitutional provisions.
2. **Resolving inter-state disputes:** The Constitution of India lays down a federal structure of governance. Thus, disputes between the states and the Union and the States are inevitable. The judiciary, particularly the Supreme Court, plays a key role in resolving such disputes.
3. **Protection of Fundamental Rights:** Part III of the Constitution confers certain fundamental rights on citizens as well as non-citizens and legal as well as natural persons. The judiciary ensures that these fundamental rights are not violated. If any act of the legislature or the executive abridges these rights, then the Constitutional courts have the power to issue writs.
4. **Assistance in law-making:** In several cases, the courts lay down guidelines which are later incorporated in the statutes by the legislature. The courts often make suggestions to the legislature to draft a new law or to modify or amend existing law in order to meet the problems of contemporary society. The judiciary also provides an advisory opinion to the President and resolves any doubts relating to the Constitutional provisions.



Hierarchy of courts in India

The judicial system in India is hierarchical in nature. There are primarily four layers of hierarchy:

- The Supreme Court of India,
- The high court of various states,
- The subordinate courts,
- Tribunals,
- Nyay Panchayats,
- Lok Adalat.

Supreme Court of India

- ◇ Its decisions are binding on all courts.
- ◇ Can transfer Judges of High Courts.
- ◇ Can move cases from any court to itself.
- ◇ Can transfer cases from one High Court to another.

High Court

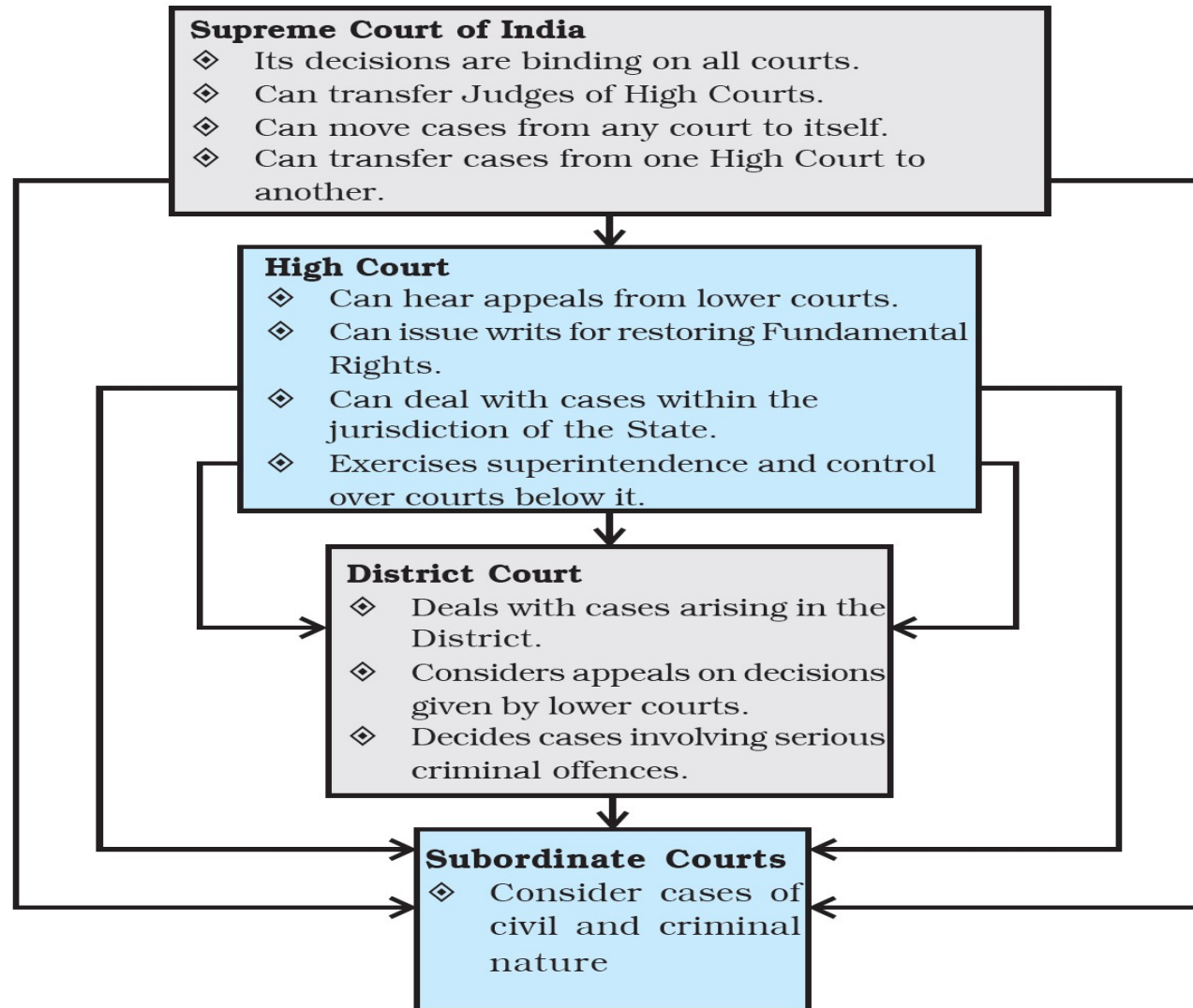
- ◇ Can hear appeals from lower courts.
- ◇ Can issue writs for restoring Fundamental Rights.
- ◇ Can deal with cases within the jurisdiction of the State.
- ◇ Exercises superintendence and control over courts below it.

District Court

- ◇ Deals with cases arising in the District.
- ◇ Considers appeals on decisions given by lower courts.
- ◇ Decides cases involving serious criminal offences.

Subordinate Courts

- ◇ Consider cases of civil and criminal nature



➤ 124. Establishment and constitution of Supreme Court

(1) There shall be a Supreme Court of India constituting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years: Provided that in the case of appointment of a Judge other than the chief Justice, the chief Justice of India shall always be consulted:

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4)



Appointment of Judges of the Supreme Court



126. Appointment of acting Chief Justice:

When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason or 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.

Functions of the Supreme Court

- The Supreme Court has the following functions:
 - It is responsible for interpreting the provisions of the Constitution. If any Central or State law is found to be contravening or violating any of the Constitutional provisions or if any law infringes the fundamental rights conferred by the Constitution, then the Supreme Court can strike down such law and declare it to be unconstitutional.
 - The Supreme Court frames guidelines and rules and lays down the procedure for its own functioning.
 - The Supreme Court is responsible for protecting and upholding the fundamental rights of the citizens. The court can issue writs under Article 32 for enforcing the rights of the citizens.
 - The Supreme court is responsible for the protection and upholding of the integrity of the entire judicial system and can punish those for contempt who make derogatory comments against the judiciary.
 - It resolves the disputes between the Union and the States as well as between two or more states.
 - It is the highest court of appeal. It hears appeals against the judgments of the subordinate courts and tribunals and gives final judgments on the matters.



Jurisdiction of the Supreme Court

The Supreme Court has original, appellate as well as advisory jurisdiction.

1. Original Jurisdiction:


Article 131 provides the original jurisdiction of the Supreme Court. The original jurisdiction of the court extends to the disputes between the Union and the States and disputes between two or more States.

The only instance where a private person can directly approach the Apex Court is for enforcing any of the fundamental rights of the individual.

2. Appellate Jurisdiction: [Article 136(1)].

The Supreme Court has very wide appellate jurisdiction. Appeals can be made before the Apex Court where the matter involves a substantial question of law. Such matters may be referred either by the sanction of the high court or under a Special Leave Petition.

- ▶ Article 132(1) empowers the Supreme Court to allow appeals against any judgment, order or decree from the high court if the matter is certified to involve a substantial question of law by the high court under Article 134A.
- ▶ Similarly, in criminal cases, an appeal can be made before the Apex Court with the prior certification of the high court or where the accused is sentenced to death by the high court in the reversal of his acquittal or where the high court sentences a person to death after withdrawing the case from a subordinate court.
- ▶ In civil cases, appeals can be made before the Apex Court under Article 133(1) subsequent to the high court's sanction.



3. Advisory Jurisdiction: The Supreme Court is also empowered to give its advisory opinion on any matter referred by the President under Article 143(1). The President can seek the advisory opinion on any question of law or of public importance or where the matter is concerned with any treaty or agreement relating to pre-constitutional times.

- The advisory opinion of the court is not binding on the government.

4. Review Jurisdiction:

1. Under Article 137, the Supreme Court is empowered to review any of its previous judgments.

139A. Transfer of certain cases

- (1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney General of India or by a party to any such case that such questions are **substantial questions of general importance**, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself: Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment
- (2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court



High Courts

- The Constitution provides for a High Court in each State under Article 214. However, the Parliament is empowered to establish a common high court, by law, for two or more states. For example, the high court of Punjab and Haryana has jurisdiction over both Punjab as well as Haryana.

Appointment of judges of High Courts

- The judges of High Court are appointed by the President. In the case of the Chief Justice of the high court, the appointment is made by the President after consulting the Chief Justice of India and the Governor of the concerned State. With respect to other judges of the high court, the President is required to consult the Chief Justice of the concerned high court.



Functions of a High Court

- It controls the functioning of the subordinate courts and issues rules and guidelines for their functioning.
- The high court hears appeals against the judgment and orders of the subordinate courts.
- The high court is empowered to issue writs to safeguard the fundamental rights of individuals.
- The high courts have the power of judicial review and can declare a law to be void if it is found to be in contravention of the provisions of the Constitution.
- If a matter before the subordinate court involves a substantial question of law, then the high court is empowered to withdraw the matter and hear the matter.

Jurisdiction of a High Court

- The high court exercises jurisdiction over the territorial limits of the concerned State.
- **Original jurisdiction:** The high court has original jurisdiction in matters relating to the enforcement of fundamental rights, certain revenue matters and election to the State Legislature. The high court has the power to punish for its contempt under Article 215.
- **Appellate jurisdiction:** The high courts have appellate jurisdiction with reference to both civil and criminal matters. Where the accused is sentenced to 7 years of imprisonment or more or to the death penalty by the sessions court, an appeal can be made before the high court. Furthermore, cases involving substantial questions of law can be appealed before the high courts.
- **Writ jurisdiction:** Article 226 of the Constitution empowers the high courts to issue writs for the enforcement of the rights of individuals. It is pertinent to note that the high court can issue writs for the enforcement of fundamental as well as legal rights.
- **Supervisory jurisdiction:** Article 227 of the Constitution confers supervisory jurisdiction on the high courts. The high court exercises superintendence over all such courts and tribunals that are established within its territorial jurisdiction.
- **Review jurisdiction:** Article 226 confers the review jurisdiction on the high courts and empowers them to review their own judgments and orders. The high courts entertain a review petition when there has been material error resulting in miscarriage of justice or where there has been a flagrant procedural error.

Subordinate Courts

- The district courts are established by the State Government. They may be established for an individual district or a group of districts. The high court is responsible for supervising the administration of the District courts. There are primarily two types of District courts:
 1. Criminal courts, and
 2. Civil courts.
- The civil courts adjudicate disputes relating to matters such as agreements, rent and divorce. These cases are decided on the basis of the procedure laid down by the Code of Civil Procedure, 1908.
- The criminal courts decide cases concerning the violation of law and which are filed by the state. These cases include dacoity, murder, etc. The working of the criminal codes is governed by the procedure laid down by the Code of Criminal Procedure, 1973.
- It is pertinent to note that the district courts while dealing with criminal matters, are referred to as session courts.
- Any person aggrieved by the order of the district court can prefer an appeal before the high court. Below the district court, there are various other subordinate courts such as the Court of Additional District Judge, Court of Judicial Magistrate of 1st Class, Court of Judicial Magistrate of 2nd Class, etc. The largest number of cases are disposed of at this level. The trial and recording of evidence also take place at this level.
- The land revenue matters in the state are decided by the revenue courts. The revenue courts include the courts of Tehsildar, Collector, etc. The Board of Revenue constitutes the highest revenue court.



Appointments and composition

- The district courts are presided over by a district judge who is appointed by the Governor of the State. The Governor appoints the district judge after consulting the concerned high court. The Additional District Judge may also be appointed subject to the workload.
- Other judicial officers are appointed by the State Public Service Commission.



Tribunal

- Various special tribunals are set up by the government for dealing with specific matters such as taxes, land disputes, etc. Tribunals may be judicial or quasi-judicial. The Tribunals provide expeditious justice and are usually established when there are several pending matters relating to a particular subject matter pending before the traditional courts. Thus, these tribunals help in reducing the burden of the traditional courts.
- Article 323A of the Constitution empowers the Parliament to establish Central as well as State-level administrative tribunals which adjudicate on matters relating to the recruitment and service of public servants.
- Article 323B provides a list of subject matters for which the Tribunals may be established by the Union Parliament or the State Legislatures. It includes tax, labour disputes, elections, land reforms, etc.

Nyay Panchayats

- The Nyay Panchayats are established at the village level and are aimed at providing cheap and expeditious justice. They are based on the direction provided by Article 40 which states that the State must take steps to empower the panchayats. The 73rd Constitutional Amendment conferred Constitutional status on the panchayats. These Nyay Panchayats adjudicate on minor offences such as wrongful restraint or theft. While these Panchayats enjoy both civil as well as criminal jurisdiction, the pecuniary jurisdiction of these judicial constituents is very low.
- The Panchas are appointed by the adult people of the village itself. Furthermore, since the posts are honorary, the members do not receive any salary. The minimum age of the members of Nyay Panchayat is 30 years.

Lok Adalat

- Unlike the Nyay Panchayat, the Lok Adalats do not adjudicate disputes, rather, they aim at resolving disputes through mediation and arbitration. The Lok Adalats are also known as the '*People's Court*'. The Lok Adalats consist of judicial officers, retired and serving, and such other persons as prescribed by the Central Government.
- A statutory status was conferred on the Lok Adalats by the Legal Services Authorities Act, 1987. Chapter VI of the Act expressly deals with the organization of Lok Adalats. Section 21 of the Act provides that the award made by a Lok Adalat is deemed to be a decree of a civil court. Furthermore, such an award is binding on the parties to the dispute.
- The Lok Adalat has jurisdiction over such cases which are pending before the court for which the Adalat is convened. The parties may either agree to refer the matter to the Lok Adalat or one of the parties may apply before the Lok Adalat or the matter may be referred to the Lok Adalat by the court. Section 20 provides that a Lok Adalat while discharging its duties, must observe the principles of "*justice, equity, fair play and other legal principles*".

UNION GOVERNMENT AND THE EXECUTIVE

- A Parliamentary government is a democratic administration in which the government is formed by the political party that obtains the most seats in the legislature or Parliament during the federal election. This majority party selects a leader to be Prime Minister or Chancellor. The cabinet is made up of other high-ranking members of the party. The opposition is formed by the minority party, and its role is to confront the governing party. If no party wins a majority in the election, a coalition government is established with the cooperation of a few political parties.
- There is a difference between a Parliamentary and presidential form of government. The executive branch is distinct in a presidential system, such as the United States, and the President is popularly chosen by the nation's population. In contrast, the leader of the government under a Parliamentary system is elected from the Parliament and is frequently one of the most senior members or ministers in Parliament, which is where the name "Prime Minister" comes from. In a Parliamentary system, the country usually has a Head of State (President) who serves as a ceremonial figure, similar to the Queen, but does not engage in legislation or politics.

► FEATURES OF PARLIAMENTARY FORM OF GOVERNMENT

This form of government was basically preferred by the leaders as:

- Leaders were aware of such a form of government.
- This government was considered a more responsible government as in this form of government, the executive is answerable to legislative and the legislative is answerable to the citizens.
- This type of government prevents Authoritarianism.
- This form helps to get representation from a Diverse Group of people.
- This form of government remains laden with the availability of Alternate Government.
- In this form of government, the head of the state holds a ceremonial position and is the nominal executive. For example, the President
- The real head of the State is the Prime Minister, who is the real executive.
- There is a majority party rule in such a form of government.
- There is always a Parliamentary Opposition to maintain a check on the actions of the ruling government.
- In this form of Government Civil Servants are Independent.



The President (Article 52)

- The first and foremost part of the Executive is the President. Article 52 states that there shall be a President of India. The President is considered the Executive head of the country. All the Executive business of the country is carried out in the name of the President.

QUALIFICATION – ART 58

- Article 58 talks about the eligibility of a person to become President of India. It says that a person is eligible for election as President if he:
 - is a citizen of India;
 - has completed the age of thirty-five years;
 - is qualified for election as a member of the House of the People.

- A person can be disqualified for election as President if he holds any office of profit under
 - the Union of India or;
 - the Government of any State or;
 - under any local or other authority subject to the control of any Government of India.

CONDITIONS OF OFFICE – ART 59

- Article 59 of the Indian Constitution talks about the conditions of the President's office. It says:
 - The President cannot be a member of either House of Parliament or of any other House of the Legislature of any State.
 - If he is a member of either House of Parliament or a member of a House of the Legislature of any State, he will need to vacate his seat in that House on the date of entering into his office as President.
 - The President shall not hold any other office of profit.
 - The President shall be authorized to the use of his official residences without rent.
 - He shall be also authorized to emoluments, allowances, and privileges determined by Parliament.
 - The emoluments and allowances of the President cannot be diminished or reduced during his term of office.



Official residence, emoluments, and allowances of President

- The President of India is entitled to rent-free accommodation, allowances, and privileges by law. He is also entitled to:
 - Free medical facilities;
 - Free accommodation;
 - Free treatment for life;
 - The official state car of the President.
- Rashtrapati Bhavan is the President's official residence, including reception halls, guest rooms, and offices. It is the largest residence of any head of state in the world.
- Salary as of 2022 – Rs. 5,00,000 /-

Procedure for impeachment of the President: Article 61

- The President of India can be impeached under Article 61, for the violation of the Constitution, on the basis of charges preferred by either House of Parliament.
- A resolution with the proposal to prefer such charges must be signed by at least one-fourth of the total members of the house. The resolution also needs to be passed by at least two-thirds majority of the house.
- When the resolution is passed by one of the Houses, the other House must investigate the charges. The President has been granted the right to be present or to be represented in such investigations.
- When the House investigating the charges passes the resolution by a two-thirds majority and declares the charges as sustaining, it results in removing the President from his office from the date of passing of the resolution.

Powers of the President

► Executive powers

Article 53 of the Indian Constitution states that all the executive powers of the Union will be vested in the President of India. President is allowed to exercise his executive powers through officers subordinate to him, directly or indirectly, in consonance to the provisions of the Constitution. His Powers includes:-

- Appointment of the high authorities of the Constitution like the Prime Minister and the Council of Ministers;
- Right of being informed about all the national affairs;
- Appointment of the judges of the constitutional courts(Supreme Court and High Courts);
- Appointment of the state Governors, the Attorney General, the Comptroller, and Auditor General, the Chief Commissioner and members of the Election Commission of India;
- Administration of Union territories and appointment of the Chief Commissioners and Lieutenant Governor of the Centrally Administered Areas;
- Removal of the Council of Ministers, the state Governors, the Attorney General.

Military Powers

- Article 53 also states that the President shall be the Supreme Commander of all the Armed Forces of the Union of India. It also states that no specific provisions can reduce the scope of this general principle.
- As the Supreme Commander of the Armed Forces of the Union, President has powers regarding:
 - Appointment of all the officers, including the appointment of the chiefs of the forces;
 - Wars are waged in the name of the President;
 - Peace is concluded in the name of the President.

Diplomatic powers

- The President forms the face of Indian diplomacy and helps the nation to maintain cordial relationships with countries across the globe.
- All the Ambassadors and high commissioners in foreign nations are his representatives;
- He receives the credentials of the Diplomatic representatives of other nations;
- Prior to ratification by Parliament, the treaties and agreements with other nations, are negotiated by the President.

Legislative Powers

- The President also enjoys certain legislative powers like:
 - During the budget session, the President is the first to address the Parliament;
 - The President is empowered to summon a joint session in order to break the deadlock in the legislation process between the two Houses of the Parliament;
 - President sanction is mandatory in cases of provisions relating to:
 1. creating a new state;
 2. changes in the boundary of existing states;
 3. a change in the name of a state.
 - Legislative provisions relating to fundamental rights of the citizens of India require the President's consent;
 - President's consent is mandatory in cases of money bill originating in Lok sabha;
 - President's consent is necessary for all the bills passed by the Parliament to become a law;
 - President is empowered to promulgate ordinances when the Parliament is not in session;
 - President also nominates the members of both the Houses.

Ordinance making power of the President: Article 123

- Article 123 talks about the presidential powers to promulgate ordinances. An ordinance can be promulgated if:
 - neither of the House of the Parliament is in session;
 - and the President feels a need for immediate action.
- The ordinance which is promulgated by the President will have the same effect as that of an act or law of the Parliament.

Financial Roles

- President receives reports of the Finance Commission and acts on its report.
- The Contingency Funds of India are at the disposal of the President.
- He also causes the presentation of audits in the Parliament.

Judicial powers

- The President enjoys the following privileges as his judicial powers:
 - He can rectify the judicial errors;
 - He exercises the power of grant of pardons and reprieves of punishments;
 - President can seek the advice of Supreme Courts on:
 1. Legal matters,
 2. Constitutional matter,
 3. Matters of national importance.

Pardoning power: Article 72

- Article 72 provides for the provisions relating to the pardoning powers of the President. President can grant pardons, respites, reprieves, and remissions of punishments or remit suspend or commute the sentence given to a person by the court in the following cases:
 - When the sentence is granted through a court-martial;
 - When the sentence or punishment is given for offense of violation of any law relating to matters that fall in the ambit of Union's executive powers;
 - When a death sentence is passed by a court.



Emergency Powers

- Article 352 of the Constitution of India grants President, three kinds of emergency powers as well:
 - When a National Emergency is declared in case of external aggression or internal armed rebellion, the President holds the powers to declare a state of emergency. Thus the President's rule gets established in the country. However, the prime minister and the Council of Ministers must recommend such an emergency;
 - When there exists a constitutional or law and order breakdown situation in a state, the President may declare a state of emergency in such cases. The state would then come under Governor's rule;
 - Whenever the financial stability of the nation or any country is seriously affected, the President has the right to intervene and direct the state to check and maintain public expenditure.

PARLIAMENT AND IT'S COMPOSITION

- Parliament is the Supreme legislative body of India.
- The Parliament in India comprises the President of India, the Upper House i.e. *Rajya Sabha* and the Lower House i.e. *Lok Sabha*.
- **COMPOSITION:** The Constitution describes the structure of parliament in **Article 79**. It states that the Parliament comprises of the President and the two houses i.e. the Lower House or House of People and Upper house or Council of States.
- Even though the President is a part of the legislature, he doesn't sit in parliament.
- However, a bill passed by houses can't be made law without the assent of the President.

RAJYA SABHA

Rajya Sabha is the Upper House of the Indian Parliament.

- **COMPOSITION:** This house consists of 250 members out of which, 238 members are elected by means of a single transferable vote. 12 members are nominated by the President on the advice of the council of ministers.
- The **method of election of these members is listed in Article 80(1)** of the Indian Constitution. It says that the members would be elected by the elected members of respective state assemblies in accordance with proportionate representation of every state.
- This provision thus reflects the federal nature of the Council of States, where every state is represented proportionally.
- However, the number of members representing each state varies from 1 to as large as 31 (for Uttar Pradesh).
- **TENURE:** This house is permanent in nature as it can never be dissolved. This is because every member elected to the Rajya Sabha serves for a term of 6 years and one-third of members do retire biennially, while the other members continue their tenure. It's like an election in different batches.
- Retired members are subject to re-election



The Lok Sabha

- **COMPOSITION:** The provisions of **Article 331** of the Indian Constitution provides for the existence of the house of the people and shall consist of a maximum of 530 chosen members from different states, not more than 20 members to be chosen from the Union Territories. If President feels that there is a lack of representation of the Anglo-Indian Community in parliament he may nominate two members of the Anglo-Indian Community.
- Some seats are also reserved for the Scheduled Caste and Scheduled tribes communities especially laid aside for them all over the country.

TENURE OF LOK SABHA

- The members elected by Universal Adult Suffrage serve their offices for a tenure of five years.
- However, if devoid of a popular majority, the government can fall and the house can dissolve midway anytime before the completion of five years.



Qualification for Membership of Parliament

- Qualifications necessary for becoming a member of parliament is provided in **Article 84** of the Indian Constitution.
- Following are the qualifications:
 - he/she should be a citizen of India.
 - In the case of Upper House i.e. Rajya Sabha, he/she should have completed at least 30 years of age and for Lower House i.e. Lok Sabha, he/she should have completed 25 years of age.
 - he/she need to comply with other such qualifications as prescribed in any law by the Indian Parliament.

Disqualification

- Now, **Article 102** of the Indian Constitution lays the grounds on which a legislator can be disqualified as a member of the Parliament.
- Those grounds are:
 - If he/she holds any office of profit under the Government of India or any of the states;
 - If he/she is declared of unsound mind by a Court;
 - If he/she is an undischarged insolvent;
 - If he/she is not a citizen of India anymore;
 - If he/she is disqualified by virtue of any law passed by the parliament of India.



POWERS & FUNCTIONS OF PARLIAMENT (LS & RS)

Apart from making Laws for India, the other important functions and powers of the Parliament are given below:

■ **Financial Functions of the Parliament**

- Parliament has the power to grant resources to the Government, to help the Government implement its various programs.
- The financial resources that the Government wishes to raise, and the money spent by the Government; these details have to be shared by the Government with the Parliament.
- Parliament controls the taxation and the way the funds are utilized by the Government.
- The approval of the Lok Sabha (the lower house of the Parliament) is needed if the Government of India wants to introduce new taxes.
- Government has to present its budget and financial statements in Parliament.



➤ **Debating Functions of the Parliament**

- The highest forum for debates in India is the Parliament.
- All the Members of Parliament have the right to debate and speak on any matter.
- Every issue in India gets analyzed in the debates held in the Parliament.
- Debates in Parliament are the heart of decision-making in India.

➤ **Judicial Functions of the Parliament**

- Considering the proposals for the removal of the judges of the Supreme Court, High Courts, Vice-President and President is the judicial function of the Parliament.



➤ **Electoral Functions of the Parliament**

- Parliament has the power to elect the Vice President of India and the President of India. This is the electoral function of the Parliament.

➤ **Constituent Functions of the Parliament**

- Approval of the Parliament is needed for making any amendments to the Constitution of India.
- The Parliament has the power to discuss and enact changes



➤ **Legislative Functions of the Parliament**

- Legislations of the country are enacted in the Parliament of India.

➤ **Controlling the Executive**

- The Parliament of India ensures that there is accountability of the Executive.
- Parliament ensures that the executive remains responsible to the people who have elected them.
- Parliament ensures that the executive does not overstep its authority.

Scope to Amendment in Constitution

The scope and extent of Parliament's power to amend the Constitution of India.

- In India, the most important process to modify and adopt the text of the Indian Constitution is contained in Article 368.
- For the purpose of amendment, various Articles of the Constitution are divided into three categories:
- Taken from South Africa
- 105 Amendments (11-Aug-2021) – state given power to identify backward classes.
- Amendment needed to adapt changes.
- Power & Procedure to Amend is given by Art 368.

As regards the scope of the amending power contained in Article 368, the court in Kesavananda Bharati case said that the word “amendment” has been used in various places to mean different things. In Article 368, It means any addition or change in any of the provisions of the Constitution. The fundamental rights cannot be abrogated, but they can be amended reasonably. The court further said Constitution can be amended provided that the basic structure of the Constitution remains the same.

- Parliament cannot change basic structure through Amendment.

- 
- Procedure – partly rigid and partly flexible

(1) Amendment by simple majority:

- Amendments contemplated in Articles 5, 6, and 239-A, can be made by simple majority. These Articles are specifically excluded from the purview of the procedure prescribed in Article 368.

(2) Amendment by special majority:

- Articles which can be amended by special majority are laid down in Article 368. All constitutional amendments, other than those referred to as above, come within this category and must be effected by a majority of the total membership of each House of the Parliament, as well as by a majority of not less than two-thirds of the members of that House present and voting.

(3) By special majority and Ratification by States:

- Articles which require in addition to the special majority and ratification by not less than one-half of the State Legislatures come under this category. These are fundamental matters where States have important power under the Constitution and any unilateral amendment by Parliament may vitally affect the fundamental basis of the system built up by the Constitution. (in 8 cases. Eg. Election of president, Article 368 itself)

Governer -Appointment and Qualification of the Governor


- **ART 155 (APPOINTMENT)** : The Governor is generally appointed by the President of the Nation under Article 155 of Indian Constitution. The governor shall be appointed by the President under his seal and warrant.
- **ART 157 (QUALIFICATION)** : The candidate shall fulfil the listed criteria given below to be appointed as Governor of the state enshrined in Article 157 of Indian Constitution which is as follows:
 1. *He ought not to be the individual from either house of parliament or a place of the state governing body.*
 2. *He ought not to hold any office of profit.*
 3. *He can utilize his official home for other purposes, however, ought not to charge rent for that.*
 4. *If an individual is named as the overseer Governor of other states, he is qualified to get the compensation of both state's Governor (chosen by the President of India).*
 5. *His payments and remittances can't be diminished amidst his term.*

POWERS & FUNCTIONS

Executive Powers of the Governor

■ The following comes under his executive powers:

1. Every executive action that the state government takes, is to be taken in his name.
2. Opinion in Appointment of HC judges
3. He may/may not make rules to simplify the transaction of the business of the state government.
4. Chief Ministers and other ministers of the states are appointed by him.
5. It is his responsibility to appoint Tribal Welfare Minister in the states of:
 1. Chattisgarh
 2. Jharkhand
 3. Madhya Pradesh
 4. Odisha

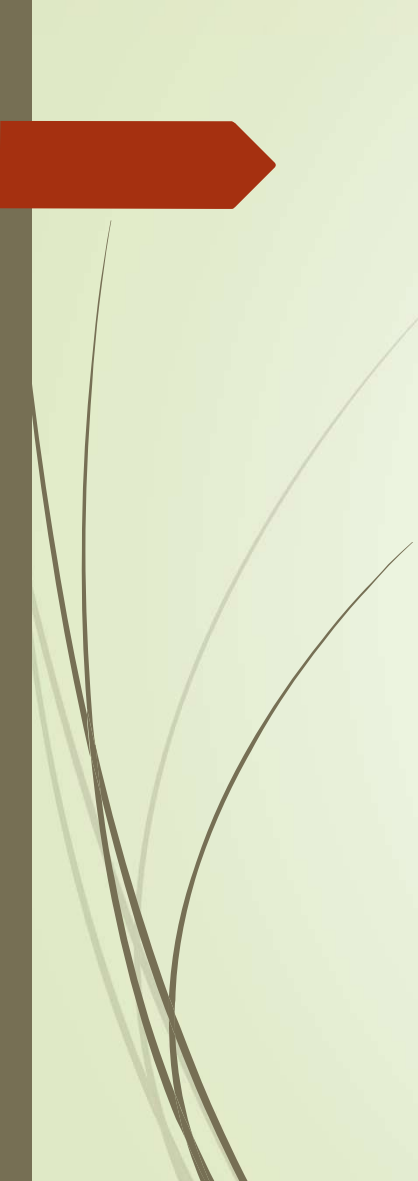
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1. He appoints the advocate general of states and determines their remuneration
 2. He appoints the following people:
 1. State Election Commissioner
 2. Chairman and Members of the State Public Service Commission
 3. Vice-Chancellors of the universities in the state
 3. A constitutional emergency in the state is recommended to the President by him.
 4. The governor enjoys extensive executive powers as an agent of the President during the President's rule in the state.



Legislative Powers of the Governor

■ The following are the legislative powers of the governor:

1. It's in his power to prorogue the state legislature and dissolve the state legislative assemblies
2. He addresses the state legislature at the first session of every year
3. If the speaker of the legislative assembly is absent and the same is Deputy Speaker, then Governor appoints a person to preside over the session
4. As President nominates 12 members in Rajya Sabha, Governor appoints $\frac{1}{6}$ of the total members of the legislative council from the fields of:
 1. Literature
 2. Science
 3. Art
 4. Cooperative Movement
 5. Social Service

- 
1. As President nominates 2 members in the Lok Sabha, Governor nominates 1 member in state legislative assembly from Anglo-Indian Community.
 2. He can consult Election Commission for the disqualification of members
 3. With respect to the bill introduced in the state legislature, he can:
 1. Give his assent
 2. Withhold his assent
 3. Return the bill
 4. Reserve the bill for the President's consideration (In instances where the bill introduced in the state legislature endangers the position of state High Court.)
 4. An ordinance can be promulgated by him when either the Legislative Assembly or Council (Unicameral/Bicameral) are not in session.
 5. The following reports are laid by him:
 1. State Finance Commission
 2. State Public Service Commission
 3. Comptroller and Auditor General (Concerning the state finance)



Financial Powers of the Governor

- The following are the financial powers and functions of the Governor:
 1. He looks over the state budget being laid in the state legislature.
 2. His recommendation is a prerequisite for the introduction of a money bill in the state legislature.
 3. He recommends for the demand for grants which otherwise cannot be given.
 4. Contingency Fund of State is under him and he makes advances out of that to meet unforeseen expenditure. State Finance Commission is constituted every five years by him.

Judicial Powers of the Governor

- The following are the judicial powers and functions of the Governor:
 1. He has the following pardoning powers against punishment:
 1. Pardon -
 2. Reprieve -
 3. Respite -
 4. Remit -
 5. Commute -
 2. President consults the Governor while appointing judges of High Court.
 3. In consultation with the state High Court, Governor makes appointments, postings, and promotions of the district judges.
 4. In consultation with the state high court and state public service commission, he also appoints persons to the judicial services.



STATE LEGISLATURE



INTRODUCTION

Chapter III of Part VI of the Constitution is concerned with the State Legislature. Articles 168 to 212 in Part VI of the Constitution deals with the organization, composition, duration, officers, procedures, privileges, powers and so on of the state legislature.


Bicameral and Unicameral States

What is a Unicameral State?

- It is a form of the legislature where only one house (one central unit) exists to make and implement laws.

What is a Bicameral State?

- It is a legislative body with two houses. In a bicameral legislature, the function to administer and implement the laws are shared between the two houses.



The State Legislature which has only one House is known as the Legislative Assembly (Vidhan Sabha) and in the State which has two houses, the Upper House is known as the Legislative Council (Vidhan Parishad) and the lower House is known as the Legislative Assembly (Vidhan Sabha).

Bicameral - the States having two Houses are Bihar, Maharashtra, Karnataka, Andhra Pradesh, Telangana and Uttar Pradesh.

Unicameral – West Bengal, Punjab & Tamilnadu.

COMPOSITION:

SLA – Art 170

SLC – Art 171.




SLA - COMPOSITION

According to Article 170, there should be a Legislative Assembly in every State of India. The Legislative Assembly of state can have at most 500 constituencies and at least 60 constituencies.

These constituencies would be represented by the members who would be selected through the process of direct election. However, the division of territorial constituencies would be determined in such a manner that it becomes dependent on the population of that constituency.




SLA - TENURE



Art 172- The Legislative Assembly should work for a time period of **five years**. Its tenure starts from the day of its first meeting. However, it can be dissolved earlier by the **special procedure established** by the law. (There can be an extension in the tenure of the Legislative Assembly. This can be done during the National Emergency.) During the period of the National Emergency, the **Parliament** can extend the tenure of the Legislative Assembly for a period of **maximum one year**.



SLC COMPOSITION



The composition of the Legislative Council is given in Article 171 of the Indian Constitution. The total **members in the Legislative Council should not exceed one-third of the total members in the state Legislative Assembly.** There is another criteria for the composition of the Legislative Council. The member in the Legislative Council should **not be less than 40** in any case.

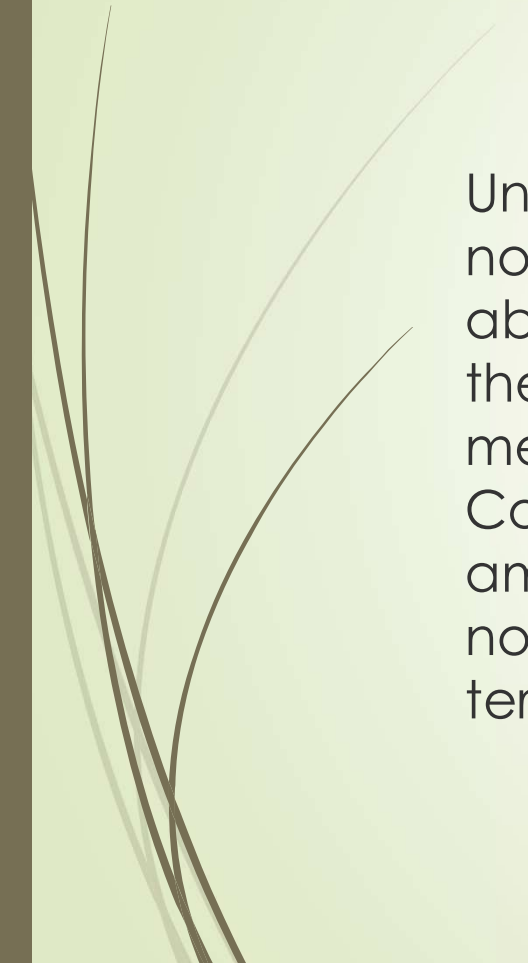


The composition of the Legislative Council can be further divided in the following way:

- **One-third** of the members of the Legislative Council should be elected from the **district boards, municipalities and other local authorities** which is specified by the Parliament according to law.
- **One-twelfth** of its members shall be elected from the person who has been **residing in the same state** for the time period of at least **three years** and graduated from the university which is in the territory of India.
- **One- twelfth** of its total member should be elected from the person who is engaged in the **teaching profession for at least three years** in the educational institution of the **state itself**.
- One third should be elected by **Legislative Assemblies** and **none** of them should be a **member of the Legislative Assembly**.
- The remainder of the members should be nominated by the **Governor** according to the established law.




SLC TENURE



Unlike the Legislative Assembly, the Legislative Council is not subject to dissolution. It is a **permanent body** unless abolished by the Legislative Assembly and Parliament by the due procedure. But no person can be a permanent member of the Council as one-third of the members of the Council retire on the expiry of every second year. It amounts to a term of six years for each member. There is no bar on a member getting re-elected on the expiry of his term.



(a) Legislative Powers



The Legislature of each State is empowered to frame laws on all matters included in the State List and the Concurrent List. But laws made by the State Legislature on the subject in the Concurrent List will be null and void in case they conflict with the laws of the Union on the same subject provided the relevant laws of the State Legislature have not obtained the assent of the President. Thus, the Constitution has imposed certain restrictions on the powers of the State Legislature. Another limitation on the power of the legislature is that **during an emergency, the Parliament of India may make laws on the State List.**

(b) Financial Powers

- The Legislature of a State also controls the finances of a State. Without the legislative sanction, a single paisa cannot be spent. The budget is introduced every year in the State Legislature. The State Legislature may pass, reduce, or reject the demands for grants made in the budget. It is its duty to find ways and means to meet the budget expenditure. Proposal for increase or decrease of taxes are to be approved in the Assembly.
- In a bi-cameral legislature, the position of the Legislative Assembly superior to that of the Legislative Council in respect of financial matters. Excepting the expenditure charged on the Consolidated Fund of the State (which is non-votable) all other items of expenditure must be submitted to the Legislative Assembly in form of demands for grants. In financial matters, the Legislative Assembly is supreme in the State.




(c) Control over Executive

The Constitution introduced parliamentary type of Government in the Centre as well as in the States. Consequently, the Council of Ministers is collectively made responsible to the State Legislature. The Legislature exercises supervision and control over the Ministers. The common method used to make the Ministers responsible to the Legislature is through question, censure motion, amendment to Government's policy, vote of no confidence, etc.

There are also Committees, which exercise control on the Government on behalf of the State Legislature. In controlling the Executive, the Legislative Assembly is more powerful than the Legislative Council. A vote of no confidence in the Legislative Council may not lead to the resignation of the Council of Ministers. However, such a vote of no confidence if passed in the Legislative Assembly compels the Ministry to tender its resignation.



(d) Electoral Functions



The elected members of the Legislative Assembly constitute a part of the Electoral College provided for the election of the President of India. The Legislative Assembly also elects the representatives of the State to the Rajya Sabha and 1/3rd of the members of the Legislative Council of the State concerned. It also elects its Speaker and Deputy Speaker. Legislative Council also elects a Chairman and Vice-Chairman from among its members to preside over the meeting of the Council.



(e) Constituent Functions

The State legislatures in India have no power to propose any amendment of the Constitution. All initiatives for the amendment of the Constitution are vested in the Union Parliament.

There are certain categories of amendments of the Indian Constitution (such as the election of the Indian President, High Courts, the representation of States in the Parliament, Article 368 of the Constitution etc.) which are to be ratified by one half of the Legislatures. In these respects, the State Legislatures also take part in the amendment of the Constitution. The 15th and 16th Amendment Bills were referred to the State Legislatures. Only when they received the support of half of the State Legislatures, the amendment became valid. Thus unlike U.S.A., the State legislatures in India have limited voice in the amendment of the Constitution.



73rd Amendment


Background

- Village panchayats existed in India long before the act was passed in 1992, but the system had inherent weaknesses like the inability to be a people's government responsive to their needs. This was due to a variety of factors like a lack of financial resources, no regular elections and inadequate representation of the weaker sections like scheduled castes/tribes and women.
- The Directive Principles of State Policy in the Constitution of India lays down in Article 40 that the government shall facilitate the establishment and smooth functioning of the gram panchayats.
- **In order to address these issues and strengthen the local self-governments in India, the central government brought about the 73rd Amendment Act in 1992. The act was passed in both houses and entered into force from 24th April 1993.**
- This Act added a new chapter into the Constitution called 'Part IX: The Panchayats'.



Objectives

- The main objective of the 73rd Amendment act was the democratic decentralization of power and resources from the centre to elected representatives at lower levels in order to allow individuals to participate more **directly in governance**.
- The Act empowered state governments to take the required procedures to establish **gram panchayats** and enable them to function as self-governing bodies.
- The objective of the 73rd Amendment pertains to Article 40 of the constitution which requires the state to organize **village panchayats** and grant them the necessary powers and **authority to enable them to function as units of self-government**.
- This amendment is based on the Gandhian Principle of DPSP which recommended grass root level democracy i.e. people should decide matters on their own.



73rd Amendment Act - Constitutional Provisions

- Local governments were provided constitutional sanction through the 73rd Amendment Act of 1992 which was enforced on 24th April 1993.
- The 11th schedule was added to the constitution through this amendment which contained 29 subject matters of the Panchayats.
- This act also added Part IX to the Constitution which contained provisions from Articles 243 to 243 O.
- This amendment brought the state governments under constitutional obligation to adopt the new system of Panchayati Raj in accordance with the provisions of the act.

Salient Features of the Act

- 1. Gram Sabha
- 2. Three-tier System
- 3. Election of Members and Chairpersons
- 4. Reservation of Seats
- 5. Duration of Panchayat
- 6. State Election Commission
- 7. Finance Commission
- 8. Finances – state may by law allow: levy of tax, duties, tolls..., give procedure and limits. State provides grants in aid and assign collected taxes, duties etc...
- 9. Powers and Functions of Panchayats – plans & implementation of schemes for Economic development and social justice. Sh. 11 (29-items)
- 10. Audit of Accounts
- 14. Bar to Interference by Courts in Electoral Matters




Eleventh Schedule

Following 29 functional items are placed within the purview of panchayats:

- ☐ Agriculture, including agricultural extension
- ☐ Land improvement, implementation of land reforms, land consolidation, and soil conservation
- ☐ Minor irrigation, water management, and watershed development
- ☐ Animal husbandry, dairying, and poultry
- ☐ Fisheries
- ☐ Social forestry and farm forestry
- ☐ Minor forest produce
- ☐ Small-scale industries, including food processing industries
- ☐ Khadi, village, and cottage industries
- ☐ Rural housing
- ☐ Drinking water
- ☐ Fuel and fodder
- ☐ Roads, culverts, bridges, ferries, waterways, and other means of communication
- ☐ Rural electrification, including distribution of electricity

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- ☐ Women and child development
 - ☐ Social welfare, including the welfare of the handicapped and mentally retarded
 - ☐ The welfare of the weaker sections, and in particular, of the scheduled castes and the scheduled tribes
 - ☐ Public distribution system
 - ☐ Maintenance of community assets
 - ☐ Non-conventional energy sources
 - ☐ Poverty alleviation program
 - ☐ Education, including primary and secondary schools
 - ☐ Technical training and vocational education
 - ☐ Adult and non-formal education
 - ☐ Libraries
 - ☐ Cultural activities
 - ☐ Markets and fairs
 - ☐ Health and sanitation including hospitals, primary health centers, and dispensaries
 - ☐ Family welfare



Result of the 73rd Amendment

- The passing of the 73rd Amendment has improved local self-government in the country vastly.
- In order to celebrate this and further give impetus to the institutions, the central government in 2010 decided to observe 24th April every year as **National Panchayati Raj Day**.
- Today, the formalized Panchayati raj functions in three levels namely, the Gram Panchayat (at the village level), the Mandal Parishad/Panchayat Samiti/Block Samiti (at the Block level), and the Zila Parishad (at the district level).



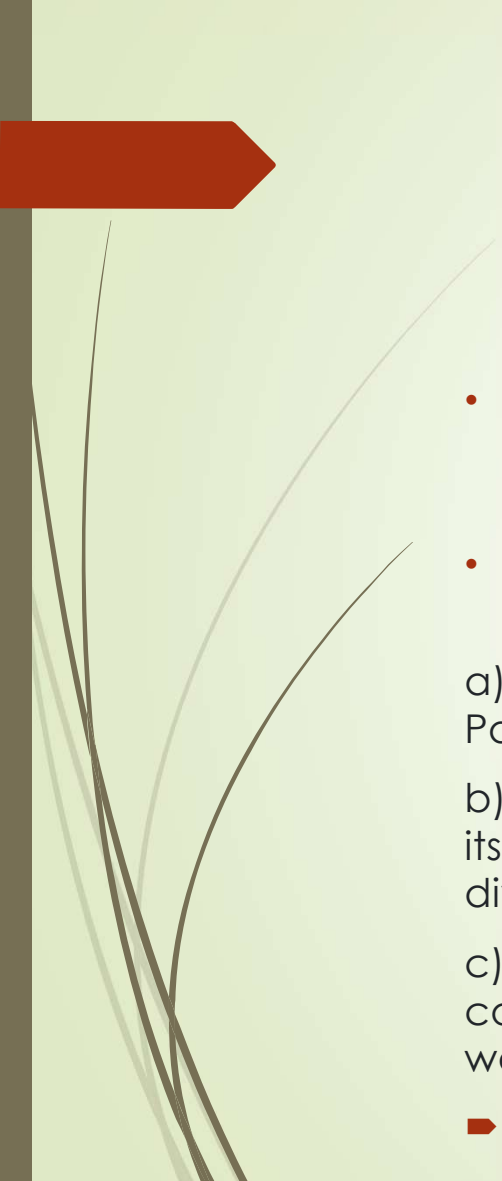
74th Amendment

INTRODUCTION

74th Amendment Act introduced Municipalities or Urban Local Bodies as constitutional entities. 74th Amendment Act aimed to create an institutional framework to let in grassroots democracy or democratic decentralization through self-governing local bodies in urban areas of the country.


OBJECTIVES

- The act granted **municipalities constitutional status**. It has brought them under the purview of the Constitution's justiciable provisions.
- In other words, state governments have a constitutional obligation to implement the new municipal system in accordance with the provisions of the act.
- The act's goal is to revitalize and strengthen municipal governments so that they can function effectively as units of local government.



Constitutional Provisions – 74th Constitutional Amendment Act

- It was passed by Parliament in December 1992 and came into force on 1 June 1993 adding Part IX A (Articles 243-P to 243-ZG) and the 12th schedule in the Constitution.
 - The 74th amendment provided a uniform law for all the municipalities in the nation.
 - a) Article 243-Q mentions the Constitution of Municipalities i.e. Nagar Panchayat, Municipal Council, and Municipal Corporation.
 - b) Article 243-R mentions the Composition of Municipalities, it states that all of its members are directly elected by the people of the Municipal area which is divided into territorial constituencies known as wards.
 - c) Article 243 S mentions about constitution and composition of ward committees consisting of wards and members of wards who represent that ward in the Municipality.
- [74th Amendment Act - Indian Polity Notes \(prepp.in\)](#)



Salient Features - 74th Constitutional Amendment Act

► Three Types of Municipalities


- The act provides for the constitution of the following three types of municipalities in every state.
 - A Nagar Panchayat (by whatever name called) for a transitional area.
 - A municipal council for a smaller urban area.
 - A municipal corporation for a larger urban area.
- **However, there is one exception, If there is an urban area where municipal services are being provided by an industrial establishment, then the governor may specify that area to be an industrial township. In such a case, a municipality may not be constituted.**

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- 
- Composition
 - Wards
 - Reservation of Seats
 - Duration of Municipalities
 - Disqualifications
 - State Election Commission
 - Finances
 - Finance Commission
 - Audit of Accounts
 - District Planning Committee
 - Bar to Interference by Courts in Electoral Matters

Twelfth Schedule

The following 18 functional items are placed within the purview of municipalities:

- ☐ Urban planning including town planning;
- ☐ Regulation of land use and construction of buildings;
- ☐ Planning for economic and social development;
- ☐ Roads and bridges;
- ☐ Water supply for domestic, industrial, and commercial purposes;
- ☐ Public health, sanitation, conservancy, and solid waste management;
- ☐ Fire services;
- ☐ Urban forestry, protection of the environment, and promotion of ecological aspects;
- ☐ Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded;

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- ☐ Slum improvement and upgradation;
 - ☐ Urban poverty alleviation;
 - ☐ Provision of urban amenities and facilities such as parks, gardens, and playgrounds;
 - ☐ Promotion of cultural, educational, and aesthetic aspects;
 - ☐ Burials and burial grounds, cremations and cremation grounds, and electric crematoriums;
 - ☐ Cattle ponds, prevention of cruelty to animals;
 - ☐ Vital statistics including registration of births and deaths;
 - ☐ Public amenities including street lighting, parking lots, bus stops, and public conveniences; and
 - ☐ Regulation of slaughterhouses and tanneries.



Significance of 74th Amendment Act

- Cities and towns make significant contributions to the nation's economic growth.
- The growth of the rural hinterland is significantly aided by these urban centers.
- The people and their representatives must be fully involved in the planning and implementation of the programs at the local level in order to maintain this economic change in line with requirements and realities at the grassroots level.
- The roots of democracy must extend into the towns, villages, and cities where people live if it is to remain strong and stable in the Parliament and State Legislatures.

UNION PUBLIC SERVICE COMMISSION

The **UPSC is a constitutional body. It is a central agency which is authorized to conduct various examinations** in India and the list of exams is given below.

1. Civil Services Examination
2. Indian Forest Service Examination
3. Engineering Services Examination
4. Combined Defense Services Examination
5. National Defense Academy Examination
6. Naval Academy Examination
7. Combined Medical Services Examination
8. Special Class Railway Apprentice
9. Indian Economic Service/Indian Statistical Service Examination
10. Combined Geoscientist and Geologist Examination
11. Central Armed Police Forces (Assistant Commandant) Examination

Establishment


- Art 315. (1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

Appointment

- 316. (1) **The Chairman and other members** of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the **President**, and in the case of a **State Commission**, by the **Governor** of the State.

Eligibility

- Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for **at least ten years either under the Government of India or under the Government of a State.**



Criteria for Removal of Members (Union Public Service Commission)

- **Article 317** - The members can submit their **resignation** to the President of India at any time. Any member of the commission would be removed from the office by the **President of India** on the ground of misbehavior (if and only if an inquiry of such **misbehavior** is made and defended by the Supreme Court of India) or if any member is charged with **bankrupt** or engaged in any **paid employment** outside the duties of his office or if the **President** opines the member is unfit to continue in office by reason of **illness of mind or body**.



Functions of Public Service Commissions.

The major functions of the Union Public Service Commission (UPSC) under **Article 320** of the Constitution of India are:

- To conduct various examinations for the appointment to the services of the Union
- Direct Recruitment by selection through interviews
- Appointing Department officers on promotion, deputation and through absorption
- Constituting and amending the Recruitment Rules for various services and posts under the Government.
- Disciplinary cases relating to different Civil Services
- ETC



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.
- ▶ 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. However 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.

Constitutional Appointment of ECI

- Since its inception in 1950 and till 15 October 1989, the election commission was a one-member body with only the **Chief Election Commissioner (CEC)** as its sole member.
- On 16 October 1989, the voting age was changed from 21 to 18 years. So, two more election commissioners were appointed by the president in order to cope with the increased work of the election commission.
- Since then, the Election Commission was a multi-member body that consisted of 3 election commissioners.
- Later on, the two posts of election commissioners were eliminated in January 1990 and the Election Commission was reverted to the previous position.
- This was repeated again later in October 1993 when the president appointed two more election commissioners. Since then, the Election Commission functions as a multi-member body comprising of 3 commissioners.
- **The chief and the two other election commissioners have the same powers and emoluments including salaries, which are the same as a Supreme Court judge.**
- In case of a difference of opinion amongst the Chief Election Commissioner and/or two other election commissioners, **the matter is decided by the Commission by a majority.**



Composition of Election Commission

- ▶ Article 324 of the Constitution has made the following provisions with regard to the composition of the election commission:
 - The President appoints the Chief Election Commissioner and other election commissioners.
 - When any other EC is so appointed, the CEC acts as the Election Commission's Chairman.
 - The President can also appoint regional commissioners to assist the Commission, if necessary after consulting with the Election Commission.
 - The tenure of office and the conditions of service of all the commissioners shall be determined by the country's President.

Functions of Election Commission

1. To direct and control the entire process of conducting elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.
2. To decide the election schedules for the conduct of periodic and timely elections, whether general or bye-elections
3. To decide on the location of polling stations, assignment of voters to the polling stations, location of counting centers, arrangements to be made in and around polling stations and counting centers and all allied matters
4. To prepare electoral roll and issues Electronic Photo Identity Card (EPIC)
5. To grant recognition to political parties & allot election symbols to them along with settling disputes related to it
6. To sets limits of campaign expenditure per candidate to all the political parties, and also monitors the same
7. To advise in the matter of post-election disqualification of sitting members of Parliament and State Legislatures.
8. To issue the Model Code of Conduct in the election for political parties and candidates so that no one indulges in unfair practice or there is no arbitrary abuse of powers by those in power.



CAG

- Comptroller and Auditor General of India is the apex authority responsible for external and internal audits of the expenses of the National and state governments. It is popularly known as the CAG of India.
- Article 148 of the Constitution of India establishes the authority of this office.
- The Comptroller and Auditor General is appointed by the President of India and can be removed from office only in the manner and on the grounds that a Judge of the Supreme Court is removed.
- The CAG is not eligible for any further office after the end of their tenure either in the Government of India or any State Government.
- The incumbent is appointed for a period of 6 years or until attaining the age of 65 years whichever is earlier.

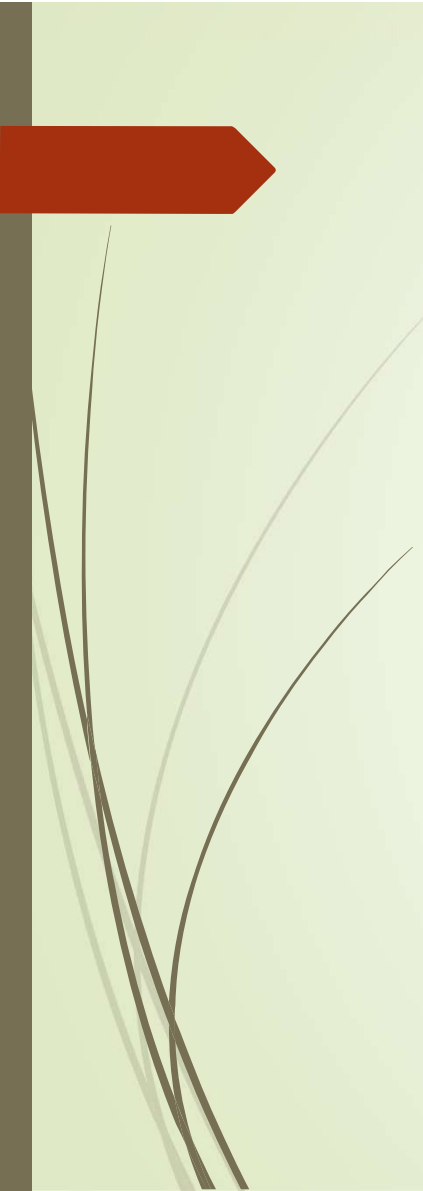
FUNCTIONS – (Art 148-151)

- Auditing the accounts related to all expenditure drawn from the Consolidated Fund of India, consolidated fund of every state and consolidated fund of every union territory having a Legislative Assembly.
- Audit of all expenditure from the Contingency Fund of India and the Public Account of India as well as the contingency funds and the public accounts of states.
- Audit of all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts of any department of the Central Government and state governments.
- Auditing the receipts and expenditure of the Government of India and each state to ensure that the rules and procedures in that regard are designed to secure an effective check on the assessment, collection and proper allocation of revenue.
- Auditing the receipts and expenditure of the following: All bodies and authorities substantially financed from the Central or state revenues; Government companies; and Other corporations and bodies when so required by related laws..... [Comptroller and Auditor General of India: Role, Functions, Duties, List of CAG of India \(byjus.com\)](#)



NATIONAL COMMISSION FOR SC / ST

- ❑ Earlier, there was only one commission, which was for both the scheduled tribes and scheduled castes. In 2004, after the 89th Constitutional Amendment Act, the NCST was established by bifurcating the National Commission for Scheduled Castes and Scheduled Tribes into the NCST and NCSC.
- ❑ This amendment replaced the National Commission for Scheduled Castes and Scheduled Tribes with two distinct commissions which are:
 - **National Commission for Scheduled Castes (NCSC)**
 - **National Commission for Scheduled Tribes (NCST)**

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- The National Commission for Scheduled Tribes is a constitutional body that was established by the Constitution (89th Amendment) Act, 2003. The Commission is an authority working for the economic development of Scheduled Tribes in India. The NCST is dealt with under **Article 338**.

Definition of Scheduled Tribes:

- According to Article 366(25) of the Constitution, Scheduled Tribes are those communities that are scheduled in accordance with Article 342 of the Constitution. Also, Article 342 of the Constitution says that: The Scheduled Tribes are the tribes or tribal communities or part of or groups within these tribes and tribal communities which have been **declared as such by the President through a public notification**

► **National Commission for Scheduled Tribes – Scheduled Tribes in India**

According to the 2011 Census, the Scheduled Tribes account for 104 million representing 8.6% of the country's population. These Scheduled Tribes are spread throughout the country largely in forest and hilly regions.

The essential characteristics of these communities are:-

- Primitive Traits
- Geographical isolation
- Distinct culture
- Shy of contact with the community at large
- Economically backwards

► **Composition of National Commission for Scheduled Tribes (NCST)**

The NCST consists of one chairperson, one vice-chairperson and three full-time members. Out of the three members, there should compulsorily be one lady member. All the members of the Commission have a tenure of 3 years.



Functions of National Commission for Scheduled Tribes

- NCST investigates and monitors all matters related to **safeguarding the provisions** for Scheduled Tribes under the Constitution and evaluating the working of those safeguards.
- NCST will inquire into specific complaints concerned with the **deprivation of rights** and safeguards of the STs.
- The commission participates and advises on the planning process for the socio-economic development of the STs and also evaluates the progress of the various developmental activities.
- The President will be **presented with an annual report** of the working of those safeguards. Apart from annual reports, other reports also will be submitted to the President as and when necessary.
- The Commission will also give **reports on what measures are to be taken** by both the central and various state governments for effective execution of the measures and safeguards for the protection, development and welfare of the STs.
- Other functions of NCST are related to welfare, protection, development & advancement of the STs.



National Commission for Scheduled Castes (NCSC)

- 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.
- **National Commission for Scheduled Castes Composition**
 - Currently, the fifth NCSC is in progression.
 - National SC Commission Chairman. Apart from the Chairman, there is a Vice-chairman and three other members.



National Commission for Scheduled Castes Functions

1. Monitoring and investigating all issues concerning the safeguards provided for the SCs under the constitution.
2. Enquiring into complaints relating to the deprivation of the rights and safeguards of the SCs.
3. Taking part in and advising the central or state governments with respect to the planning of socio-economic development of the SCs.
4. Regular reporting to the President of the country on the implementation of these safeguards.
5. Recommending steps to be taken to further the socio-economic development and other welfare activities of the SCs.
6. Any other function with respect to the welfare, protection, development and advancement of the SC community.