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# POLITY

**STATIC REVISION SIMPLIFIED**

For UPSC CSE Prelims & Other Competitive Exams





# **Indian Polity**

## **Static Revision Simplified**

A quick revision booklet of Polity for  
UPSC Prelims and other competitive exams

**Study IQ Education Pvt. Ltd.**

Indian Polity: Static Revision Simplified 1st Edition by Study IQ Publications

Author/Copyright Owner: Study IQ Education Pvt. Ltd.

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Publisher: Study IQ Publications

Printed at: ATOP Printers Noida



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# Preface

**Dear Aspirants,**

CSE Prelims is just around the corner. It is considered to be the iron gate toward your goal to become a civil servant. Prelims is the most competitive part of UPSC CSE, and therefore, reading-revising and testing one's knowledge is imperative for clearing Prelims. According to the present competition, around 1 in 100 people who attempt UPSC Prelims clear it. Given the growing competition, there is an urgent requirement for content specially curated to crack Prelims. The need of the hour is simplified content that helps in a quick and complete revision of the UPSC syllabus.

Taking inspiration from the overwhelmingly positive response to our UPSC CSE books, we are taking another leap towards simplifying Prelims preparation. To fulfill our aspirants' demand, Study IQ Publications is delighted to present you with the first edition of 'SIP+ Static Revision Simplified booklets'.

The SIP+ booklet series has been strategically divided into 2 parts; SIP+ Static Revision Simplified and SIP+ Current Revision Simplified. The UPSC syllabus is huge, it is further complicated by information overload and increasingly difficult questions. These booklets have been created especially keeping in mind, the concerns and challenges that students face during their Prelims preparation. This is an honest attempt to tackle all of the student's issues and save their precious time before Prelims.

**Special Features of This Book:**

This booklet aims to make your preparation focused and relevant based on UPSC's current trends and patterns, revision-friendly, and up-to-date.

- The requirements of the UPSC Prelims are the exclusive focus of this book.
- We have taken great care to ensure that the material is written in a clear; ready revision format so that students can learn and recall key concepts and facts to their advantage.
- Wherever necessary, we've incorporated relevant tables, charts and mind-maps to help students grasp and revise key concepts and facts.
- The special feature of SIP+ booklet series is the availability of ready revision charts which students can take out and paste on their wall or study table to revise key concepts and facts anytime on their own discretion.

With all sincerity and humility, the StudyIQ team wishes you the best in your preparation, and we are hopeful that this book will help you in your journey.

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# CHAPTER 1

## Historical background of Indian constitution

The British rule had a great impact on Indian constitution and its polity. Various acts were brought by the British to regulate the Indian affairs, these laid down the legal framework for organization and functioning of government in British India. These acts form the historical background of Indian constitution and can be studied under two heads i.e.

1. The Company rule (1773 – 1858)
2. The Crown rule (1858 – 1947)

### **COMPANY RULE (1773 – 1858)**

- 1600 → ‘East India Company’ (It was a private company) was founded. The company was given an ‘exclusive right’ to trade in India under a charter granted by the Queen Elizabeth.
- 1765 → The East India company obtained ‘diwani rights’ of Bengal, Bihar and Orissa after its victory in the Battle of Buxar.
- ‘Diwani rights’ refer to the rights over revenue and civil justice. These rights gave excessive powers to the East India company, servants of the company utilised these powers for corrupt activities. Thus, British government felt the need to regulate the company affairs in India by laying down a legal framework.

Acts	Regulation of EIC	Administrative changes	Other changes	Significance
<b>Regulating act of 1773</b>	<ul style="list-style-type: none"><li>• Prohibited the servants of the company to engage in private trade.</li><li>• Court of Directors (Governing body of the company) had to report about Indian affairs (Revenue, civil, military) to the British government.</li></ul>	<ul style="list-style-type: none"><li>• Designated Governor of Bengal as <b>Governor-General of Bengal</b>.</li><li>• First ‘Governor General of Bengal’ was <b>Lord Warren Hastings</b></li><li>• Governor of Bombay + Madras presidencies were made <b>subordinate</b> to Governor General of Bengal.</li></ul>	<ul style="list-style-type: none"><li>• Provided for <b>Supreme court</b> which had jurisdiction over all inhabitants of Calcutta.</li><li>• SC had power to administer personal laws of the defendants i.e. trial of Hindus and Muslims was done according to their own personal laws.</li></ul>	<ul style="list-style-type: none"><li>• First step by British government to regulate + control the East India company.</li><li>• Recognized for the 1st time the political and administrative functions of the company.</li><li>• Laid the foundation for central administration in India</li></ul>
<b>Pitt's India act of 1784</b>	<ul style="list-style-type: none"><li>• It clearly distinguished the commercial and political functions of the company.</li><li>• It made mandatory for all civil + military officers disclose their property in India and Britain.</li></ul>	<ul style="list-style-type: none"><li>• Created a system of <b>Double government</b> → Court of Directors and Board of control.</li><li>• Court of Directors - Commercial affairs, Board of Control - Political affairs</li></ul>		<ul style="list-style-type: none"><li>• For the first time the company territories were called ‘British possessions in India’.</li><li>• Supreme control over Company’s affairs + administration was given to British Government.</li></ul>
<b>Charter Act of 1793</b>	<ul style="list-style-type: none"><li>• The company's trade monopoly in India was extended for another 20 years.</li><li>• EIC → had to make payment of the employees + Board of Control from Indian revenues.</li><li>• EIC to pay British govt. 5 lakh Pounds each year.</li></ul>	<ul style="list-style-type: none"><li>• Governor General was given <b>over-riding power</b> over governor of presidencies.</li></ul>	<ul style="list-style-type: none"><li>• Royal approval was mandated for the appointment of Governor-General + Governors + Commander-in-Chief.</li></ul>	

Acts	Regulation of EIC	Administrative changes	Other changes	Significance
<b>Charter Act of 1813</b>	<ul style="list-style-type: none"> <li>Trade monopoly of East India company in India was abolished (exception include trade in Tea and trade with China).</li> </ul>	<ul style="list-style-type: none"> <li>Sovereignty of British crown over Indian company territories was asserted.</li> <li>Empowered Local Governments to impose taxes and punish those who did not pay them.</li> </ul>	<ul style="list-style-type: none"> <li>Christian missionaries were allowed in India to preach their religion.</li> <li>Western education needed to spread among inhabitants of British territories in India.</li> <li>Allocation of 1 Lakh rupees was done to achieve the same</li> </ul>	<ul style="list-style-type: none"> <li>British assumed a new responsibility of providing education to the Indian people.</li> <li>The strict control on missionary activities was relaxed by the act.</li> </ul>
<b>Charter Act of 1833 - (Also known as Saint Helena Act)</b>	<ul style="list-style-type: none"> <li>Ended the activities of East India company as a commercial body, making it a purely administrative body.</li> </ul>	<ul style="list-style-type: none"> <li>Governor General of Bengal' was made 'Governor General of India.'</li> <li>Lord William Bentick was First Governor General of India.</li> <li>Governor General was vested with all civil + military powers.</li> <li>Exclusive legislative power was given to Governor General of India for the entire British India. The act deprived the Governor of Bombay and Madras of their legislative powers.</li> <li>Strength of Governor General's Council was increased to 4 from earlier 3 with the inclusion of Law member Lord Macaulay.</li> <li>Indian laws were codified and consolidated.</li> </ul>	<ul style="list-style-type: none"> <li>Principle of non-discrimination introduced 1) No Indian to be denied employment under company based on religion, colour. 2) Provision for abolition of Slavery.(It was abolished in 1843)</li> <li>Restrictions on immigration of Europeans and acquiring property were lifted.</li> <li>Provision for open competition negated (civil service).</li> </ul>	<ul style="list-style-type: none"> <li>Final step towards centralization in British India.</li> <li>EIC → became the trustee of crown in the field of British administration.</li> <li>India first law commission was constituted which drafted the Indian penal code (IPC), in 1860.</li> </ul>
<b>Charter Act of 1853</b>	<ul style="list-style-type: none"> <li>Last act enacted by the British parliament to regulate the company affairs. The company rule was abolished after the Revolt of 1857.</li> </ul>	<ul style="list-style-type: none"> <li>Separated the legislative and executive function of Governor General council. (Legislation was treated as a special function).</li> <li>Indian (central) Legislative council: functioned as a 'mini parliament'. For this 6 new members were provided in the council who were known as legislative councillors.</li> <li>Local representation was introduced for the first time (4 out of 6 members were appointed by the local/ provincial government – Madras, Bombay, Bengal, Agra).</li> </ul>	<ul style="list-style-type: none"> <li>Introduced an open competition for selection and recruitment of civil service – Thus, the civil service was made open to Indians too</li> </ul>	<ul style="list-style-type: none"> <li>legislative wing of the Governor-General's Council laid the foundation of Indian Parliamentary government.</li> <li>Led to the birth of Indian civil services.</li> <li>Local representation in legislative council was introduced for the first time.</li> <li>First step was laid for inclusion of Indians in the administrative affairs.</li> </ul>

## CROWN RULE (1858 – 1947)

After the Revolt of 1857 or the ‘sepoy mutiny’ the British government decided to abolished the East India Company, and transferred the powers of Government, territories and revenues to the British Crown. This was done by the Government of India Act, 1858 also known as the ‘Act for Good government’.

Acts	Executive/Administrative changes	Legislative changes	Other changes
<b>Government of India act 1858 (Act of Good govt.)</b>	<ul style="list-style-type: none"> <li>Designation of Governor General of India changed to <b>Viceroy</b> of India.</li> <li>First viceroy and the last Governor General of India → <b>Lord Canning</b>.</li> <li>A new office '<b>Secretary of State</b>' for India was given complete control over Indian administration.</li> <li>15-member council (advisory) was established for assisting Secretary of the state</li> </ul>		<ul style="list-style-type: none"> <li><b>System of Dual Government abolished</b> (Board of control + Court of Directors done away it).</li> <li>Dissolved East India company → Administration came under direct British rule.</li> <li>Did away with policies like doctrine of lapse.</li> <li>Independent status to Indian princes and chiefs provided they accept British suzerainty.</li> </ul>
<b>Indian Council Act of 1861</b>	<ul style="list-style-type: none"> <li><b>Portfolio system</b> (introduced by Lord Canning) was given Statutory recognition.</li> <li>Viceroy was empowered to issue <b>ordinances</b>.</li> </ul>	<ul style="list-style-type: none"> <li><b>Representative Institutions</b> - Indian Legislative Council would comprise of 6 to 12 members. Half of them would be non-officials.</li> <li>These Non-officials could include Indians (not explicitly mentioned in the act).</li> <li>Viceroy appointed 3 Indians -Raja of Benares, Maharaja of Patiala, and Sir Dinkar Rao - as non-officials in legislative council.</li> <li><b>Decentralisation:</b> Legislative powers of Bombay and Madras Presidencies was restored.</li> </ul>	<ul style="list-style-type: none"> <li><b>New legislative council</b> established for Bengal, northwestern province and Punjab</li> </ul>
<b>Indian Council Act of 1892</b>		<ul style="list-style-type: none"> <li>Number of members (non-official)→ Increased in central + provincial legislative assemblies.</li> <li>Official majority was still maintained.</li> <li>Empowered Legislative councils → Power of <b>discuss the Budget</b>.</li> </ul>	<ul style="list-style-type: none"> <li>Limited + indirect provision for use of elections was made. The word ‘election’ was not used.</li> <li>Process was described as <b>nomination</b> based on recommendation of certain bodies (district council, Municipality)</li> </ul>
<b>Indian council Act 1909 - (Morley – Minto reforms)</b>	<ul style="list-style-type: none"> <li>First time → Provision was made for associating Indians to the <b>executive council</b> of viceroy and Governor.</li> <li><b>Satyendra Prasad Sinha</b> → first Indian to join Viceroy's executive council (Law member).</li> <li><b>Two Indians</b> were nominated to the Council of the Secretary of State for Indian affairs</li> </ul>	<ul style="list-style-type: none"> <li>Indians were given the membership to the <b>Imperial Legislative council</b> for the first time.</li> <li>The provincial legislative assembly had to have non - official majority. (Mostly Indians).</li> <li>Increased the size of legislative council (16 to 60 seats in central legislative assembly).</li> <li>Enlarged <b>deliberative functions</b> of legislative council i.e., power to discuss budget, ask supplementary questions, move resolutions etc.</li> </ul>	<ul style="list-style-type: none"> <li><b>Separate electorates</b> were given to the Muslims – Under this the Muslim members were to be elected only by Muslim voters.</li> <li>It also provided separate representation for presidency corporations, chamber of commerce and zamindars.</li> </ul>

Acts	Executive/Administrative changes	Legislative changes	Other changes
<b>Government of India Act 1919 - (Montagu – Chelmsford reforms)</b>	<p><b>Central government</b></p> <ul style="list-style-type: none"> <li>Viceroy executive council → three out of six members of the viceroy executive council were to be Indians</li> </ul> <p><b>Provincial government (Dyarchy)</b></p> <ul style="list-style-type: none"> <li>Governor is head of the executive.</li> <li>Under the system two classes of administrators → Executive councillors and ministers.</li> <li>Administration of reserved list → Governor + executive council (not responsible to legislature).</li> <li>Secretary of State + Governor General could interfere in matters under the reserved list.</li> <li>Administration of transferred list → Governor + Ministers (responsible to legislature).</li> <li>These ministers were nominated from among the elected members of the legislative council.</li> <li>Interference of Secretary of State + Governor-General is restricted in matters under the transferred list.</li> </ul>	<p><b>Central government</b></p> <ul style="list-style-type: none"> <li>Bicameralism was introduced: Upper house (council of state) and a Lower house (Legislative assembly).</li> <li>Majority of the members both houses chosen by direct elections</li> </ul> <p><b>Provincial government</b></p> <ul style="list-style-type: none"> <li>Increased size of provincial legislative assemblies. Now about 70% of the members were elected.</li> <li>Division of subjects in provinces was done under two lists reserved list and transferred list.</li> <li><b>Reserved Subjects:</b> Law and order, irrigation, finance, land revenue, etc.</li> <li><b>Transferred Subjects:</b> Education, local government, health, excise, industry, public works, religious endowments, etc.</li> </ul>	<ul style="list-style-type: none"> <li>For the first time → provincial budgets were separated from the central budget.</li> <li>Thus, the provincial legislatures were authorized to enact budgets</li> <li>Extended the principle of communal electorates – Sikhs, Indian Christians, Europeans, and Anglo-Indians.</li> <li>New office of the <b>High commissioner for India</b> in London was established.</li> <li>Establishment of <b>a public service commission</b>. (Central public service commission – 1926).</li> </ul>
<b>Government of India act 1935</b>	<ul style="list-style-type: none"> <li><b>Creation of an All-India Federation</b></li> <li>Federation was to consist of British India + princely states willing to join it</li> <li>Federation <b>never came into being</b> because of lack of support from the required number of princely states.</li> <li>Governor had to act on the advice of ministers responsible for provincial legislature (diarchy ended).</li> <li><b>Dyarchy</b> was adopted at the Centre</li> </ul>	Division of powers (Between centre and provinces) under 3 lists <ul style="list-style-type: none"> <li>Federal List (Centre) Provincial List (Provinces) Concurrent List (Both)</li> <li>Residual powers was vested in the Viceroy (Power over subjects not mentioned in any of the lists).</li> <li>Introduction of <b>bicameralism</b> in six out of eleven provinces</li> <li>Provided 'Provincial autonomy'</li> </ul>	<ul style="list-style-type: none"> <li>Extension of principle of communal representation to women, depressed classes, and workers.</li> <li>Establishment of the <b>Reserve Bank of India</b> to control credit and currency of the country.</li> <li>Establishment of Federal, Provincial and Joint public <b>service commission</b>.</li> <li>Provided for the establishment of '<b>federal court</b>' which was set up in 1937</li> </ul>
<b>Government of India act 1947 (ended British rule)</b>	<ul style="list-style-type: none"> <li>Partition of India and created 2 independent dominion India and Pakistan</li> <li>Abolition of office of Secretary of the State</li> </ul>	<ul style="list-style-type: none"> <li>Empowered the constituent assemblies of 2 dominions to adopt their own constitution and repeal any British rule.</li> <li>Assigned dual functions (constituent and legislative) to the constituent assembly formed in 1946.</li> </ul>	<ul style="list-style-type: none"> <li>It granted freedom to Indian princely states to join either dominion (India or Pakistan) or remain independent.</li> </ul>

## CHAPTER 2

# Making of the Constitution

### INTRODUCTION

The Indian constitution was drafted by an assembly of elected representatives called the Constituent Assembly. The demand for constituent assembly grew in the later stages of the Independence struggle.

### DEMAND FOR A CONSTITUENT ASSEMBLY

Year	Events
1934	M. N. Roy first proposed Constituent Assembly
1935	Indian National Congress (INC) officially demanded the setting up of a Constituent Assembly for framing the Constitution of India
1940	Demand was accepted in principle by August offer of 1940.
1942	Cripps mission proposal were rejected due to Muslim league demand of having 2 autonomous state with separate Constituent Assembly.
1946	Constituent Assembly was constituted as per the Cabinet Mission Plan. Its proposals were accepted by both parties

The constituent assembly came up when India was still under British rule. However, the constituent assembly formed was a sovereign body and had representation from almost all sections of the society.

### FORMATION OF CONSTITUENT ASSEMBLY

#### Key Facts Related to Formation of Constituent Assembly

Year	The Assembly was constituted in November 1946
Objective	Enable appropriate transfer of sovereign power from British authorities to Indian leadership.
Representation	It had representation from both provincial legislature + Princely states.
Composition	Total 389 representatives (296 from British India + 93 allotted to Princely states. British provinces seats were divided among 3 principal communities Muslim, Sikh and generals (all except Muslim and Sikhs)
Mode of Election	Partly elected (Indirectly elected by Members of Provincial assemblies) + Partly nominated body (Members nominated by Princely states).
Result of elections	Indian National Congress (208 seats), Muslim League (73 seats) and small groups and independents (15 seats).

### IMPORTANT FACTS RELATED TO CONSTITUENT ASSEMBLY

#### Key Facts Related to Working of Constituent Assembly

1st meeting	The members of the Constituent Assembly held their first meeting on December 9, 1946.
Interim President	1st meeting was attended by 211 members and was presided over by Dr. Sachchidananda Sinha
Elected President	Dr. Rajendra Prasad
Two Vice Presidents	H.C. Mukherjee and V.T. Krishnamachari.
Duration of the Assembly	Constituent Assembly took 2 years, 11 months and 18 days to complete its task.
26th November, 1949	On this date the Constituent Assembly adopted, enacted and gave to the people of India the Constitution of India

After India gained Independence certain changes were seen in the position of the constituent assembly.

## CONSTITUENT ASSEMBLY AND INDIAN INDEPENDENCE ACT, 1947

The Independence act made the following changes to the Constituent Assembly:

- It made the Assembly a fully sovereign body and also a legislative body.
- As a legislative body, it performed two different functions: 1) framing the Constitution 2) Enactment of ordinary laws for free India.
- The Assembly became the first Parliament of free India. chaired by **Rajendra Prasad** to perform **constituent functions** and chaired by **G.V. Mavlankar** to perform **legislative functions**.
- The final strength of the Assembly came down from 389 (originally fixed under Cabinet Mission Plan) to **299**.

## OBJECTIVES RESOLUTION

- Moved in the 3rd meeting (13<sup>th</sup> December 1946) of Constituent assembly by Jawaharlal Nehru.
- Laid down the underlying principles + philosophy of the constitutional structure.

### **The summary of the resolution read as follows:**

- India is an independent sovereign republic with the power to draw up its own Constitution.
- Indian Union shall comprise territories of British India, the territories that now form the Indian States and other parts outside India and the States who are willing to be constituted into India.
- All the territories forming India shall be autonomous units with all powers and functions of Government and administration save and except such powers and functions as are vested in or assigned to the Union.
- All power and authority of sovereign independent India and its constituent parts are derived from the people.
- All people of the Indian Union shall be guaranteed and secured justice (social, economic and political); equality of status of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.
- Adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.
- The territorial integrity of the Republic and its sovereign rights on land, sea and air will be maintained according to justice and the law of civilised nations.
- India will make its full and willing contribution to the promotion of world peace and the welfare of mankind.

## OTHER FUNCTIONS PERFORMED BY CONSTITUENT ASSEMBLY

The Constituent Assembly, apart from framing the Constitution, performed other functions as well:

1. Enactment of the **ordinary laws** of the country.
2. Ratification of India's membership of the **Commonwealth** in May 1949.
3. Adoption of the **national flag** on July 22, 1947.
4. Adoption of the **national anthem** and **national song** on January 24, 1950.
5. Elected Dr. Rajendra Prasad as the **first President** of India on January 24, 1950

It continued to function as the parliament of the country till the formation of the first parliament after the general elections of 1951-52.

## COMMITTEES OF CONSTITUENT ASSEMBLY

The Constituent Assembly formed 22 committees to take up the responsibility of drafting the new Indian Constitution. Here are the following important committees:

**Major Committees-** There were 8 major committees

Committee	Head
Union Power Committee	Jawaharlal Nehru
Union Constitution Committee	Jawaharlal Nehru
States Committee	Jawaharlal Nehru
Provincial Constitution Committee	Sardar Patel

Committee	Head
Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas	Sardar Patel
Rules of Procedure Committee	Dr. Rajendra Prasad
Steering Committee	Dr. Rajendra Prasad

## DRAFTING COMMITTEE OF THE CONSTITUTION

The function of the drafting committee was to formulate a rough draft of the new Constitution. Drafting Committee. Comprised of **Seven Members** (including Chairman).

- Dr BR Ambedkar (Chairman)
- N Gopalaswamy Ayyangar
- Syed Mohammad Saadullah
- Alladi Krishnaswami Ayyar
- KM Munshi
- N Madhava Rao (replaced B.L. Mitter)
- TT Krishnamachari (replaced D.P. Khaitan)

## ENFORCEMENT OF THE CONSTITUTION

- Original constitution had **Preamble, 395 articles, and 8 Schedules.**
- Preamble was written after the rest of the Constitution.
- Some provisions of the Constitution pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions, came into force on November 26, 1949, itself. Rest on the commencement of the constitution i.e., on 26<sup>th</sup> January 1950.

## CRITICISM OF THE CONSTITUENT ASSEMBLY

The critics have criticised the Constituent Assembly on various grounds, as follows

- **Non-Representative:** All members were not directly elected by the people of India.
- **Not Sovereign:** As it was constituted by the British Government's proposals.
- **Time consuming:** American constitution took only four weeks to complete their work however the Constituent Assembly took a long time to frame the Constitution.
- **Domination of Congress:** Critics argue that the assembly was dominated by only Congress.
- **Lawyers – domination:** Critics claim that the Constituent Assembly was dominated by lawyers and their view, is the primary cause of the Constitution's bulkiness and complication.
- **Hindu Dominated:** Critics argue that the Constituent assembly had the representation from only one major community that is Hindus and others were not adequately represented in the assembly.

## IMPORTANT FACTS RELATED TO CONSTITUTION

Key Facts of Constitution	
<b>Elephant</b>	It was adopted as the symbol (seal) of the Constituent Assembly
<b>Sir B.N. Rau</b>	He was the legal/constitutional advisor to the Constituent Assembly
<b>H.V.R Iyengar</b>	He was the secretary to the Constituent Assembly
<b>S.N. Mukerjee</b>	He was the chief draftsman of the constitution in the Constituent Assembly
<b>Prem Behari Narain Raizada</b>	He was the calligrapher of the Indian Constitution
<b>Nand Lal Bose and Beohar Rammanohar Sinha</b>	The original version of the constitution was beautified and decorated by these artists
<b>Vasant Krishan Vaidya</b>	The calligraphy of the Hindi version of the original constitution was done by him.

## CHAPTER 3

# Salient Features of the Constitution

### INTRODUCTION

Indian constitution has borrowed features from almost every known constitution of the world. However, the constitution has several unique features which distinguish it from other constitutions. The salient features of our constitution flow directly and indirectly from the preamble which indicates the faith of framers in the ideals, objectives and goals as mentioned in our Constitution.

Features	Related Details
<b>Lengthiest Written Constitution</b>	<ul style="list-style-type: none"><li>About 465 Articles (divided into 25 Parts) and 12 Schedules</li><li>Reasons: 1) <b>Geographical Factors:</b> India's vastness and diversity (2) <b>Historical Factors:</b> Influence of Gol Act, 1935 (3) <b>Single Constitution:</b> Union + State (4) Domination of <b>legal luminaries</b></li></ul>
<b>Drawn From Various Sources</b>	<ul style="list-style-type: none"><li>Dr. B.R. Ambedkar: Constitution of India has been framed after 'ransacking all the known Constitutions of the World'.</li><li><b>Structural part:</b> Government of India Act of 1935.</li><li><b>Philosophical part</b> of the Constitution (the Fundamental Rights and the Directive Principles of State Policy) derive their inspiration from the American and Irish Constitutions respectively.</li><li><b>Political Part:</b> British Constitution.</li></ul>
<b>Blend of Rigidity and Flexibility</b>	<ul style="list-style-type: none"><li>Two types of amendments are provided by Article 368<ul style="list-style-type: none"><li>Special majority of the Parliament, (2/3 of present and voting + supported by more than 50% of total strength)</li><li>Special majority of the Parliament and with the ratification by half of the total states with simple majority.</li></ul></li><li>Some provisions can be amended by simple majority (these are not considered amendment under Article 368).</li></ul>
<b>Federal System with Unitary Bias</b>	<ul style="list-style-type: none"><li><b>Federal Features</b>, viz., dual government, division of powers, written Constitution, supremacy of Constitution, rigidity of Constitution, independent judiciary and bicameralism.</li><li><b>Unitary Features</b>, viz, strong centre, single constitution, single citizenship, integrated judiciary, appointment of Governor by the centre, AIS, emergency provisions etc.</li></ul>
<b>Parliamentary Form of Government</b>	<ul style="list-style-type: none"><li><b>Fundamental Principle:</b> Co-operation and Coordination b/w legislature and executive organs.</li><li><b>Features.</b></li><li>Presence of nominal and real executives.</li><li>Majority party rule.</li><li>Collective responsibility of the executive to the legislature.</li><li>Double membership.</li><li>Leadership of the prime minister or the chief minister.</li><li>Dissolution of the lower House (Lok Sabha or Assembly).</li></ul>
<b>Synthesis of Parliamentary Sovereignty and Judicial Supremacy.</b>	<ul style="list-style-type: none"><li>Indian parliamentary system: Proper synthesis between the British principle of parliamentary sovereignty and the American principle of judicial supremacy.</li><li>The Supreme Court can declare the parliamentary laws as unconstitutional through its power of judicial review.</li><li>The Parliament can amend the major portion of the Constitution through its constituent power</li></ul>
<b>Integrated and Independent Judiciary</b>	<ul style="list-style-type: none"><li>Supreme Court is the guarantor of the fundamental rights of the citizens and the guardian of the Constitution.</li><li>Integrated: SC + HC + Lower Courts enforce both union and state laws.</li><li>Independent: Security of tenure to judges of SC and HC, all expenses of HC and SC are charged on consolidated Fund etc.</li></ul>

Features	Related Details
<b>Fundamental Rights Part-III (Article 12-35)</b>	<ul style="list-style-type: none"> <li>Right to Equality (Articles 14–18)</li> <li>Right to Freedom (Articles 19–22)</li> <li>Right against Exploitation (Articles 23–24)</li> <li>Right to Freedom of Religion (Articles 25–28).</li> <li>Cultural and Educational Rights (Articles 29–30).</li> <li>Right to Constitutional Remedies (Article 32).</li> <li>FR's aim to promote political democracy.</li> <li>FR's are enforceable by courts through writs.</li> </ul>
<b>Directive Principles of State Policy Part – IV (Art 36 – 51)</b>	<ul style="list-style-type: none"> <li>These principles are meant for promoting the ideal of social and economic democracy.</li> <li>Aim to establish welfare state</li> <li>Non-justiciable in nature</li> <li>Similar to instruments of instructions under Gol Act, 1935</li> </ul>
<b>Fundamental Duties (Total: 11)</b>	<ul style="list-style-type: none"> <li>Part IV-A &amp; Article 51 A</li> <li>Fundamental Duties serve as a reminder to citizens that while enjoying the rights, they must be conscious of their duties towards the country, society and fellow citizens</li> <li>Included by 42nd Constitutional Amendment Act of 1976 on the recommendation of the Swaran Singh Committee.</li> <li>The 86th Constitutional Amendment Act of 2002 added one more fundamental duty.</li> <li>Non-justiciable in nature</li> </ul>
<b>A Secular State</b>	<ul style="list-style-type: none"> <li>Western concept of Secularism connotes a complete separation between religion and the state</li> <li>Indian concept of Secularism connotes giving respect to all religions or treating + all religions equally</li> <li>The word 'Secular' was added to the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act of 1976.</li> <li>The idea of Secularism was reflected in Preamble, Art. 14,15, 16, 25-30, Art. 44.</li> </ul>
<b>Universal Adult Franchise</b>	<ul style="list-style-type: none"> <li>The voting age was reduced to 18 years from 21 years in 1989 by the 61st Constitutional Amendment Act of 1988.</li> </ul>
<b>Independent Bodies</b>	<ul style="list-style-type: none"> <li>These bodies are envisaged by the constitution as the Bulwarks of the democratic system.</li> <li>These are Election commission, Union Public Service commission, Comptroller and Auditor-General, etc.</li> </ul>
<b>Emergency Provisions</b>	<ul style="list-style-type: none"> <li>During the emergency the Federal structure of the country got converted into a Unitary one.</li> <li>National emergency (Article 352)</li> <li>State emergency (President's Rule): On the ground of 1) failure of the Constitutional machinery in the state (Article 356). (2) failure to comply with the directions of the Centre (Article 365).</li> <li>Financial emergency (Article 360).</li> <li>It converts federal structure into unitary one</li> </ul>
<b>Three-tier Government</b>	<ul style="list-style-type: none"> <li>Democratic decentralization by establishing PRI's (73rd CA 1992) and ULB's (74th CA 1992) which form third tier of government</li> </ul>
<b>Co-operative Societies</b>	<ul style="list-style-type: none"> <li>97th Constitutional Amendment Act of 2011 gave constitutional status to co-operative societies</li> <li>Fundamental right to form co-operative societies [Article 19 (1) (c)].</li> <li>DPSU: Promotion of Co-operative societies (Art. 43-B).</li> <li>New Chapter Added – Part IX B Parliament has power to regulate multi-state co-operative societies.</li> </ul>

## SOURCES FOR THE INDIAN CONSTITUTION

Sources	Features of the Constitution
<b>Government of India Act of India Act 1935</b>	(1) Federal Scheme (2) Office of governor (3) Judiciary (4) Public Service Commissions (5) Emergency provisions (6) administrative details
<b>British Constitution</b>	(1) Parliamentary government (2) Rule of Law (3) Legislative procedure, (4) Single citizenship, (5) cabinet system (6) prerogative writs, (7) parliamentary privileges (8) Bicameralism.
<b>US Constitution</b>	(1) Fundamental rights (2) Independence of judiciary (3) judicial review (4) Impeachment of the president, (5) Removal of Supreme Court (6) high court judges (7) post of vice-president.

Sources	Features of the Constitution
<b>Irish Constitution</b>	(1) Directive Principles of State Policy (2) Nomination of members to Rajya Sabha (3) Method of election of president.
<b>Canadian Constitution</b>	(1) Federation with a strong Centre (2) Vesting of residuary powers in the Centre (3) Appointment of state governors by the Centre (4) Advisory jurisdiction of the Supreme Court.
<b>Australian Constitution</b>	(1) Concurrent List (2) Freedom of trade, commerce and inter-course (3) Joint sitting of the two Houses of Parliament.
<b>Weimar Constitution of Germany</b>	Suspension of Fundamental Rights during Emergency.
<b>Soviet Union (USSR now Russia)</b>	Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
<b>French Constitution</b>	Republic and the ideals of liberty, equality and fraternity in the Preamble.
<b>South African Constitution</b>	(1) Procedure for amendment of the Constitution (2) Election of members of Rajya Sabha.
<b>Japanese constitution</b>	Procedure established by Law

## SCHEDULE IN INDIAN CONSTITUTION

Schedule	Subject Matter
<b>First Schedule</b>	<ul style="list-style-type: none"> <li>Names of the States, Union Territories and their territorial jurisdiction</li> </ul>
<b>Second Schedule</b>	<ul style="list-style-type: none"> <li>Salaries, Emoluments, Privileges of certain dignitaries. President, Governor, Speaker, Deputy Speaker of Lok Sabha and Legislative Assembly, Chairman and Deputy Chairman of Rajya Sabha and Legislative Council, Judges of Supreme Courts and High Courts, CAG.</li> <li><b>Not mentioned</b> are MPs, MLAs, Union and State Ministers, Election Commissioner, UPSC Members</li> </ul>
<b>Third Schedule</b>	<ul style="list-style-type: none"> <li><b>Oath and Affirmations:</b> Union and State Ministers, MLA and MP Contestants, MLA &amp; MPs, Judges of Supreme Court and High Court Judges, CAG.</li> <li><b>Note:</b> CAG, Judges of Supreme and High Court are included in second and third schedules</li> <li><b>Not included in Third Schedule:</b> President &amp; Vice President, Speaker&amp; Deputy Speaker of Lok Sabha, Legislative Assembly, Chairman &amp; Deputy Chairman of RS &amp;Legislative Council, Election Commission, UPSC, SPSC</li> </ul>
<b>Fourth Schedule</b>	<ul style="list-style-type: none"> <li>Allocation of the Seats in Rajya Sabha to States and UT's</li> </ul>
<b>Fifth Schedule</b>	<ul style="list-style-type: none"> <li>Administration of Scheduled Areas and Scheduled Tribes</li> </ul>
<b>Sixth Schedule</b>	<ul style="list-style-type: none"> <li>Administration of Tribal Areas in Assam, Meghalaya, Tripura and Mizoram</li> </ul>
<b>Seventh Schedule</b>	<ul style="list-style-type: none"> <li>Division of Powers 1. Union list (100) 2. State list (61) 3. Concurrent list (52)</li> </ul>
<b>Eight Schedule</b>	<ul style="list-style-type: none"> <li>Official Languages recognized by the Constitution originally 14 and now 22 languages</li> <li>21st CAA-Sindhi</li> <li>92nd CAA– Bodo, Dongri, Maithili, Santhali</li> <li>71st CAA – Konkani, Manipuri, Nepali</li> <li>96th CAA – Odia</li> </ul>
<b>Ninth Schedule (1st CA 1951)</b>	<ul style="list-style-type: none"> <li>Land reforms and other matters to be placed by State and Centre.</li> </ul>
<b>Tenth Schedule (52nd CA 1985)</b>	<ul style="list-style-type: none"> <li>Anti- Defection Law provisions.</li> </ul>
<b>Eleventh Schedule (73rd CA 1992)</b>	<ul style="list-style-type: none"> <li>Panchayats (29 Subjects) (243-G)</li> </ul>
<b>Twelfth Schedule (74th CA 1992)</b>	<ul style="list-style-type: none"> <li>Powers that can be transferred to Municipalities (18 Subjects) (243-W).</li> </ul>

## CHAPTER 4

# Preamble

### INTRODUCTION

- Preamble contains the **overall philosophy** of the Constitution.
- Concept was taken from the **US Constitution**.
- Based on the **Objective resolution** moved by Pandit Jawaharlal Nehru.
- **Amended only once** by the 42nd constituent assembly (1976.) Added three new words – socialist, secular and Integrity.
- **Neither** a source of legislature's powers nor a prohibition upon its powers.
- **Non-justiciable** i.e., its provisions are not enforceable in courts of law.

### TEXT OF THE PREAMBLE

- The Preamble of the Indian Constitution in the present form reads as follows:
- **WE, THE PEOPLE OF INDIA**, have solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure all its citizens:
- **JUSTICE**, social, economic and political;
- **LIBERTY** of thought, expression, belief, faith and worship;
- **EQUALITY** of status and of opportunity; and to promote among them all
- **FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation;
- IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION".

### COMPONENTS OF THE PREAMBLE

1. **Source of authority:** People of India.
2. **Nature of Indian State:** Sovereign, Socialist, Secular Democratic and Republican polity.
3. **Objectives of the Constitution:** Justice, liberty, equality and fraternity
4. **Date of adoption of the Constitution:** November 26th, 1949

#### Source of the authority

**We, the people of India:** The term means that the constitution has been drawn up and enacted by the people through their representatives, and not handed down to them by a king or any outside powers

#### Nature of Indian State

"Constitute India into a Sovereign, Socialist, Secular, Democratic Republic"

Nature	Meaning and Position of India
Sovereign	<ul style="list-style-type: none"><li>• <b>Meaning:</b> Government represented by people have the supreme right to make decisions on internal + external matters. No external power can dictate the government of India.</li><li>• <b>India's position:</b> India is 'sovereign' as it is neither a dependency nor a dominion of any other nation, but an independent state. Can conduct its own affairs without interference. Can acquire a foreign territory or cede a part of territory in favour of a foreign state.</li></ul>

Nature	Meaning and Position of India
Socialist	<ul style="list-style-type: none"> <li><b>Meaning:</b> Wealth is generated socially and should be shared equally by society. Government should regulate the ownership of land and industry to reduce socio-economic inequalities.</li> <li><b>India's position:</b> DPSP have a socialistic content. 42nd amendment added the term "socialism" to the Preamble..</li> <li>India does not follow strict socialism i.e. "<b>communistic socialism</b>" (nationalisation of all means of production and distribution and the abolition of private property). Indian socialism is a blend of Marxism and Gandhism, leaning towards Gandhian socialism.</li> </ul>

Secular	<ul style="list-style-type: none"> <li><b>Meaning:</b> Citizens have complete freedom to follow any religion. But there is no official religion. Government treats all religious beliefs and practices with equal respect.</li> <li><b>Concept of Secularism:</b> 2 major concepts of secularism include the following:           <ul style="list-style-type: none"> <li><b>Negative Concept of Secularism (western concept):</b> Strict separation between the State (the politics) and the church (religion). State will not interfere in any religious matter and religion will not interfere in any state matters.</li> <li><b>Positive Concept of Secularism:</b> All religions are given equal respect and protection. State is neutral in religious matters i.e., it protects all religions and at the same time guarantees religious rights to every citizen. Any step which is inconsistent with this idea is invalid.</li> </ul> </li> <li><b>India's position:</b> India is a secular country (Positive concept of secularism). 42nd constitutional amendment act added the term "secular" to the Preamble. Various provisions in the constitution reveal the secular character of the Indian state i.e. Article 15, Articles 25 to 28 etc.</li> </ul>
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Indian Secularism	Western Secularism
State is neutral in all religious matters	State is completely separate from all religious matters
Upholds a positive relationship between state and religion	Negative relationship i.e. State believes in complete non-interference in religious matters. Also, religion does not interfere in the affairs of the state
Till now there is no uniform civil code	Single uniform code of law is used to provide justice. Religious background is not taken into account.
State can aid religious institutions.	State does not aid religious institutions
Rights of both individual and religious community are protected.	Individual and his rights are given prime importance.

Democratic	<ul style="list-style-type: none"> <li><b>Meaning:</b> A form of government where people enjoy equal political rights, elect their representatives and hold them accountable. The government is run according to some basic rules.</li> <li>Democracy is of two different forms – <b>direct</b> democracy and <b>indirect</b> democracy.</li> <li><b>Direct Democracy:</b> The electorate decides on policy initiatives directly without elected representatives as proxies. Tools of Direct democracy are as follows:</li> </ul>
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Tools of Direct Democracy	
<b>Referendum</b>	Proposed legislation is referred to the electorate for settlement by their direct votes.
<b>Initiative</b>	People can propose a bill to the legislature for enactment.
<b>Recall</b>	Voters can remove a representative or an officer before the expiry of his term, when he fails to discharge his duties properly.
<b>Plebiscite</b>	Obtaining the opinion of people on any issue of public importance. It is generally used to solve the territorial disputes

**Indirect Democracy:** Example; Representative democracy.

- Elected people represent a group of people. Representatives elected by the people exercise the supreme power and thus carry the government and make laws. two types of representative democracy are Parliamentary and Presidential democracy.
- India's position:** Indian constitution provides for representative Parliamentary democracy i.e. executive is responsible to the legislature for all its policies and actions. Universal adult franchise, periodic elections, rule of law, independence of judiciary, and absence of discrimination on certain grounds etc. show the democratic character of Indian polity.

Nature	Meaning and Position of India
Republic	<ul style="list-style-type: none"> <li><b>Definition:</b> The head of the state is an elected person and not a hereditary position. Republic means 2 more things; 1) Political sovereignty is vested in the people and not one individual like a king 2) Absence of any privileged class. Thus, all public offices being opened to every citizen without any discrimination.</li> <li><b>India's position:</b> India is a republic where the elected head of the state is known as the President. He is elected through an indirect election for a five year term.</li> </ul>

### Objectives of Indian State

- Indian State aims to secure for all its citizens justice, liberty, equality and fraternity so as to promote unity among the citizens and maintain integrity in the society.
- Russian Revolution** (1917): Ideal of social, economic, and political justice.
- French Revolution:** Inspired values of liberty, equality, and fraternity

Objective	Meaning and Types
Justice	<ul style="list-style-type: none"> <li><b>Meaning:</b> Citizens should not be discriminated on the grounds of caste, religion and gender. Social inequalities should be reduced. Government should work for the welfare of all, especially of the disadvantaged groups.</li> </ul> <p><b>Preamble provides for the following:</b></p> <ul style="list-style-type: none"> <li><b>Social justice:</b> Equal treatment of all citizens without regard to their social distinction based on caste, colour, religion etc. State can take affirmative actions to improve the conditions of backward classes and women.</li> <li><b>Economic justice:</b> Absence of discrimination between persons based on their economic status. Removal of high inequality in wealth, income and property. Social + economic Justice = "distributive justice",</li> <li><b>Political justice:</b> All citizens have equal political rights, equal access to all political offices, and equal voice in government.</li> </ul>
Liberty	<ul style="list-style-type: none"> <li><b>Meaning:</b> There should be no unreasonable restrictions on the citizens in what they think, how they wish to express their thoughts and the way they wish to follow up their thoughts in action.</li> <li>Absence of restrictions on an individual's activities. Providing opportunities for the development of individual personalities. It is not absolute but a qualified right.</li> </ul>
Equality	<ul style="list-style-type: none"> <li><b>Meaning:</b> All are equal before the law. The traditional social inequalities should be ended. The government should ensure equal opportunity for all.</li> <li>The concept embodies equality of status and opportunity to all or any Indian citizens. Privileges are absent for any particular section of society and at the same time, adequate opportunities without discrimination are to be provided for all individuals.</li> <li>This provision covers three aspects of equality: civil, political, and economic. <ul style="list-style-type: none"> <li><b>Civic equality</b> essentially means that all individuals have equal rights and freedoms. (Article 14, 15 and 17).</li> <li><b>Economic equality</b> means providing fair and equal opportunity to all for work (Article 16)</li> <li><b>Political equality</b> guarantees to all persons an equal opportunity for participation in the political process (Article 325)</li> </ul> </li> </ul>
Fraternity	<ul style="list-style-type: none"> <li><b>Meaning:</b> All should behave as if we are members of the same family. No one should treat a fellow citizen as inferior.</li> <li>It refers to a sense of brotherhood. The Constitution contains various provisions to promote this sense of fraternity such as Single citizenship, provision in fundamental duties etc.</li> </ul>

### IS THE PREAMBLE PART OF THE CONSTITUTION?

The question whether Preamble is part of the constitution or not has been dealt by Supreme court in its various judgments.

Case	Judgements
Berubari Union Case (1960):	Preamble is not part of the constitution and it cannot be amended.
Kesavananda Bharati case (1973)	Preamble is a part of the constitution and can be amended.
LIC of India case 1995	It was reiterated Preamble of India is part of the constitution

## CHAPTER 5

# Indian Union and its Territories

### INTRODUCTION

Article 1 to 4 under Part I of the Indian constitution deal with Union and its territories.

Articles	Subject-Matter
Article 1	Name and territory of the Union.
Article 2	Admission or establishment of new States.
Article 3	Formation of new States and alteration of areas, boundaries or names of existing States.
Article 4	Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

### Article 1: Name and territory of the Union



#### Provisions under Article 1 of Indian Constitution

Name of the country	Constituent Assembly adopted both names; India (modern name), that is, Bharat (Traditional name).
India as a 'Union of States'	Indian has been described as a 'union of states' this has 2 implications 1) Indian federation is <b>not the result of an agreement</b> among states 2) Indian states have <b>no right to secede</b> from the federation.
'Territory of India' is wider expression than 'Union of India'	<b>Territory of India:</b> All the states in India form the part of Union of India. <b>Territory of India:</b> Territory of India includes states + union territories + territories that may be acquired by the GoI in future

### Article 2: Admission or establishment of new states

#### Provisions under Article 2 of Indian Constitution

Scope	The article talks about admission or establishment of <b>new States</b> .
Power of Parliament	The article provides the Parliament with two powers: a) Power to admit new states (which already exist) b) Power to establish new states (States which are non – existent)
Example	Sikkim was included in India in 1975 under the provisions of this article. It was not part of India before this.

### Article 3: Formation of new States and alteration of areas, boundaries or names of existing States

#### Provisions under Article 3 of Indian Constitution

Scope	Article talks about formation of 'new states' and alteration of areas, boundaries or names of 'existing states'.
Power of Parliament	Parliament can create new states out of existing states by separation of territory or by merging two or more states or part of states or by uniting territory to a part of any state. Parliament can increase or diminish the <b>area</b> of any state. Parliament can alter the <b>boundaries</b> of any state. Parliament can change the <b>name</b> of any state.

### Provisions under Article 3 of Indian Constitution

<b>Special requirements</b>	Before exercising its power under Article 3 there are 2 special conditions which need to be fulfilled:
	<ul style="list-style-type: none"> <li>• <b>Prior recommendation of the President</b> is needed before introduction of the bill for the purpose under Article 3.</li> <li>• <b>State legislature view</b> is taken by the President before recommending this bill in parliament (State in which changes are being made).</li> </ul>
<b>Limited power of the State Legislature (Unitary feature)</b>	<p><b>Non - binding:</b> State's views are <b>not binding</b> and the President (or the Parliament) can choose to ignore the state's suggestions.</p> <p><b>No reference for new changes:</b> If new changes are made in the bill, it is not necessary to refer that bill to the concerned state again for its views.</p> <p><b>Provision in case of Union territories:</b> If the bill is related to a Union territory with a state legislature in it (such as Delhi and Pondicherry), <b>no reference</b> is needed to be made to that legislature for its view on the bill.</p>

### Article 4: Laws made under articles 2 and 3 provide for the amendment of the First and the Fourth schedule

There are two parts to this article:

- Any law which contains provisions under **Article 2 or Article 3** shall contain provisions for the amendment of the First schedule and the Fourth Schedule which may be necessary to give effect to the provisions of the law.
- Laws made under Art 2 and Art 3 shall **not** be considered as "**constitutional amendment**" under Article 368.

## EVOLUTION OF STATES AND UNION TERRITORIES

### Important Committees

<b>Dhar commission (1948)</b>	<ul style="list-style-type: none"> <li>• Recommended re organisation of the states on the basis of administrative convenience instead of linguistic factor.</li> </ul>
<b>JVP committee (1948)</b>	<ul style="list-style-type: none"> <li>• It formally <b>rejected language</b> as the basis for the <b>reorganisation</b> of states.</li> </ul>
<b>State Reorganization commission (1955)</b> • Fazl Ali (Chairman) • K.M. Panikkar • A.N. Kunzru	<ul style="list-style-type: none"> <li>• It broadly accepted the language as a basis for the reorganisation of states but rejected the theory of one language- one state. Recommended doing away with the four fold classification (Division of States into Part A,B, C and D).</li> <li>• Based on Fazl Ali commission, <b>States reorganisation act 1956 and 7th CAA</b> were passed which led to abolition of four - fold classification of states and led to formation of 14 states and 6 UTs.</li> <li>• First linguistic state created in India – 'Andhra State' in 1953</li> </ul>

## STATES FORMED AFTER 1956

- 1960: Maharashtra, Gujarat from Bombay
- 1963: Nagaland
- 1966: Haryana, Chandigarh and HP from Punjab
- 1972 : Manipur, Tripura and Meghalaya.
- 1975 : Sikkim (36 CAA)
- 1987 : Mizoram, Arunachal Pradesh and Goa
- 2000 : Chattisgarh, Uttarakhand and Jharkahand
- 2014 : Telangana

## RECENT DEVELOPMENTS

- Union territories of Dadra and Nagar Haveli and Daman and Diu were merged into a single union territory in 2019.
- Union territories of Jammu and Kashmir and Ladakh were created. This was the 1st time that a State had been turned into a Union territory.

## CHAPTER 6

# Citizenship

### INTRODUCTION

Citizenship implies full and equal membership of a political community. India has two kinds of people i.e., citizens and aliens. Unlike aliens, citizens are full time members of the Indian state and are provided with certain civil and political rights.

The Indian constitution has not provided any detailed or elaborate provisions related to citizenship and has mainly empowered Parliament to deal with such matters.

### CONSTITUTIONAL PROVISIONS RELATED TO CITIZENS

#### Provisions Related to Citizenship in India

<b>Part II</b>	Article 5 to Article 11.
<b>Constitutional provision</b>	Not permanent or elaborate. Identify only those who became citizens at the commencement of the constitution.
<b>Parliament</b>	Empowered to deal with matters related to citizenship (Article 11).
<b>Legislation</b>	Citizenship Act, 1955 (amended various times)
<b>List</b>	Union List
<b>Type</b>	Single citizenship
<b>Borrowed</b>	From British Constitution

#### Constitutional provisions

Articles	Subject-Matter
<b>Article 5</b>	Citizenship at the commencement of the constitution.
<b>Article 6</b>	Rights of citizenship of certain persons who have migrated to India from Pakistan.
<b>Article 7</b>	Rights of citizenship of certain migrants to Pakistan.
<b>Article 8</b>	Rights of citizenship of certain persons of Indian origin residing outside India.
<b>Article 9</b>	Persons voluntarily acquiring citizenship of a foreign State not to be citizens.
<b>Article 10</b>	Continuance of rights of citizenship.
<b>Article 11</b>	Parliament to regulate the right of citizenship by law.

Constitutional provision provide for citizenship under 4 categories:

1. Person who is domiciled in India: the parent is Indian (descent) or resident in India for 5 years.
2. People who came from Pakistan
3. People who went to Pakistan and returned back to India before commencement of this constitution.
4. Persons of Indian origin residing outside India (by registration)

## CITIZENSHIP ACT, 1955

The Constitution has empowered Parliament to make provisions related to Citizenship. Parliament enacted Citizenship Act, 1955 which provided certain ways to acquire Citizenship:

### By Birth

Date of Birth	Conditions for citizenship
January 26th 1950 - July, 1 1987	Individual shall be a citizen irrespective of the nationality of his parents.
On or after July, 1 1987	Individual shall be a citizen if either of his parents is a citizen of India at the time of his/her birth.
On or after December 3, 2004	Individual shall be a citizen if both of their parents are Indian citizens or if one of their parents is an Indian citizen and the other is not an illegal migrant in the country at the time of his birth.

### By Descent

A person born outside India	Citizenship
On or after 26th January 1950 but before December 1992	Considered as a citizen if his Father was a citizen at the time of his birth.
On or after December 10, 1992	Considered as a citizen if either of his Parents is a citizen of India at the time of his birth.
December 3, 2004	The parents (who are citizens of India) have to declare that their minor child does not hold a passport of any other country. Register within one year of the date of birth at an Indian Consulate in that country. If the said term has expired, registration can be done with the approval of the Central Government.

### By Registration

Central Government can register as a citizen of India any person based on application (not being an illegal migrant)

- Person of Indian origin (ordinarily resident in India for 7 years).
- Spouse of Indian Citizen (ordinarily resident in India for 7 years).
- Minor children of parents who are citizens of India.
- Previous citizen of independent India (ordinarily resident in India for 12 months).
- Overseas citizen of India cardholder for 5 years (ordinarily resident in India for 12 months).

### By Naturalisation:

Central Government may grant a certificate of naturalisation to any person (who is not an illegal migrant) on application based on the following conditions:

- Resided in India or been in the service of a Government of India (12 months preceding the application + should have resided/been in government service for an aggregate not less than 11 years)
- Good character.
- Adequate knowledge of a language specified in the 8th Schedule to the Constitution.

### By incorporation of Territory

- If a foreign territory becomes part of India, the Indian Government specifies the persons who shall be the citizens of India (from the notified date).

## LOSS OF CITIZENSHIP

The provisions related to loss of citizenship are found in the constitution but are majorly dealt by the Parliament via citizenship act, 1955. The act provides for loss of citizenship by renunciation, termination and deprivation.

### Provisions Related to Loss of Citizenship

<b>Constitutional Provisions</b>	Article 9 of the constitution provides that if an Indian Citizen becomes a citizen of any other country then he/she will automatically lose his/her Indian Citizenship
<b>Citizenship Act 1955</b>	<p><b>By Renunciation</b> Declaration renouncing his/her citizenship. Minor child also lose citizenship (can re-apply after age of 18).</p> <p><b>By Termination</b> If a person consciously acquires citizenship of another country (does not apply during war).</p> <p><b>By Deprivation</b> On grounds of 1) Fraud 2) Disloyalty to constitution 3) Connection with enemy 4) Imprisonment of naturalised citizen 5) Ordinary resident (out of India for 7 years)</p>

Indians living abroad can be segmented into Non - resident Indians (NRI) and OCI (Overseas citizen of India). Below is a comparative chart showing difference b/w Indian resident, NRI and OCI.

Category	Indian passport	Resident in India	Expatriate	Tax status	OCI card
<b>Indian (resident)</b>	Yes	Yes	No	Yes	No
<b>Non-resident Indian (NRI)</b>	Yes	No	Yes (of India)	No	No
<b>OCI (Overseas citizen of India)</b>	No	Yes (in India)	Yes (in India)	Yes (If resident of India) rest no	Yes

### OVERSEAS CITIZEN OF INDIA

- OCI is not a Citizenship. No right to vote or hold public offices.
- Provides similar rights available to residents or citizens of India.
- Provides for permanent residency i.e. allowing them to live and work in India indefinitely.
- Registration of OCI is done by Central Government based on application.
- Renunciation of OCI card can be done by OCI by making a declaration.
- Cancellation of OCI Card: Fraud, Disaffection towards constitution, Conspiring with enemy nation, Imprisonment (two years or more), Decision of Government, Violation of law by OCI, dissolution of marriage.

### Rights with Overseas Citizen of India Cardholder

Rights available to OCI Cardholder	Rights not available to OCI Cardholder
<ul style="list-style-type: none"> <li>Multiple entries, multi-purpose lifelong visa to visit India;</li> <li>Exemption from reporting to Police authorities for any length of stay in India;</li> <li>Parity with NRIs in financial, economic and educational fields except in the acquisition of agricultural or plantation properties;</li> <li>Treated at par with Non-Resident-Indian in the matter of inter-country adoption of Indian children;</li> <li>Treated at par with resident Indian nationals in the matter of tariffs in air fares in domestic sectors in India;</li> <li>Charged the same entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India;</li> <li>Parity with Non-Resident Indian in respect of entry fees to be charged for visiting the national monuments, historical sites and museums in India;</li> <li>Parity with Non-Resident Indians to appear for the All India Pre-Medical Test etc;</li> <li>OCI Registration booklet is treated as OCI's identification for any service rendered to him/her;</li> <li>In case proof of residence is required, OCI may give an affidavit attested by a notary stating that a particular/specific address may be treated as their place of residence in India and may also give their overseas residential address as well as email address if any</li> </ul>	<ul style="list-style-type: none"> <li>Not entitled to the right to equality of opportunity in matters of public employment.</li> <li>Ineligible for election as President.</li> <li>Ineligible for election as Vice-President.</li> <li>Ineligible for appointment as a Judge of the Supreme Court.</li> <li>Ineligible for appointment as a Judge of the High Court.</li> <li>Cannot register as a voter.</li> <li>Ineligible for being a member of the House of the People or of the Council of States.</li> <li>Ineligible for being a member of the State Legislative Assembly or the State Legislative Council.</li> <li>Ineligible for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may specify.</li> </ul>

The citizenship act, 1955 has been amended various times. The most recent amendment took place in 2019 and brought changes mainly to provide citizenship to certain category of illegal migrants.

## CITIZENSHIP (AMENDMENT) ACT, 2019

### **Background:**

- **Regulation of Citizenship in India:** Citizenship Act, 1955. Provides 5 methods to acquire citizenship - Birth, descent, registration, naturalisation (extended residence in India), and by incorporation of territory into India.
- **Illegal migrant:** Foreigner who enters India illegally, i.e., without valid travel documents, like a visa and passport. Those who enter India legally, but stay beyond the time period permitted in their travel documents.
- **Provision for illegal migrants:** Regulation by Foreigners Act, 1946 + the Passport (Entry into India) Act, 1920. Central government can regulate the entry, exit and residence of foreigners within India.

### **Provisions under Citizenship amendment Act, 2019**

The **2019** amendment made some significant changes to the **Citizenship Act of 1955**. Below are its major features:

- Specified class of illegal migrants from the 3 countries will not be treated as illegal migrants.
- Should belong to any of the **six communities** i.e. Hindu, Sikh, Buddhist, Jain, Parsi, or Christian + **3 countries** i.e. Afghanistan, Pakistan and Bangladesh.
- Entered India before or on the cut off date of **31st December 2014**.
- Citizenship through naturalisation. Requirement of residency has been decreased from 11 years to **5 years**.
- Does not apply to two categories i.e. **6th schedule** states + States under **Inner line permit** for example Arunachal Pradesh, Mizoram, Nagaland, and Manipur.
- Central Government can cancel OCI membership if provisions of the Citizenship amendment act are violated or any other law so notified by the Central Government. Opportunity to be heard should be provided.

Due to the recent agitations in Assam (against violation of Assam accord) and various other parts of the country (due to provisions of citizenship amendment act, 2019) both NRC and NPR have been in news.

## NATIONAL REGISTER OF CITIZENS (NRC)

Parameters	Details
<b>Definition</b>	It is an official, verified and valid record of all Indian citizens, containing details of individuals which are essential to establish their claim to citizenship. Creation was mandated by the 2003 amendment of the Citizenship Act, 1955
<b>Objective</b>	To document all the legal citizens of India so that the illegal immigrants can be identified and deported
<b>Components</b>	It includes <b>demographic information</b> about all those individuals who qualify as citizens of India as per the Citizenship Act, 1955. It will contain details of <b>only Indian Citizens</b> .
<b>History</b>	It was first prepared after the <b>1951</b> Census of India. NRC has not been updated till today (except in Assam in 2013 - 14) but only after the Supreme Court order).

## NATIONAL POPULATION REGISTER (NPR)

Parameters	Details
<b>Usual residents</b>	The NPR or National Population Register is a list of " <b>usual residents</b> " of the country.
<b>Compulsory registration</b>	It is compulsory for every usual resident of India to register in the NPR.
<b>Inclusion</b>	Includes both Indian citizens and foreign citizens. Objective is to create a database of every "usual resident" in the country.
<b>Preparation of NPR</b>	It is supposed to be prepared at the local (village/sub-town), sub-district, district, state and national levels under provisions of the Citizenship Act 1955 and the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

Parameters	Details
<b>Data collection</b>	The data for the National Population Register was first collected in 2010 by the Government of India. It was expected to be repeated every 10 years.
<b>Requirements</b>	No documents are required for NPR. Self-declaration will be treated as enough for data entry in the population registrar.

## DIFFERENCE BETWEEN NPR, NRC AND CENSUS

**NRC**, **Census** and **NPR** are fundamentally different from each other. NPR will include **all the usual residents** of the country whereas **NRC** is intended to list **only the citizens** of India. Below we will look in detail the difference between National population register, National register of citizens and Census.

Parameters	NRC	NPR	Census
<b>Definition</b>	It is a registry of citizens	It is a registry of usual resident of an area	It is an exercise for calculating the total population of the country.
<b>History</b>	First prepared in 1951 during the census and has not been updated since.	First time prepared in 2011 during census and has not been updated since.	First census was conducted in 1872.
<b>Coverage</b>	Only citizens are included where documents and information proving citizenship are sought.	Usual residents including citizens and non-citizens are included in the list. Its purpose is to count the number of people irrespective of their citizenship.	It includes the whole population of the country where information on demography, economics activity, literacy and education, etc. are collected.
<b>Objective</b>	To identify Indian citizens and identify illegal migrants living in the country.	To calculate all the residents of a local area and data collected here is also to be used for creation of NRC as per Citizenship Rule 2003.	Its purpose is for population assessment, policy formulation and planning.
<b>Regulation</b>	Regulated under Citizenship Act 1955.	It is regulated by Citizenship Rule 2003	It is regulated by Census Act 1948

## CHAPTER 7

# Fundamental Rights

### INTRODUCTION

Rights are essentially an entitlement or a justified claim. They denote what we are entitled to as citizens, as individuals and as human beings. Various types of rights exist which differ in origin, scope enforcement etc, we will look at some important ones below.

### DIFFERENT TYPES OF RIGHTS

Types	Meaning
Natural rights	<ul style="list-style-type: none"><li>Rights given to us by nature or God instead of ruler or society.</li><li>Inalienable rights</li><li>Other rights are derived from these basic rights.</li><li>Example: Right to preserve life was considered a natural right.</li></ul>
Human rights	<ul style="list-style-type: none"><li>Rights available to us simply because we are humans.</li><li>Every human has an intrinsic value. Should be given equal opportunity to realise their full potential.</li></ul>
Constitutional rights	<ul style="list-style-type: none"><li>These rights are provided by the constitution to the people.</li><li>Not applicable to all citizens unlike Fundamental rights.</li><li>Example: Right to vote under Article 326 is available only after achieving maturity i.e. 18 years.</li></ul>
Statutory rights	<ul style="list-style-type: none"><li>Provided to people by various laws passed by the Legislature example MNREGA (Provides Right to work), National food security act (Provides Right to food) etc.</li></ul>
Fundamental rights	<ul style="list-style-type: none"><li>Fundamental as they are essential for all round development of the Individual</li><li>Enforceable and Justiciable in the Supreme court (under Article 32) and High court (under Article 226).</li><li>Rights are enforced by using writs.</li></ul>

### Difference Between Fundamental Rights and Legal Rights

Parameters	Fundamental rights	Legal rights
Protection	Protected and guaranteed by the <b>constitution of India</b>	Protected and guaranteed by the <b>ordinary law of India</b>
Amendment	It can be changed by <b>amending the constitution</b> itself.	It may be changed by the legislature <b>by ordinary law making process</b> .
Basic structure	Part of the basic structure of the constitution.	Not part of the basic structure doctrine.
Justiciability	If these are violated one can move to the <b>Supreme court</b> or <b>High court</b> . Can directly approach the Supreme court	In case, legal rights are violated an individual has to move to the <b>ordinary court</b> first. The Judicial hierarchical process has to be followed.
Safeguards	Most of the Fundamental rights provide protection against the <b>state action</b> and not against private individual. <b>Exception:</b> Rights pertaining to abolition of untouchability + rights against exploitation.	These rights impose obligation on the individual (and in some cases against the state too).

## ABOUT FUNDAMENTAL RIGHTS

Fundamental rights are considered ‘fundamental’ because first, they are mentioned in the constitution and second they are justiciable in nature i.e. one can approach the court in case they are violated. Only the most important rights are recognised by the state as fundamental and enshrined in the constitution.

### Details Related to Fundamental Rights

<b>About</b>	<ul style="list-style-type: none"> <li>Part III of the constitution from Article 12 to Article 35.</li> <li>Described as the ‘Magna Carta of India’.</li> <li>Inspired from US – Bill of Rights</li> <li>Promote Political democracy</li> <li>Original constitution – 7 Fundamental rights. Presently 6 Fundamental rights (Right to property was deleted (Article 31) was deleted.</li> </ul>
<b>Features</b>	<ul style="list-style-type: none"> <li><b>Not absolute</b> rights but qualified. Reasonable restrictions can be imposed on them.</li> <li>Mostly available against the <b>arbitrary actions of the state</b>. Some of them are available against actions of Private Individual as well.</li> <li>Defended and guaranteed by both the <b>Supreme court (under Article 32)</b> and <b>High court (under Article 226)</b>.</li> <li>Most have <b>negative nature</b> i.e. place limitations on the authority of the State. Some are <b>positive</b> as well i.e. conferring certain privileges on the persons.</li> <li>Can be amended i.e. Not sacrosanct or permanent. Amendment can be done without affecting the ‘basic structure’ of the constitution.</li> <li>With the exception of Article 20 and Article 21 they can be suspended during ‘National emergency’.</li> <li>Scope is limited because of Article 31 A, Article 31 B and Article 31 C. Can also be limited when martial law has been imposed in the area.</li> <li>Most of the FR are <b>directly enforceable</b>. Other require enabling law to be made ‘only’ by the Parliament (Article 35). Example Article 21 A etc.</li> </ul>

The Fundamental rights mentioned in the constitution can be divided into the following:

Fundamental Rights	Articles
Right to equality	Articles 14–18
Right to freedom	Articles 19–22
Right against exploitation	Articles 23–24
Right to freedom of religion	Articles 25–28
Cultural and educational rights	Articles 29–30
Right to constitutional remedies	Article 32

## APPLICABILITY OF FUNDAMENTAL RIGHTS

Applicability	Articles and Availability
<b>Few are available ‘Only’ to Citizens</b>	Article 15,16,19,29 and 30 are available with citizens only and not to foreigners.
<b>Available to Citizens and foreigners.</b> <b>Not for enemies</b>	Article 14,20,21,21A,22,23,24,25,26,27,28 are available with both citizens and foreigners (not enemy aliens).
<b>Against Citizens</b>	Article 15,17,23,24,32(Only Habeaus Corpus) are available against State + Private Citizen.

## ARTICLE 12: DEFINITION OF STATE

The fundamental rights basically impose obligation on the state therefore it becomes important to define the state and to understand which institutions come under it.

### Scope of State under Article 12

<b>Definition of the state</b>	Community of Persons permanently occupying a definite territory independent of external control and possessing an organised Government. Following come under the definition of the State <ul style="list-style-type: none"> <li>• Government and Parliament of India i.e. the Executive and Legislature of the Union.</li> <li>• Government and Legislature of each State i.e. the Executive and Legislature of the various States of India.</li> <li>• All the local authorities such as municipalities, panchayats, district boards, port and improvement trusts, etc.</li> <li>• All other authorities that are present in Indian territory or are operating under the supervision of the Government of India i.e. statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.</li> </ul>
<b>Position of Judiciary</b>	Judiciary has not been defined under Article 12. Through various Judgments it has been held that 'only' when the Judiciary performs ' <b>non – Judicial functions</b> ' they come under the definition of the State.
<b>Important Judgment:</b>	<ul style="list-style-type: none"> <li>• <b>Ajay Hasia v. Khalid Mujib, 1981</b> : 6 factor test laid down to determine what would be considered state under Article 12.</li> <li>• <b>Zee Telefilms v. The Union of India 2005</b>: 6 factor test laid down was implemented in this case to determine that BCCI cannot be called 'state' under Article 12.</li> </ul>

## ARTICLE 13: LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS

This article aids the courts to keep the legislature under check. The article gives duty to the state to implement the fundamental rights and provides the court power to declare laws or act void in case it violates fundamental rights.

### Scope of Laws under Article 13

<b>About</b>	<ul style="list-style-type: none"> <li>• Addresses all those laws which are inconsistent with or in derogation of fundamental rights.</li> <li>• Laws which are inconsistent with the provisions of Part-III of the Indian Constitution, shall be void.</li> <li>• Forms the basis of the <b>doctrine of judicial review</b></li> </ul>
<b>Scope</b>	<b>Law under Article 13 include:</b> <ul style="list-style-type: none"> <li>• <b>Permanent laws</b> enacted by Parliament or state legislatures.</li> <li>• <b>Temporary laws</b> like ordinances issued by the president or the state governors.</li> <li>• <b>Statutory instruments</b> like order, bye-law, rule, regulation or notification.</li> <li>• <b>Non-legislative sources of law</b> i.e. custom or usage having the force of law.</li> </ul>

## RIGHT TO EQUALITY (ARTICLE 14-18)

### Article 14: Equality Before Law

- Article 14 deals with two concepts: Equality before the law + Equal Protection of Laws
- Rights available to **all persons** whether citizens + foreigners.
- Below the difference between equality before law and equal protection of law has been mentioned.

Parameters	Equality Before Law	Equal Protection of Laws
<b>Definition</b>	Law must be enforced and administered equally among all.	All persons in similar circumstances shall be given the same rights and liabilities.
<b>Implications</b>	No special privileges in favour of any person, Equal subjection of all persons to the ordinary law of the land administered by ordinary law courts. No person (whether rich or poor, high or low, official or non-official) is above the law.	Equal treatment in similar circumstances, both in the privileges and liabilities imposed by the law. Similar application of the same laws to all persons who are similarly situated. Like should be treated alike without any discrimination.
<b>Origin</b>	British origin	US Constitution.
<b>Nature</b>	<b>Negative concept</b> as it implies the absence of any special privilege in favour of individuals.	<b>Positive obligation</b> as state ensures every person enjoys equal protection. Provides 'similar treatment instead of identical one i.e. equality is advocated for only those who are equal. No discrimination amongst equal. However, the Equals and unequals cannot be put in the same footing and be treated without discrimination.

## Article 15: Prohibition of Discrimination on Certain Grounds

### Provisions Related to Article 15 of Indian Constitution

- Article 15(1)** State shall not discriminate against any **citizen** on grounds **only** of religion, race, caste, sex or place of birth, or any combination thereof. Applicable against 'state action' only and available to citizens. (Discrimination on other grounds is allowed For example: Qualifications of weight, height, etc in case of police services).
- Article 15 (2)** No discrimination with regards to giving 1) Access to shops, Public restaurants, hotels and places of public entertainment (applicable to state). (2) No discrimination in Use of wells, tanks, bathing ghats maintained by state funds for general public (Applies to both citizens and state).
- Article 15 (3)** State can make special provisions for Women and Children
- Article 15 (4)** State is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the SC/ST's. This clause was added by the 1st constitutional amendment act. Added after the Judgment in Champakam Doraijan case.
- Article 15 (5)** Reservations in Private educational institutions whether aided or unaided for OBCs + SC's/ST's other than Minority educational Institutions. Added by the 93rd constitutional amendment act.
- Article 15 (6)** State is empowered to provide reservations to **Economically weaker sections** for admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions. Added by the 103rd CAA, 2019.

Criteria applicable to OBC: Creamy layer criteria	Eligibility criteria for EWSs in Educational Institutions
<ul style="list-style-type: none"> <li><b>Constitutional posts:</b> President, Vice President, Judges of SC and HC's etc.</li> <li><b>Officers:</b> Top ranked officials (Group A/Group B)</li> <li><b>Top ranked army officers:</b> Rank of colonel and above in the Army and equivalent posts in the Navy, the Air Force and the Paramilitary Forces.</li> <li><b>Other professions:</b> Doctor, lawyer etc.</li> <li><b>Agricultural land:</b> Above certain limit</li> <li><b>Annual Income:</b> Gross annual income of more than Rs.8 lakh or wealth above the exemption limit.</li> </ul>	<ul style="list-style-type: none"> <li><b>Annual income:</b> Gross annual income (aggregate) below Rs.8 lakh.</li> <li><b>Possession of asset:</b> Following asset should be under their possession <ul style="list-style-type: none"> <li>5 acres of Agricultural land and above.</li> <li>Residential flat of 1000 sq. ft. and above.</li> <li>Residential plots of 100 sq. yards and above in notified municipalities.</li> <li>(d) Residential plots of 200 sq. yards and above in areas other than the notified municipalities.</li> </ul> </li> <li><b>Determination of property:</b> Cumulative asset to determine EWS status.</li> <li><b>Definition of family:</b> Person who seeks the benefit of reservation + parents + siblings (below 18 years).</li> </ul>

## Article 16: Equality of Opportunity in Public Employment

- This Right is available only with Citizens and is applicable 'only' to public Institutions and not the private Institutions.

### Provisions Related to Article 16 of Indian Constitution

- Article 16 (1)** Equality of opportunity in Public employment.
- Article 16 (2)** No citizen can be discriminated or made ineligible for employment of any office under the state and on the grounds of only religion, race, caste, sex, descent, place of birth or residence or any combination thereof. (Descent and place of residence are not present in Article 15)
- Article 16 (3)** **Residence** can be prescribed for certain types of Employment or appointment in the state by the **Parliament**.
- Article 16 (4)** State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.
  - Article 16 (4A)** Provides reservation of seats in matter of 'promotion' with **consequential seniority** (85th amendment) for SC/ST's.
  - Article 16 (4B)** Provides for carrying over of unfilled vacancies reserved for SC/ST to subsequent years. This is commonly referred to as "carry forward rule"
- Article 16 (5)** Law can be made to provide that Incumbent of an office related to Religious or denominational institutions belonging to particular religion.
- Article 16 (6)** State is permitted to make a provision for the reservation of up to 10% of appointments or posts in favour of any economically weaker sections of citizens. Added by the 103<sup>rd</sup> CAA 2019.

## **Important Judgments and Commissions**

<b>Related Judgements and Commissions</b>	
<b>Mandal commission</b>	Appointed under Article 340. Identified 52% of the population as OBCs and recommended 27% Reservations.
<b>Indra Sawhney case, 1992</b>	<ul style="list-style-type: none"> <li>• Total reservations shall not exceed 50%</li> <li>• Carry forward rule is valid - Should not violate the 50% rule</li> <li>• Merit shall not be compromised.</li> <li>• No reservation in promotions.</li> <li>• Creamy layer to exclude advanced sections among OBCs.</li> <li>• Set up a permanent statutory body to examine over - inclusion and under - inclusion in the list of OBCs.</li> </ul>
<b>Important amendments</b>	<p><b>77th amendment</b> Provided for reservation in promotions in favour of SCs and STs</p> <p><b>81st amendment</b> Empowered the state to fill backlog vacancies even if there cross 50% ceiling.</p> <p><b>82nd amendment</b> It added a provision to Article 335. According to article 335, all reservations which are made for SC/ST's have to be in accordance with efficiency in administration.</p> <p><b>85th amendment</b> Consequential seniority to SC/ST's</p>
<b>M Nagaraj case vs Union of India</b>	<p>Upheld reservation in promotions</p> <p>Laid a criteria to be fulfilled before providing 'reservation in Promotion'. State is obliged to <b>demonstrate</b>.</p> <ul style="list-style-type: none"> <li>• Current backwardness of SC/ST's.</li> <li>• '<b>Inadequate representation</b>' of the community in the relevant sector.</li> <li>• The reservation will maintain '<b>administrative efficiency</b>'.</li> </ul>
<b>Jarnail Singh vs Lachhmi Narain Gupta (2018)</b>	<ul style="list-style-type: none"> <li>• Supreme court laid down that the Nagaraj Judgment does not need reconsideration by the seven Judge bench. Besides this the court ruled; <ul style="list-style-type: none"> <li>◆ <b>Struck down backwardness criteria:</b> No need for state to collect 'quantifiable data' on the backwardness of the SC's and the ST's.</li> <li>◆ <b>Need to prove Inadequate representation:</b> States have to prove Inadequacy of representation in relation to specific cadre and not in proportion to SC/ST population in the State.</li> <li>◆ <b>Extended creamy layer exclusion to SC/ST:</b> It was held that in case of promotions creamy layer exclusion applies to SC/ST's. Hence, the State cannot grant reservations in promotion to SC/ST individuals who belong to the creamy layer of their community.</li> </ul> </li> </ul>
<b>Justice Rohini commission</b>	<ul style="list-style-type: none"> <li>• It was appointed in 2017 with the purpose of sub-categorization of Other Backward Castes.</li> </ul>

## **Article 17: Abolition of Untouchability**

1. The article abolished 'untouchability'. Applicable to both State and Private citizens.
2. Term 'untouchability' is not defined in the constitution.
3. It is an absolute right as no reasonable restrictions are applied on this article
4. Parliament has been empowered to make law for prescribing punishment for untouchability. Protection of Civil rights act was passed by the Parliament.

## **Article 18: Abolition of Titles**

This **article abolishes titles** and makes four provisions in that regard:

1. State cannot confer any title on a citizen or a foreigner.
2. Citizens of India cannot accept any title from any foreign state.
3. A foreigner working for Indian Government, holding any office of profit or trust under the state cannot accept title, present encloument from foreign state without taking prior consent of the president.

## RIGHT TO FREEDOM (ARTICLE 19-22)

### Article 19: Protection of Certain Rights Regarding Freedom of Speech, etc.

Under this article **six fundamental rights** related to freedom are guaranteed to all the citizens of India. These are:

Article	Freedom	Reasonable restriction
<b>Article 19 1(a)</b>	Freedom of speech and expression. (Every citizen has right to express his beliefs and convictions. It is an elaborate right and includes freedom of press, freedom of silence, Right to telecast etc.)	<ul style="list-style-type: none"> <li>• Sovereignty and Integrity of India</li> <li>• Security of State</li> <li>• Friendly relation with foreign states.</li> <li>• Public Order</li> <li>• Decency or Morality,</li> <li>• Contempt of court,</li> <li>• Defamation,</li> <li>• Incitement to an offense.</li> </ul>
<b>Article 19 1 (b)</b>	Every citizens has the right to assemble peacefully and without arms. Citizens can conduct meetings, demonstrations and take out processions.	<ul style="list-style-type: none"> <li>• Sovereignty and Integrity of India,</li> <li>• Public order,</li> </ul> <p><b>Other restrictions:</b></p> <ul style="list-style-type: none"> <li>• Section 144 of CRPC allows magistrate to restrain an assembly or meeting or procession.</li> <li>• Section 141 IPC assembly 5 or more persons can be made unlawful.</li> </ul>
<b>Article 19 1 (c)</b>	Right to form associations or unions or co-operative societies: Includes right to continue an association or union, Includes the right to not join or form an association, Does not include the right to strike.	<ul style="list-style-type: none"> <li>• Sovereignty and Integrity of India,</li> <li>• Public Order</li> <li>• Morality</li> </ul>
<b>Article 19 1 (d)</b>	Citizen can move freely throughout the territory of the country.	<ul style="list-style-type: none"> <li>• Interest of general public</li> <li>• Protection of interest of tribals.</li> </ul>
<b>Article 19 1(e)</b>	Every citizen has the right to reside and settle in any part of the territory of the country	<ul style="list-style-type: none"> <li>• General public interest,</li> <li>• Protection of interest of scheduled tribes</li> </ul>
<b>Article 19 1 (g)</b>	All citizens are given the right to practise any profession or to carry on any occupation, trade or business.	<ul style="list-style-type: none"> <li>• General Public Interest</li> <li>• Professional and technical qualifications</li> <li>• The business can be monopolised by the state. State is not required to justify its monopoly.</li> </ul>

- These six rights are protected against **only state action** and not private individuals.
- Article 19 covers only the right to move **within** the **country**. Right to move in and out of the country is dealt by Article 21.
- The right under Article 19 is suspended automatically if **National emergency** is imposed on the ground of external aggression however, it cannot be suspended when the emergency is imposed on the grounds of 'armed rebellion'.

### Article 20: Protection in respect of Conviction for Offences

- Protection against arbitrary and excessive punishment to an accused person.
- Cannot be suspended during an emergency.
- Available to both Citizens + Foreigners

Article 20	Explanation	Related facts
<b>Article 20 (1): No ex-post facto law</b>	No person shall be convicted of an offense by applying retrospective laws (i.e. by applying law backwards).	Applies only to criminal laws not to civil and tax laws. In criminal case it This immunity is not available in case of Preventive detention.
<b>Article 20(2): No double Jeopardy</b>	No person shall be prosecuted and punished for the same offense more than once. Conditions: Must have tried before court/Court must be competent/ Conclusion of proceeding (acquittal or conviction)/ Should be in force/Should be tried for the same offense.	Applies only for proceedings before court of law or Judicial tribunals (not applicable before administrative or departmental authorities).

Article 20	Explanation	Related facts
<b>Article 20(3): No self-Incrimination</b>	No person accused of any offence shall be compelled to be a witness against himself.	Does not cover the following: Blood Samples, Signatures, Thumb impressions, Exhibition of body, Production of material.

### Article 21: Protection of Life and Personal Liberty

- No person shall be deprived of his life or personal liberty except according to procedure established by law.
- It is available to both **citizens** and **non – citizens**.
- Wide scope of this article: Right to livelihood, Right of Prisoners for dignified life, Right to die with dignity, Right to Privacy etc. all form part of Article 21 of the constitution.

Parameters	Procedure Established By Law	Due Process of Law
<b>Origin</b>	British constitution.	Constitution of United States.
<b>Scope</b>	Does not assess whether the laws made by the legislature or by the concerned authority are fair, just and not arbitrary.	Determines whether a law is valid by examining both its procedural and substantive characteristics.
<b>Role of Judiciary</b>	Judiciary's role is limited to evaluating the procedure used by the legislature to enact the law in question.	Judiciary has the power to determine the laws' procedural adequacy as well as its intention.
<b>Protection</b>	Safeguards a citizen's rights from the executive's arbitrary actions.	It safeguards citizens' rights from executive + legislative actions.
<b>Constitutional provision</b>	Provided in Article 21	Not explicitly mentioned in the Indian Constitution

### Related Judgment

Judgments	Arbitrary executive action	Arbitrary legislative action	Due process of law	Meaning of liberty
<b>A.K. Gopalan case</b>	Protection under Art. 21 is available	Protection under Art 21 is not available	Not Available	Narrow: liberty relating to person, body of the individual
<b>Menaka Gandhi case</b>	Protection under Art. 21 is available	Protection under Art 21 is available	Available	Broad view: Includes opportunity to live with dignity and to develop ones capacity etc.

### Article 21 A: Right to Education

Article 21 A of Indian Constitution	
<b>Provision</b>	<ul style="list-style-type: none"> <li>State shall provide for free and compulsory education to children in the age of 6 to 14 years in such a manner as a state may determine</li> </ul>
<b>86th CAA. 2002</b>	<ul style="list-style-type: none"> <li>Inserted Article 21 A</li> <li>Amended Article 45 says 'The state shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years'.</li> <li>Added a new Fundamental duty: Every citizen of India to provide opportunities for education to his child or ward between the age of 6 and 14 years'</li> </ul>
<b>Enforcement</b>	<ul style="list-style-type: none"> <li>Right to Education 2009 was enacted to enforce this</li> </ul>

### Article 22: Protection against arrest and detention

- Protection to those arrested and detained.
- Punitive detention refers to punishment for an offense committed after trial + conviction in court.
- Preventive detention refers to detention without trial + conviction in court.

### Protections Available under Article 22 of Indian Constitution

<b>Protection in case of arrest</b>	<ul style="list-style-type: none"> <li>Informed about ground of arrest, Consult and defend by legal practitioner, Produced before magistrate within 24 hours, Right to released unless further detention authorised by magistrate.</li> </ul>
<b>Protection in case of Preventive detention</b>	<ul style="list-style-type: none"> <li>Detention period cannot exceed 3 months</li> <li>Beyond 3 months report of advisory board needed</li> <li>Board to consist Judges of High court</li> <li>Ground of detention to be communicated to detained person (no need to tell facts related to public interest).</li> <li>Opportunity to make representation against detention order</li> <li>Parliament has power to prescribe 1) to increase 3 month detention period without obtaining advisory board opinion 2) Maximum period of detention under Preventive detention law 3) Procedure to be followed by advisory board.</li> <li>Legislative power with regard to preventive detention is divided between parliament and state legislature.</li> </ul>

## RIGHTS AGAINST EXPLOITATION: (ARTICLE 23 - 24)

### Article 23: Protection of traffic in human beings and forced labour

#### Detailed Provisions under Article 23 of Indian Constitution

<b>Provision</b>	Prohibits ' <b>Traffic in Human Beings</b> ' and ' <b>Forced Labour</b> '
<b>Definition</b>	<ul style="list-style-type: none"> <li>'Traffic in human being': Selling/buying men/women/children, Immoral traffic in women and children, devadasis, slavery.</li> <li>'Begar': Compulsory work without remuneration</li> <li>Forced labour: Compel a person to work against his will.</li> <li>Force: Physical force + legal force + compulsion due to economic circumstances.</li> </ul>
<b>Scope</b>	<ul style="list-style-type: none"> <li>Available with both '<b>citizens</b>' + '<b>non – citizens</b>'.</li> <li>Protection against both '<b>state</b>' + '<b>private Individual</b>'.</li> </ul>
<b>Exception</b>	<ul style="list-style-type: none"> <li>Compulsory service can be imposed by State</li> </ul>

### Article 24: Prohibition of employment of children in factories etc.

#### Detailed Provisions under Article 24 of Indian Constitution

<b>About</b>	<ul style="list-style-type: none"> <li>Prohibits employment of children below the age of 14 years in hazardous industries.</li> </ul>
<b>Exception</b>	<ul style="list-style-type: none"> <li>Does not prohibit their employment in any harmless or innocent work</li> </ul>
<b>Legislation</b>	<ul style="list-style-type: none"> <li>Child labour (Prohibition and Regulation) Act, 1986 (latest amendment in 2016)</li> </ul>
<b>Latest amendment</b>	<ul style="list-style-type: none"> <li><b>Child Labour (Prohibition and Regulation) Amendment Act, 2016</b></li> <li>Introduces blanket ban on the employment of children below 14 years in all occupations and processes.</li> <li>Prohibits employment in hazardous processes of adolescents (14 to 18 years of age) in certain hazardous occupations and processes.</li> <li>It allows the children to work in "the family or family enterprises" after school hours or allows the child to be "an artist in the audio-visual entertainment industry".</li> <li>Penal provisions: Imprisonment + Fine (50,000 rs)</li> </ul>

## RIGHT TO FREEDOM OF RELIGION (ARTICLE 25 - 28)

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

#### Detailed Provisions under Article 25 of Indian Constitution

<b>Provision</b>	<ul style="list-style-type: none"> <li>Freedom of conscience, freedom to profess, practice and propagate religion.</li> <li>Covers both religious belief (doctrines) + religious practices (rituals)</li> <li>Does not include the Right to convert (<i>Stanislaus v. State of Madhya Pradesh, 1977</i>).</li> </ul>
<b>Reasonable Restrictions</b>	<ul style="list-style-type: none"> <li>Public Order, Morality and Health</li> </ul>

**Detailed Provisions under Article 25 of Indian Constitution**

<b>Rights of State</b>	<ul style="list-style-type: none"> <li>State can also regulate secular activities associated with religion.</li> <li>Provide for religious reform of Hindu religious institutions.</li> </ul>
<b>Explanations</b>	<ul style="list-style-type: none"> <li>Two explanations are mentioned in the article i.e., Wearing and carrying of Kirpans is to be included in the profession of the Sikh religion;</li> <li>Hindus, include Sikhs, Jains and Buddhists.</li> </ul>

**Article 26: Freedom to manage religious affairs.****Detailed Provisions under Article 26 of Indian Constitution**

<b>Provision (Protects 'collective freedom' of religion)</b>	<b>Religious denomination</b> have been given the following rights:
	<ul style="list-style-type: none"> <li>Establish and maintain institutions for religious/charitable purpose.</li> <li>Manage its own affairs in religious matters.</li> <li>Own and acquire movable/immovable property.</li> <li>Administer the property in accordance with law.</li> </ul>
<b>Reasonable Restrictions</b>	Public Order, Morality, Health
<b>Definition of 'Religious denomination'</b>	Not provided in the constitution. SC in its Judgment has held that 'religious denomination' must satisfy 3 conditions <b>1) System of belief 2) Common organisation 3) Distinctive name.</b>

**Article 27: Freedom as to payment of taxes for promotion of any particular religion**

- Provision Freedom from taxation for religious institutions
- Tax cannot be levied for the promotion or maintenance of any particular religion/religious denomination.
- This article prohibits only levy of a tax and not a fee.
- Fee controls secular administration of religious institutions and does not promote or maintain religion.

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

- Freedom from attending '**religious instructions**' in educational institutions.

Type of Institute	Status of religious instruction
Institutions wholly maintained by the State	Completely prohibited
Institutions administered by the State but established under any endowment or trust	Permitted
Institutions recognised by the State	Permitted on a voluntary basis. May or may not attend
Institutions receiving aid from the State	Permitted on a voluntary basis. May or may not attend.

**CULTURAL AND EDUCATIONAL RIGHTS (ARTICLE 29-30)****Article 29: Protection of interests of minorities****Detailed Provisions under Article 29 of Indian Constitution**

<b>Article 29 (1)</b>	<ul style="list-style-type: none"> <li>Any section of the citizens residing in any part of India having distinct Script, language and culture shall have right to protect the same.</li> <li>Group right, as it is available for both 'religious' and 'linguistic' minorities</li> <li>SC held that the term 'Section of the citizens' includes both, majority as well as minority.</li> <li>Absolute right for the minorities and is not subjected to any reasonable restriction.</li> </ul>
<b>Article 29 (2)</b>	<ul style="list-style-type: none"> <li>No citizen can denied admission into any educational institutions maintained by the state or receiving aid from the state only on grounds of <b>religion race, caste or language.</b></li> </ul>

## Article 30: Right to monitor and establish and administer educational institutions

### Detailed Provisions under Article 30 of Indian Constitution

<b>Provision</b>	<ul style="list-style-type: none"> <li>Rights of minorities (both religious and linguistic) to establish and administer educational institutions.</li> </ul>
<b>Scope</b>	<ul style="list-style-type: none"> <li>Confined to minorities (unlike article 29 which is applicable to 'any section of citizens').</li> </ul>
<b>Minorities</b>	<ul style="list-style-type: none"> <li>Not defined by the constitution. Minority Status may vary from state to state (both 'religious' + 'Linguistic' minority).</li> </ul>
<b>Type of Minority institutions.</b>	<ul style="list-style-type: none"> <li>Institutions that seek recognition as well as aid from the State; (under regulatory power of the state).</li> <li>Institutions that seek only recognition from the State and not aid; (under regulatory power of the state) and</li> <li>Institutions that neither seek recognition nor aid from the State (free to conduct its own affairs).</li> </ul>
<b>Other Facts</b>	<ul style="list-style-type: none"> <li>Compensation amount fixed for acquisition of any property of minority institutions shall not restrict the right guaranteed to minorities. (44th constitutional amendment act).</li> <li>State cannot discriminate while providing aid to minority institutions.</li> <li>No 'reverse discrimination' in favour of minorities. Objective of the article is 'only' to ensure equality with majority.</li> <li>Not an absolute right. Institution cannot mal-administer. Regulatory measures can be put by the state to ensure academic excellence, welfare of teachers and students, conditions of service, state can put conditions to ensure proper utilisation of aid by the state etc.</li> </ul>

## ARTICLE 32: RIGHT TO CONSTITUTIONAL REMEDIES

- Described as the very soul of the constitution and the very heart of it.
- Basic feature. Cannot be taken away by a constitutional amendment.
- Supreme court has the power to issue directions/orders/writs for the enforcement of Fundamental rights.
- Parliament can empower any subordinate court to issue writs of all kinds (not done till now).
- President can suspend the right to move any court for the enforcement of the fundamental rights during a national emergency (Article 359).
- Borrowed from English law where they were known as 'prerogative writs'.

### Comparing writ power of Supreme Court and High Court:

Parameters	Supreme Court	High Court
<b>Enforcement</b>	Narrow writ Jurisdiction: Can issue writs only for the enforcement of fundamental rights.	Wide writ Jurisdiction: Can issue writs for Fundamental Rights + any other purpose (ordinary legal right).
<b>Territorial Jurisdiction</b>	Wide territorial jurisdiction. It can issue writs against a person or government throughout the territory of India.	Narrow territorial jurisdiction and it can issue writs within its territorial jurisdiction (state) only or outside its territorial jurisdiction only if the cause of action arises within its territorial jurisdiction
<b>Obligation</b>	A remedy under Article 32 is in itself a Fundamental Right and hence, the Supreme Court may not refuse to exercise its writ jurisdiction.	A remedy under Article 226 is discretionary and hence, a high court may refuse (in so far as it relates to FRs) to exercise its writ jurisdiction.

Writs	Meaning	Purpose	Locus standi	Against whom
<b>Habeas corpus</b>	To have the body of	To release a person who has been detained illegally in prison or private custody	Does not apply	Private citizen or public authority
<b>Mandamus</b>	We command	To secure performance of public duties by lower court, Tribunal or public authority.	Applies	Against Public officia Judicial and Quasi-Judicial bodies
<b>Certiorari</b>	To be certified	To quash an order already passed by an Inferior court, tribunal or quasi – Judicial authority	Applies	Judicial and Quasi - Judicial bodies

Wrts	Meaning	Purpose	Locus standi	Against whom
<b>Prohibition</b>	To prohibit/stop	To prohibit an inferior court to continue proceedings in a case in which it holds no jurisdiction.	Applies	Judicial and Quasi - Judicial bodies
<b>Quo warranto</b>	By what authority	To restrain a person from holding public office to which he is not entitled/or qualified	Does not apply	Any public authority unqualified for the position.

## ARMED FORCES AND FUNDAMENTAL RIGHTS

### Article 33: Power of Parliament to modify the rights conferred by this part in their application to forces

- Parliament (not state legislature) can restrict, abrogate fundamental rights of armed forces, para military force, police forces, intelligence agencies.
- Members of armed forces also include other service providers to the armed forces. Example: Cooks and Carpenters.

## MARTIAL LAW AND FUNDAMENTAL RIGHTS

### Article 34: Restriction on rights conferred by this part while martial law is in force

- It provides for the restrictions on Fundamental rights while 'martial law' is in force.
- Martial law has not been defined in the constitution. It refers to situation where civilian administration is run by military authorities.
- Empowers Parliament to indemnify any government servant or any other person when martial law is in force.
- Concept has been derived from Britain.

Parameters	Martial Law	National Emergency
<b>Impact</b>	Affects only Fundamental Rights.	Affects Fundamental Rights + Centre-state relations + distribution of revenues and legislative powers between centre and states + Parliament tenure (may).
<b>Government and law courts</b>	Suspends government and ordinary law courts.	Government and ordinary law courts continue.
<b>Grounds for imposition</b>	Breakdown of law and order due to any reason.	It can be imposed only on three grounds—war, external aggression or armed rebellion.
<b>Region where it is imposed</b>	It is imposed in some specific area of the country.	It is imposed either in the whole country or in any part of it.
<b>Provision in constitution</b>	It has no specific provision in the Constitution.	It has specific and detailed provision in the Constitution.

## EFFECTING CERTAIN FUNDAMENTAL RIGHTS

### Article 35: Legislations to give effect to provisions of Part III of the constitution

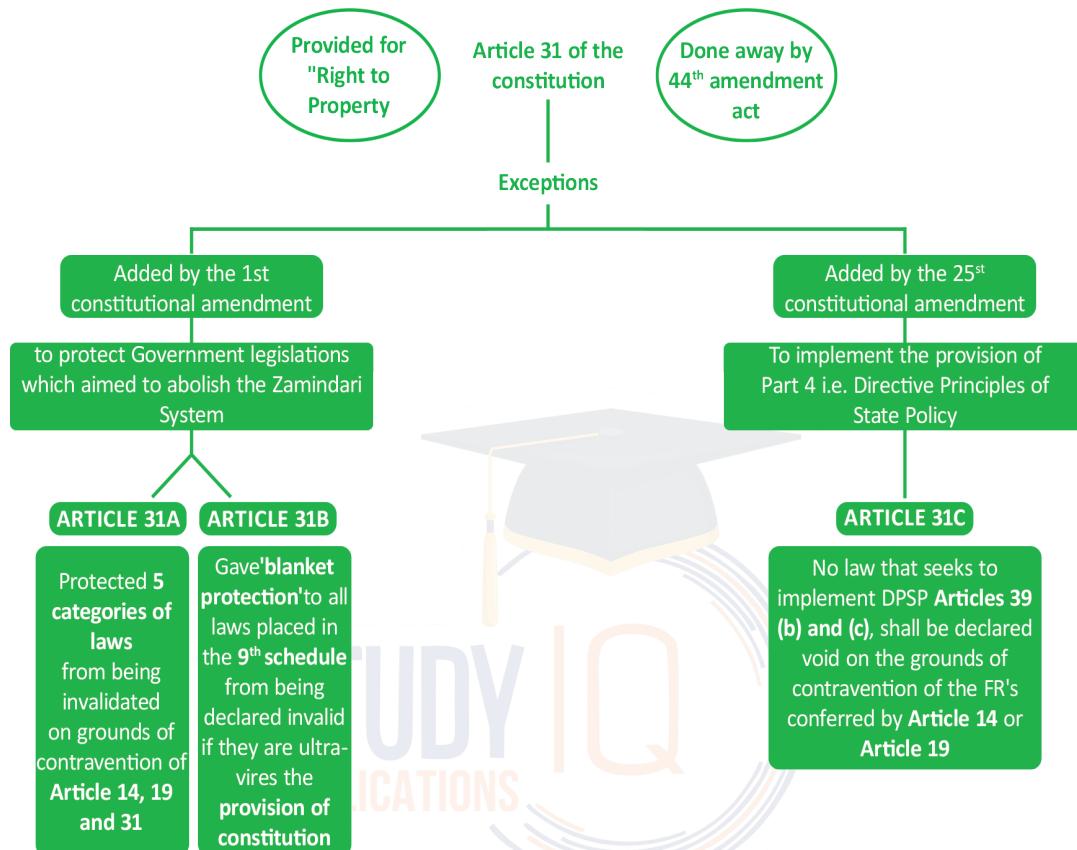
**Only Parliament** has power to make laws to give effect to certain FRs (ensures uniformity)

- Article 16: Residence as criteria for public employment.
- Article 32: To empower courts other than Supreme Court and high courts to issue writ orders, directions for enforcement of fundamental rights.
- Article 33: To make laws to take away fundamental rights for armed forces – para-military and police.
- Article 34: To indemnify the acts of government servant during martial law.
- Parliament can also make laws for punishment of offenses declared under FRs. Example: untouchability, trafficking etc.
- This Article extends the competence of Parliament to make laws on few matters specified in state list

## EXCEPTIONS TO FUNDAMENTAL RIGHTS

- Right to Property was repealed by 44th amendment act, now it is a legal right under article 300A.
- Exceptions to Article 31 are exceptions to Fundamental rights.

### Exception to Fundamental Rights



## CHAPTER 8

# Directive Principles of State Policy

### INTRODUCTION

DPSP can be defined as ideals to keep in mind while making policies and enacting laws. They are constitutional instructions to state in legislative, executive and administrative matters.

- Provision found in Part IV (Article 36 – 51)
- Resemble Instrument of Instructions of GOI act 1935 to the Viceroy
- Inspired by the Irish Constitution
- Dr B R Ambedkar described them as “novel features of the Indian constitution”.
- DPSP + Fundamental rights are described as “philosophy, soul and conscience of the constitution”.
- Non Justiciable in nature.
- Used by court to determine constitutionality of law. SC held that DPSP can be considered as reasonable restriction in relation to Article 14 and 19.

### CLASSIFICATION OF DPSP: NOT MENTIONED IN CONSTITUTION

Principles	Articles
Socialistic principles	Article 38, 39, 39A, 39B, 41, 42, 43, 43A, 47
Gandhian principles	Article 40, 43, 43B, 46, 47, 48
Liberal intellectual Principle	Article 44, 45, 48, 48A, 49, 50, 51.

### ADDITION TO DPSP

Amendment	Additions
42nd amendment	<ul style="list-style-type: none"><li>• Article-39: To secure opportunities for healthy development of children.</li><li>• Article-39A: To promote equal justice and to provide free legal aid to poor.</li><li>• Article 43A: Participation of workers in the management of industry.</li><li>• Article 48A: Safeguarding forests and wildlife.</li></ul>
44th amendment	Article 38 (state to secure social order for the promotion of welfare of the people)
86th amendment	Changed content of Article 45, i.e. provision for early childhood care and education of children below 6 years.
97th amendment	Introduced Article 43B: Cooperative societies.

### CONSTITUTIONAL PROVISIONS

Articles	Provisions
Article 36	Definition of State
Article 37	Application of the directive principles
Article 38	State to secure a social order for the promotion of welfare of the people

Articles	Provisions
<b>Article 39</b>	Certain principles of policy to be followed by the State. To secure : <ul style="list-style-type: none"> <li>a. Rights to adequate means of livelihood</li> <li>b. Equal distribution of material resources of the community for the common good</li> <li>c. Prevention and concentration on health</li> <li>d. Equal pay for equal work</li> <li>e. Preservation of health and strength of workers.</li> <li>f. opportunities for healthy development of children</li> </ul>
<b>Article 39 A</b>	Equal justice a free legal aid.
<b>Article 40</b>	Organization of village panchayats
<b>Article 41</b>	Right to work, to education, and to public assistance in certain cases.
<b>Article 42</b>	Provision for just and humane conditions of work and maternity relief.
<b>Article 43</b>	Living wage, etc. for workers
<b>Article 43A</b>	Participation of workers in management of industries.
<b>Article 43B</b>	Promotion of co-operative societies
<b>Article 44</b>	Uniform Civil code for the citizens
<b>Article 45</b>	Provisions for early childhood care and education to children below the age of six years.
<b>Article 46</b>	Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections.
<b>Article 47</b>	Duty of the state to raise the level of nutrition and the standard of living and to improve public health. Prohibit the consumption of Intoxicants.
<b>Article 48</b>	Organisation of agriculture and animal husbandry
<b>Article 48 A</b>	Protection and improvement of environment and safeguarding of forests and wild life.
<b>Article 49</b>	Protection of monuments and places and objects of national importance.
<b>Article 50</b>	Separation of judiciary from executive
<b>Article 51</b>	Promotion of international peace and security.

## DIFFERENCE BETWEEN DPSP AND FUNDAMENTAL RIGHT

Parameters	Fundamental right	Directive Principle of State Policy
<b>Justiciability</b>	Justiciable.	Non-justiciable
<b>Objective</b>	Political democracy	Economic + Social democracy.
<b>Nature</b>	Negative: Prohibit state from doing something	Positive: Require state to do certain things
<b>Sanction</b>	Legal sanction	Moral + Political sanction
<b>Scope</b>	Welfare of the Individual (Individualistic)	Welfare of the Community (Socialistic)
<b>Enforcement</b>	Automatically enforced (No legislation needed, some exception like Article 17, 23 and 24)	Not automatically enforced (Require legislation)

## CONFLICT BETWEEN DPSP AND FUNDAMENTAL RIGHTS

Judgements/Amendments	Verdict/Changes made
<b>Champakam Doraijan case (1951)</b>	<ul style="list-style-type: none"> <li>• Fundamental rights were held superior to the DPSP.</li> <li>• It was held the Fundamental rights can be amended by the Parliament.</li> </ul>
<b>Golaknath case (1967)</b>	<ul style="list-style-type: none"> <li>• Fundamental rights were held sacrosanct in nature.</li> <li>• It was held that FR cannot be amended by the Parliament.</li> <li>• Article 368: Gives only Procedure to amend but not the power to amend.</li> </ul>
<b>24th and 25th amendment</b>	<ul style="list-style-type: none"> <li>• Parliament can take away FR</li> <li>• Article 31 C added which made Article 39 (b) and 39 (c) &gt; Article 14, 19, 31</li> <li>• Thus, it was held that law so made to implement Article 39 (b) and (c) to the extent that they violate article 14, 19 and 31 will not be subject to Judicial review</li> </ul>
<b>Kesavananda Bharti case (1973)</b>	<ul style="list-style-type: none"> <li>• Upheld provision which made Article 39 (b), 39 (c) &gt; Article 14, 19 and 31.</li> <li>• Judicial review was held part of basic structure of the constitution.</li> </ul>
<b>42nd amendment</b>	<ul style="list-style-type: none"> <li>• Made all DPSP &gt; Article 14, 19 and 31</li> <li>• No law to implement Directive principles will be held void on the ground that it violates Article 14, 19 and 31 of the Indian constitution.</li> </ul>
<b>Minerva Mills case (1980)</b>	<ul style="list-style-type: none"> <li>• All DPSP &gt; Article 14, 19 and 31 held unconstitutional</li> <li>• Balance between FR and DPSP (Basic structure of the constitution)</li> <li>• Article 39 (b) and (c) &gt; Article 14 and 19 (present status)</li> </ul>



## CHAPTER 9

# Fundamental Duties

### INTRODUCTION

Duty conveys a sense of moral obligation and commitment to someone or something. Initially the Indian constitution did not contain provisions related to Fundamental duties; they were added later to the constitution. This addition was done to convey that rights and duties are inter - related i.e. if someone performs his or her duties properly it automatically safeguards the basic rights of others.

Parameters	Related Facts
Origin	Not mentioned in the original constitution. Included by the 42nd amendment, 1976.
42nd CAA, 1976	Added New Part IV-A + Article 51 A (10 Fundamental duties).
86th CAA, 2002	Added 1 New FD: To provide opportunity for education to his child between the age 6 and 14 years. At present total FD are 11.
Inspired from	USSR constitution
Recommendation	Swaran Singh Committee
Legal status	Non – Justiciable
Applicability	Citizens only
Nature	Moral + Civic duties are mentioned
List of Fundamental duties	To abide by the Constitution and respect National Flag and National Anthem (Not national song) <ul style="list-style-type: none"><li>• To follow the noble ideals that inspired the struggle for freedom.</li><li>• To protect the sovereignty, unity and integrity of India.</li><li>• To render national service when called upon to do so.</li><li>• To promote the common spirit of brotherhood amongst all Indians + to renounce practices derogatory to the dignity of women.</li><li>• To preserve the rich heritage of country's culture.</li><li>• To protect national environment including forests, lakes, wildlife, etc.</li><li>• To develop scientific temper, humanism and spirit of reform and inquiry.</li><li>• To safeguard public property and to abjure violence.</li><li>• To strive towards excellence in all sphere of individuals.</li><li>• Duty of the parent/guardianTo provide opportunity for education to his child between the age 6 and 14 years.</li></ul>

## CHAPTER 10

# Amendment of the Constitution

### INTRODUCTION

- Constitutional provision: Part XX (Article 368)
- Power to amend lies with the Parliament.
- Exception: Basic Structure of the Indian constitution (Kesavananda Bharati case)
- Borrowed from South Africa

### PROCEDURE FOR AMENDMENT (ARTICLE 368)

#### Provisions Related to Amendment Procedure in Indian Constitution

Introduction of bill	Either house of parliament (Lok Sabha or Rajya Sabha)
Prior approval of President	Not needed
Type of Majority needed	Special Majority
Bill in houses	Both the houses need to pass the bill with special majority.
Joint seating	No provision exists. Both houses need to pass the bill separately.
Amendment of federal provisions	Special majority + ratification by the legislatures of half of the states by a simple majority.
Assent to the bill	President must give his assent i.e. Obligatory for the President to give his assent.
Role of State Legislature	Cannot introduce such a bill.

### TYPES OF MAJORITY

Simple Majority	Special Majority	Special Majority of parliament + Consent of States
<ul style="list-style-type: none"><li>Majority of members of each house present and voting.</li><li>Similar to ordinary law-making process.</li><li>Not considered amendment under Article 368.</li><li>Example: Indian Antarctic Bill, 2022 was passed to have India's own measures to protect the Antarctic environment</li></ul>	<ul style="list-style-type: none"><li>Majority of 2/3rd members present and voting + more than 50% of the total strength of the house.</li><li>Example: 103rd constitutional amendment act which gave 10% reservation for EWS (Economically weaker sections).</li></ul>	<ul style="list-style-type: none"><li>Special majority + Ratification of half of the state legislatures by a simple majority.</li><li>Federal provisions are amended using this process.</li><li>Example: 101st amendment which introduced GST (Goods and Services Tax).</li></ul>

## VARIOUS PROVISIONS AND TYPE OF MAJORITY REQUIRED

Types of Majority	Provisions which can be changed
Simple Majority	<p><b>Admission/ establishment of new states (Art.2)</b></p> <ul style="list-style-type: none"> <li>• Article 3: Formation of new states &amp; alteration of area, boundaries or names of existing states</li> <li>• Second Schedule (emoluments, allowances, privileges)</li> <li>• Article 169: Abolition/creation of legislative councils in states</li> <li>• Article 100: Quorum in parliament</li> <li>• Article 106: Salaries &amp; allowances of members of the parliament</li> <li>• Article 118: Rules of procedure in parliament</li> <li>• Use of English in parliament</li> <li>• Number of puisne judges in SC</li> <li>• Article 105: Privileges of parliament, its members and committees.</li> <li>• Article 138: Conferment of more jurisdiction to SC</li> <li>• Article 343: Use of official language</li> <li>• Article 5 – 11: Citizenship</li> <li>• Elections to parliament and state legislatures</li> <li>• Article 82: Delimitation of constituencies</li> <li>• 6th Schedule</li> <li>• Union Territories</li> <li>• 5th Schedule</li> </ul>
Special Majority	<ul style="list-style-type: none"> <li>• Fundamental Rights</li> <li>• Directive Principles of State Policy</li> <li>• Any other provisions not covered under other two types</li> </ul>
Special Majority + Ratification of States	<ul style="list-style-type: none"> <li>• Election of the President and its manner</li> <li>• Extent of executive power of the Union and the states</li> <li>• Supreme Court and High Courts</li> <li>• Distribution of legislative powers between the Union &amp; the states</li> <li>• Seventh Schedule (3 lists) – Art. 246</li> <li>• Representation of states in parliament</li> <li>• Article 368 GST Council</li> </ul>

## RECENT AMENDMENTS TO THE INDIAN CONSTITUTION

Amendment	Changes introduced by amendment
99th Constitutional amendment (2014)	Formation of a National Judicial Appointments Commission.
100th Constitutional amendment (2015)	Related to the Land Boundary Agreement (LBA) between India and Bangladesh.
101st Constitutional amendment (2017)	Introduced the Goods and Services Tax
102nd Constitutional amendment (2018)	Constitutional status to National Commission for Backward Classes.
103rd Constitutional amendment (2019)	Provided a maximum of 10% Reservation for Economically Weaker Sections (EWSs).
104th Constitutional amendment (2020)	Extended the reservation of seats for SCs and STs in the Lok Sabha and states assemblies. Removed the reserved seats for the Anglo-Indian community in the Lok Sabha and state assemblies.
105th Constitutional amendment (2021)	Restored the power of the state governments to identify Other Backward Classes (OBCs) that are socially and educationally backward. Annulled SC judgement of 11 May 2021, which had empowered only the Central government for such identification.

## CHAPTER 11

# Basic Structure of the Indian Constitution

### INTRODUCTION

- Article 368 gives Parliament the power to amend the constitution.
- But certain essential features of the constitution cannot be amended by Parliament. These features form part of the basic structure of the Indian constitution.
- Basic Structure cannot be amended by Parliament under Article 368.
- Basic structure of Indian constitution is a judicially innovated doctrine + has not been defined by the constitution + is constantly evolving through various judgments.

### EVOLUTION OF BASIC STRUCTURE

SC Judgments/ Amendments	Judgment/ Provision
<b>Shankari Prasad case, 1951</b>	<ul style="list-style-type: none"><li>Parliament under Article 368 has the power to amend any part of the constitution including Fundamental rights.</li><li>Article 13: Includes ordinary law and not constitutional amendment.</li><li>Amendments abridging FR cannot be void under Article 13.</li></ul>
<b>Golakh Nath Case, 1967</b>	<ul style="list-style-type: none"><li>Sacrosanct nature of FR: Transcendental and immutable.</li><li>Parliament cannot take away any FR.</li><li>Constitutional amendment: Law under Article 13</li><li>Amendment violating FR void under provision of Article 13</li></ul>
<b>Parliament response: 24th Constitutional amendment</b>	<ul style="list-style-type: none"><li>Parliament can take away any FR under Article 368 and such acts are not laws under Article 13.</li></ul>
<b>Kesavananda Bharati Case 1973</b>	<ul style="list-style-type: none"><li>Overruled its Judgment in the Golakh Nath Case, 1967</li><li>Supreme court laid down the 'Basic Structure Doctrine'</li><li>Parliament cannot take away the Basic structure of the constitution.</li><li>FR which form part of Basic structure cannot be taken away by the Parliament.</li></ul>
<b>39<sup>th</sup> Constitutional Amendment 1975</b>	<ul style="list-style-type: none"><li>Kept election disputes of President + Vice President + PM + Speaker of Lok Sabha beyond the scrutiny of the courts</li></ul>
<b>Indira Gandhi Case 1975</b>	<ul style="list-style-type: none"><li>Invalidated 39th Amendment. Provision beyond the amending power of Parliament Impacted basic structure of the constitution.</li></ul>
<b>42<sup>nd</sup> Constitutional Amendment, (1976)</b>	<ul style="list-style-type: none"><li>Amended Article 368.</li><li>No limitation on constituent power of parliament</li><li>No amendment can be questioned in courts.</li></ul>
<b>Minerva Mills Case 1980</b>	<ul style="list-style-type: none"><li>Limited amending power basic feature of Indian Constitution.</li><li>Added 2 features to the list of 'basic structure'-Judicial review + Balance between Fundamental Rights and DPSP.</li></ul>
<b>Waman Rao case</b>	<ul style="list-style-type: none"><li>SC: 'Basic structure doctrine' would apply to constitutional amendments enacted after April 24, 1973.</li></ul>

## PRESENT STATUS

- Supreme Court hasn't clearly defined or clarified as to what constitutes the 'basic structure' of the Constitution. (It is an **evolving** doctrine)
- From various judgements - 'basic features' of the Constitution or **elements** of the 'basic structure' have emerged -
  - ◆ Supremacy of the Constitution
  - ◆ Sovereign, democratic and republican nature of the Indian polity
  - ◆ Secular character of the Constitution
  - ◆ Separation of powers between the legislature, the executive and the judiciary
  - ◆ Federal character of the Constitution
  - ◆ Unity and integrity of the nation
  - ◆ Welfare state (socio-economic justice)
  - ◆ Judicial review
  - ◆ Freedom and dignity of the individual
  - ◆ Parliamentary system
  - ◆ Rule of law
  - ◆ Harmony and balance between Fundamental Rights and Directive Principles
  - ◆ Principle of equality
  - ◆ Free and fair elections
  - ◆ Independence of Judiciary
  - ◆ Limited power of Parliament to amend the Constitution
  - ◆ Effective access to justice
  - ◆ Principles (or essence) underlying fundamental rights
  - ◆ Powers of the Supreme Court under Articles 32, 136, 141 and 142
  - ◆ Powers of the High Courts under Articles 226 and 227.



## CHAPTER 12

# Parliamentary system

### INTRODUCTION

Constitution makers adopted the Parliamentary system of government, both at the Union and State levels, based on ministerial responsibility to the popular house. In doing so, they preferred 'responsibility of the executive' prevalent in British system of government over the US system of 'stability of the executive'..

### COMPARISON BETWEEN PRESIDENTIAL AND PARLIAMENTARY SYSTEM

Parameters	Presidential	Parliamentary
<b>Relationship between the Executive and Legislature</b>	Separation of Powers	Fusion of Powers
<b>Head of State/ Government</b>	Same person (President)	Different Person Head of State – President Head of Government – PM
<b>Term of office</b>	Fixed (Predictable)	Less Predictable
<b>Period of Executive Questioning</b>	Irregular (Primarily responsible to the people)	Regular (Primarily responsible to the Parliament)
<b>Coalition Government</b>	Less Likely	More likely
<b>Examples</b>	USA, Brazil, Russia, Sri Lanka	Britain, Japan, Canada, India

### FEATURES OF PARLIAMENTARY GOVERNMENT

Feature	Parliamentary system	Comparison with Presidential system
<b>Nominal &amp; Real Executives:</b>	<ul style="list-style-type: none"><li>• Nominal - de jure executive -President</li><li>• Real – de facto executive – PM</li><li>• President – Head of State</li><li>• Prime Minister – Head of Government</li></ul>	<ul style="list-style-type: none"><li>• US President: Head of State + Head of Government</li></ul>
<b>Majority Party rule</b>	<ul style="list-style-type: none"><li>• Political party which secures 'majority seats' in the Lok Sabha forms Govt.</li><li>• Leader of Majority party is appointed as PM by President</li><li>• Other Ministers are appointed by President on advice of PM.</li><li>• Coalition - formed when no single party gets majority</li></ul>	<ul style="list-style-type: none"><li>• US President elected by an 'electoral college' with a 'fixed tenure' of four years.</li></ul>
<b>Collective Responsibility</b>	<ul style="list-style-type: none"><li>• Article 75: Ministers are 'collectively responsible' to the Parliament in general and to the Lok Sabha in particular.</li><li>• Can be removed by passing a no – Confidence motion.</li></ul>	<ul style="list-style-type: none"><li>• US President + secretaries are not responsible to the Congress.</li><li>• The members of Cabinet are elected + appointed + removed by the - US President.</li><li>• President cannot be removed by the Congress except by impeachment.</li></ul>
<b>Political Homogeneity</b>	<ul style="list-style-type: none"><li>• Usually council of ministers belong to the same political party i.e. they share the same political ideology.</li><li>• In case of a coalition they are bound by consensus</li></ul>	<ul style="list-style-type: none"><li>• Cabinet: Non-elected advisory body.</li></ul>

Feature	Parliamentary system	Comparison with Presidential system
<b>Double Membership</b>	<ul style="list-style-type: none"> <li>Ministers (i.e. council of Ministers) are members of both legislature and executive.</li> <li>Minister who is not a member of the parliament for six consecutive months ceases to be a minister.</li> </ul>	<ul style="list-style-type: none"> <li>Complete separation of power between legislature and executive</li> <li>President + his secretaries are not members of Congress (US Parliament)</li> </ul>
<b>Leadership of the Prime Minister</b>	<ul style="list-style-type: none"> <li>PM – leader of council of Ministers, Leader of the Parliament, Leader of the party in power.</li> </ul>	
<b>Dissolution of the Lower house</b>	<ul style="list-style-type: none"> <li>By the 'President' on 'recommendation' of the Prime Minister.</li> </ul>	<ul style="list-style-type: none"> <li>President cannot dissolve the House of Representatives (Lower House of Congress)</li> </ul>
<b>Secrecy</b>	<ul style="list-style-type: none"> <li>Ministers cannot divulge information which come to them during the course of duty in the house. (Oath of Secrecy)</li> </ul>	

## MERITS AND DEMERITS OF THE PARLIAMENTARY SYSTEM

Merits of Parliamentary system	Demerits of Parliamentary system
<ul style="list-style-type: none"> <li><b>Harmony between legislature and executive:</b> Executive → Part of Legislature → There is Interdependence + Cooperation b/w two organs → Less dispute and conflicts b/w legislature and executive .</li> <li><b>Responsible Government:</b> Ministers responsible to Parliament. Parliamentary tools to control executive - question hour, discussions, debates, adjournment motion, no confidence motion.</li> <li><b>Prevents despotism:</b> Dispersal of Authority – Executive power vested in the Council of Ministers (not one person). Executive responsibility to Parliament – can be removed no – confidence motion.</li> <li><b>Ready alternative govt:</b> Opposition provides ready alternative if ruling party loses majority.</li> <li><b>Wide representation:</b> All sections + regions are represented.</li> </ul>	<ul style="list-style-type: none"> <li><b>Unstable Government:</b> It can lose majority due to no confidence motion, political defection or breakdown coalition.</li> <li><b>No Continuity in policies:</b> Change in government brings change in policies. Uncertainty of tenure adversely impacts policy continuity and may result in policy paralysis.</li> <li><b>Dictatorship of cabinet:</b> In case of majority in the Parliament – Cabinet may becomes autocratic.</li> <li><b>Govt by amateurs:</b> Ministers - Lack expertise which leads to less administrative efficiency. Ministers only from Parliament PM cannot select outside experts.</li> </ul>

In India, we adopted 'Parliamentary system' because of Familiarity with the system, Preference to more responsibility, to avoid legislative - executive conflict. and heterogeneous nature of Indian society.

## COMPARISON OF INDIA AND BRITISH MODEL OF PARLIAMENTARY GOVERNMENT

Comparison	Indian Parliamentary Government	British Parliamentary Government
<b>Type</b>	Republican system – Head of state is elected (President)	Monarchial system – Head of state is hereditary (King or Queen)
<b>Parliament sovereignty</b>	Does not exist – Parliament powers are restricted (constitution, judiciary etc.)	Parliament is 'sovereign.'
<b>Prime Minister</b>	Can be a member of any house (Lok Sabha or Rajya Sabha)	PM has to belong to the lower house.
<b>Ministers(CoM)</b>	Individual who is not a member of either house can be appointed.	Members of Parliament alone are appointed as Ministers.
<b>Legal Responsibility of Minister</b>	Does not exist. No need to countersign the official acts of head of state.	Legal Responsibility of the Minister exists.
<b>Shadow Cabinet</b>	No	Yes
<b>Name</b>	Lower House (Lok Sabha) Upper House (Rajya Sabha)	Lower House (House of commons) Upper House (House of Lords)

## CHAPTER 13

# Federal System

### INTRODUCTION

Indian constitution presents a remarkable blend of federal and unitary features. Under normal circumstances, States enjoy autonomy in their respective spheres of power. However, Union becomes all powerful during times of emergency. This is why Dr. B. R. Ambedkar said that , “Indian Constitution could be both unitary and federal according to the requirements of time and circumstances”.

### COMPARISON BETWEEN UNITARY AND FEDERAL GOVERNMENT

Comparison	Federal Government	Unitary Government
<b>Government</b>	Dual Government – National and Regional Government	Single Government – National Government – It will create Regional Government
<b>Type of Constitution</b>	Written constitution	May be written or Unwritten Written – France Unwritten - Britain
<b>Division of Powers</b>	Exists (b/w national and Regional Govt.)	No division of Powers (All power in hands of national govt)
<b>Supremacy of the constitution</b>	Yes – Constitution is Supreme	May be supreme (Japan) May not be Supreme (Britain)
<b>Rigidity of Constitution</b>	Yes – Constitution of Rigid	May be rigid (France) May be flexible (Britain)
<b>Position of Judiciary</b>	Independent Judiciary	May be Independent May not be Independent
<b>Type of Legislature</b>	Bicameral legislature	Both Bicameral (Britain) or Unicameral (China)

### Formation of a Federation

A federation can be formed in 2 ways:

- **By Integration:** Number of States come together to form a Union
- **Example:** USA (United States of America)
- **By disintegration** - Unitary state is converted into a ‘federation’ by granting ‘autonomy’ to the provinces (to promote regional interest).
- **Example** – Canada (10 provinces) Formation – 1867

### FEDERALISM IN INDIA

India has been described as a ‘quasi - federal’ state i.e. distribution of powers between the Centre and the States is not equal. India is a federation with a unitary bias and possesses a strong central machinery. Below we will study the provisions related to federalism in India.

Parameters	Related Details
Reasons for adoption	<ul style="list-style-type: none"> <li>• <b>Large Size of the Country:</b> Federal system efficient governance in the country.</li> <li>• <b>Socio – cultural diversity:</b> Federal system reconcile national unity with regional diversity</li> </ul>
Constitutional Provision	<ul style="list-style-type: none"> <li>• Term ‘federation’ has ‘nowhere’ been used in the Constitution.</li> </ul>
Article	<ul style="list-style-type: none"> <li>• ‘Article 1’ of the constitution describes India as a <b>‘Union of States.’</b></li> </ul>
Union of States (Implication)	<ul style="list-style-type: none"> <li>• Indian federation is ‘not’ the result of an agreement among the states.</li> <li>• Indian states have ‘no’ right to secede from the federation.</li> </ul>
Inspiration	<ul style="list-style-type: none"> <li>• Based on the <b>Canadian model</b> – Formation by disintegration + Using term ‘union’ + Centralizing tendencies.</li> </ul>

## FEDERAL FEATURES OF THE INDIAN CONSTITUTION

Federal features of the Indian constitution	Unitary features of the Indian constitution
<ul style="list-style-type: none"> <li>• <b>Dual Polity:</b> Under the seventh schedule both centre and states have been given sovereign power in their respective spheres.</li> <li>• <b>Written Constitution:</b> Indian constitution is very lengthy. There are about 470 articles, 25 parts and 12 schedules in the constitution.</li> <li>• <b>Division of Powers</b> - The seventh schedule contains union list (100 items), State list (61 items) and concurrent list (52 items). In case of concurrent list both centre and state can make laws (however in case of conflict centre law prevails). The power in relation to residuary subjects lies with the centre.</li> <li>• <b>Supremacy of the constitution:</b> Enacted Laws enacted must conform to the provisions of the constitution.</li> <li>• <b>Rigidity of the constitution:</b> For amendment of federal provisions in the constitution special majority of the Parliament and approval of half the state legislatures is needed.</li> <li>• <b>Independent Judiciary:</b> To protect supremacy of the Constitution + Settle disputes - Centre -states or between the states</li> <li>• <b>Bicameralism</b> – Lok Sabha - House of the People Rajya Sabha – Helps to maintain federal equilibrium by protecting interests of the States.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Strong centre:</b> Division of power at the centre → Union list has more number of items than the state list + More important subjects form part of the union list + Centre has overriding authority over states in case of concurrent list + Residuary power lies with the centre</li> <li>• Indian Federation is “an indestructible Union of destructible states”. Indian states have no territorial Integrity + Parliament has unilateral power to change the area + boundaries + name of any state (by Simple majority).</li> <li>• Single constitution for both centre and States</li> <li>• Single citizenship</li> <li>• Less rigid nature of Indian constitution i.e. many portions of constitution can be amended by unilateral action</li> <li>• <b>Emergency</b> → Federal structure turns into a unitary one.</li> <li>• <b>All-India Services:</b> Exist for both centre and states. However, the ultimate control lies with the centre.</li> <li>• <b>Integrated Audit Machinery</b> – CAG of Indian audits the accounts of both centre and states but the power of appointment and removal lies with the President.</li> <li>• Parliament → empowered to legislate on any subject of the State List if Rajya Sabha passes a resolution</li> <li>• Governor is appointed by the President + Holds office during the Pleasure of the President + considered as Agent of the centre.</li> <li>• <b>Integrated Election Machinery</b> - CAG of Indian audits the accounts of both centre and states but the power of appointment and removal lies with the President.</li> <li>• <b>Veto over State bills:</b> Governor holds the discretion to reserve a bill passed by State legislature for the consideration of the President who holds absolute veto power over the bill.</li> </ul>

## CHAPTER 14

# Central State relationship

- Indian constitution is federal in structure
- Division of legislative, executive and financial powers between the Centre and the states exists.
- Exception - Judicial power (no division) - Integrated Judiciary in India

### LEGISLATIVE RELATIONS

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#### Territorial extent of Union and State Legislature

- Territory of India: States + UT's + any other area included in the territory of India.
- Parliament → Power to make laws for part or whole of India.
- Laws of Parliament are applicable to Indian citizens and their property in 'any part of the world'.
- State Legislature → Power to make laws for whole or part of the state.
- Extra – Territorial legislation: Power lies with Parliament.

#### Restrictions on territorial Jurisdiction of Indian Parliament

- **Union Territories:** President can make regulation for four Union Territories (not all). These include Andaman and Nicobar Islands + Lakshadweep + Dadra and Nagar Haveli and Daman and Diu + Ladakh.
  - ◆ President Regulation: Has the 'same' force and effect as an act of Parliament.
  - ◆ Regulation can 'repeal' or 'amend' any act of Parliament → related to 4 UT's given above.
- **Scheduled Areas:** 'Governor' can direct that an act of Parliament 'does not' apply to a scheduled area or applies with certain changes. Similar power lies with Governor of Assam in relation to tribal Areas in Assam (Autonomous districts).
- **Tribal areas:** 'President' of India can direct that an act of Parliament 'does not' apply to a tribal area in the state of Mizoram, Meghalaya and Tripura (Autonomous districts) or applies with changes.

#### Distribution of Legislative subjects

##### Division in the 7th schedule

- **Union List:** Parliament holds exclusive power to make laws. Total - 100 Subjects
- **State List:** State legislature makes laws (In Normal circumstances). Total - 61 subjects.
- **Concurrent List:** Both Centre + State can make laws. Total - 52 subjects.
- **Residuary powers:** Not mentioned in any list. Parliament has exclusive power to make any law.
- **Dominance of list:** Union List > State list, Union list > Concurrent list, Concurrent list > State list.
- **Exception:** State law reserved for the consideration of the president + received assent. State law prevails (in that state). Parliament can override this by making a new law.

#### Parliamentary legislation in state field

Article	Parliamentary legislation	Process	Other Facts	Status of laws made
Art. 249	If 'Rajya Sabha' resolution says it is necessary in the 'national interest'	Resolution must be supported by 2/3rd of the members present and voting	Resolution remains in force for one year + can be renewed any number of times + Renewal not more than for a year. State Leg. can make laws	Parliament laws cease to be inforce 6 months after resolution expires. In case of inconsistency Parliamentary law prevails.

Article	Parliamentary legislation	Process	Other Facts	Status of laws made
Art. 250	During National emergency			Parliamentary laws remain in force '6 months' after expiry of emergency. In case of inconsistency Parliament law prevails.
Art. 252	States make a request	Two or more State Legislature pass a resolution.	Other state can adopt → by passing the resolution in their respective state legislature	Laws apply to 'only' to those states which passed the resolution + can be amended or repealed 'only' by the Parliament
Art. 253	To implement an international treaty	-	-	-
Art. 356	President's Rule is imposed		Impact only the state where President Rule is imposed	Laws continue to remain in operation even after the president's rule. Can be repealed/ altered/ reenacted by the State Legislature

### **President's Rule**

- Parliament → Makes laws → For Matters in State List → only for States under President Rule.
- Status of laws → 'continue' to remain in operation even after President's rule.
- Laws can be repealed/ altered/ reenacted by the State Legislature.

### **Centre control over state Legislature**

- Reservation of certain bill by the Governor → President's consideration → President holds 'absolute veto' over such bills.
- Mandatory to take prior sanction of the President to introduce certain Bills in state legislature on matters in the 'State List.' For example; a bill imposing restrictions on the freedom of trade and commerce.
- Financial emergency → Centre can direct the states to reserve money bills + other financial bills for consideration of President.

## **ADMINISTRATIVE RELATIONS**

- **Constitutional provision:** Article - 256 to 263 (Part XI)

### **Distribution of executive power**

- **Division of 'Executive power':** Co-extensive with legislative powers.
- **Centre Executive power:** Union list, International Treaty/agreement
- **State Executive power:** State list + Concurrent list (Even if law is made by Parliament).
- **Exception:** Power is given to Centre by a constitutional provision/ parliamentary law.

### **State executive power**

- Needs to comply with 'parliamentary laws' + not override 'executive power' of the centre.
- Centre can give directions to the States on exercising their executive power → State does not follow these directions → President rule can be imposed.
- The Executive power of the state extends to the following matters, if directed as such by Centre.
  - ◆ Maintain Communication System (declared of national or International importance)
  - ◆ Protection of Railways in the State
  - ◆ Providing facility for instruction in mother tongue to 'linguistic minorities' till primary stage.
  - ◆ Scheme for the welfare of the Scheduled Tribes in the state.

### **Mutual delegation of Executive Functions**

- Article 258: President can request Governor for use of state machinery. State consent is mandatory.
- Article 258 A: Governor can request President for use of central executive machinery. Union consent is mandatory.
- Parliament by law can entrust executive power of the Centre to the States, without the consent of the state.

### **Cooperation between Centre and State**

- Parliament can make a law for adjudication of **Interstate River Dispute** (Article 262).
- President can establish an **Inter-State Council** to investigate and discuss subject of common interest b/w Centre and States (Article 263)
- **Full faith and Credit clause:** States and Centre shall respect each other's public acts, records and Judicial proceedings.
- Parliament can appoint authority to carry constitutional provisions relating to Inter state trade, commerce and intercourse.

### **All India services**

- **Art 312:** Parliament can create new All India service on the Rajya Sabha resolution.
- Jointly controlled by Centre (ultimate control for example Centre can remove officials of All India Services) + States (Immediate control for example States have the power to suspend the officials).

### **Public Service commission**

- State public service commission: Appointment → Governor, Removal → President
- **'Parliament'** can create a Joint Public service commission (on request of 2 or more states).
- UPSC can 'serve' states → On request of Governor, President approval.
- UPSC can 'assist' states: with regards to Joint recruitment (on request of 2 or more states).

### **Integrated Judicial system**

- Single system of courts enforces both central and state laws.

### **Emergency**

Types of Emergency	Provisions under Emergency
<b>National Emergency (Art. 352)</b>	Centre becomes entitled to give executive directions to a state on 'any' matter + State Government → not suspended but come under complete control of Centre.
<b>President Rule (Art. 356)</b>	President can vest in himself the executive powers of the state.
<b>Financial Emergency (Art 360)</b>	Centre can direct the states to observe canons of financial propriety.

### **Other Provisions**

- **Article 355:** Duties of the Centre include 1) Protect every state against 'external aggression' + 'internal disturbance'. Ensure that Government of every state is carried according to provisions of the Constitution.
- **Governor:** Appointed by President + Tenure (Pleasure of President) + 'Agent of the Centre' in state
- **State Election commission:** Appointment: Governor + Removal: President

### **Extra constitutional devices**

- NITI Aayog + National Integration Council + Zonal Councils + North-Eastern Council

## **FINANCIAL RELATIONS**

**Constitutional articles:** Article 268 – 293 (Part XII)

### **Allocation of Taxation powers**

List	Taxation Power
<b>Union list</b>	Parliament (Total 13 + More remunerative)
<b>State list</b>	State Legislature (Total 18 + Less remunerative)
<b>Concurrent list</b>	No Tax legislation is present. Exception was made by the 101st amendment which provided a special provision for GST i.e. it gave concurrent power to Parliament and State legislature to make laws governing GST.
<b>Residuary power</b>	Union

### **Distribution of Tax Revenues**

Two amendments had a major impact:

- **80th Amendment act 2000:** Implemented the recommendations of the 10th finance commission. Corporate Tax and Customs duty had to be shared with the states.
- **101st amendment act:** Good and Services Tax (GST) was implemented. Concurrent Taxing power to Parliament and State Legislatures to make laws for levying GST + ‘Replaced’ number of ‘Indirect taxes’ levied by both Union and States + Article 268 A – Dealing with ‘Service tax’ was deleted.

### **Present Situation with regards to distribution of Tax revenues -**

Article	Levy	Collect	Assigned	Example
<b>268</b>	Centre	States	States	Stamp duties on bills of exchange, Promissory notes etc. (Not part of CFI)
<b>269</b>	Centre	Centre	States	Taxes on interstate trade and commerce. (Not part of the CFI)
<b>269 A</b>	Centre	Centre	Divided b/w centre and State	GST in course of Inter- State trade and commerce. Parliament – Determines Tax division b/w center and State (GST council recommends), Principles of supply during Inter state trade.
<b>270</b>	Centre	Centre	Divided b/w Centre and States	All taxes in the Union List – Exception - (Taxes under Article 268,269, 269 A, Surcharge on taxes under 271 Cess for specific purpose) . Distribution as prescribed by President (Finance commission recommends)
<b>271</b>	Centre	Centre	Centre	Surcharges on taxes under 269 and 270. Exemption – Remember, GST is exempted from surcharge.
	State	State	State	Taxes belonging to state only - (Total 18) Example –Land Revenue, agricultural income, Professional Tax, Professional Tax

### **Distribution of Non-Tax Revenue**

- **Non-Tax Revenue:** It refers to the money government earns through non taxation sources.
  - ◆ **Major sources for Centre:** Posts and telegraphs, railways, banking, broadcasting, coinage and currency, central public sector enterprises, escheat and lapse etc.
  - ◆ **Major sources for State:** Irrigation, forests, fisheries, state public sector enterprises, escheat and lapse etc.

### **Grant – in – Aids to States**

- **Grant- in- Aid** – simply means ‘money’ given by Centre to States in form of assistance.
- **Types of Grants** – 1) Statutory 2) Discretionary 3) Other Grants

Statutory Grants (Article 275)	Discretionary Grants (Article 282)	Other Grants
<ul style="list-style-type: none"> <li>‘Parliament’ to make grants to the state which need financial assistance (not every state).</li> <li>2 types – General and Specific purpose (To improve Tribals).</li> <li>‘Charged’ on the ‘consolidated fund of India’.</li> <li>Given on the recommendation of ‘Finance commission of India’.</li> </ul>	<ul style="list-style-type: none"> <li>Empowers both Centre and the states to make any grants for any public purpose.</li> <li>Under this Union allocates grants to the state according to its discretion</li> </ul>	<ul style="list-style-type: none"> <li>Grants for a temporary period.</li> <li>Charged on ‘consolidated fund of India’ on the recommendation of ‘finance commission’.</li> <li><b>Example</b> - Temporary grants in lieu of export of Jute and Jute based products to Assam, Bihar, West Bengal and Orissa</li> </ul>

### Protection of State Interest (financial matters)

- Following bills require Prior recommendation of the President to be introduced:
  - Bills which deal with → 1) Tax or duty in which state are interested + 2) Change the meaning of expression ‘agricultural income’ + 3) Impact principles of allocation of money to the States + 4) Impose surcharge/tax/duty for the purpose of the Centre.

### Borrowing by Centre and the States

- Centre can borrow within India + outside India.
- States can borrow within territory of India. (Limits – Set by State legislature).
- Centre can give loans/guarantee for loans raised by the State. (charged on CFI).
- Article 293(3): State needs to take '**prior permission**' of the Centre to borrow if they have outstanding liabilities to the Centre.

### Inter - Governmental Tax immunity

- Centre cannot tax state property and vice versa.
- Exceptions - (where immunity does not apply) -
  - Corporations or companies of state and central Government,
  - Property and Income of local authority.
  - Custom duties can be imposed on good/services of the state.
  - Excise duty can be imposed on good of the state.

## IMPORTANT COMMITTEES ON CENTRE – STATE RELATIONS

By Centre	By States
Administrative Reforms commission	Rajamannar committee (1969) - TN
Sarkaria commission (1983)	Anandpur Sahib Resolution (1973)
Punchhi commission (2007)	West Bengal memorandum (1977)

## CHAPTER 15

# Inter State Relations

The Constitution makes the following provisions with regard to inter-state comity:

- Adjudication of inter-state water disputes.
- Coordination through inter-state councils.
- Mutual recognition of public acts, records and judicial proceedings.
- Freedom of inter-state trade, commerce and intercourse.

### INTER-STATE WATER DISPUTES

**Article 262** makes two provisions:

- Parliament may by law provide for the adjudication of any dispute or complaint related to any inter-state river and river valley.
- Parliament may provide that neither the Supreme Court nor any other court is to exercise jurisdiction in respect of any such dispute or complaint.

#### Two laws enacted by Parliament

- **The River Boards Act (1956)**
  - ◆ For Establishment of river boards by the Central government
  - ◆ On the request of the state governments concerned
  - ◆ To advise them for the regulation and development of inter-state river and river valleys
- **The Inter-State Water Disputes Act (1956)**
  - ◆ Empowers the Central government to set up an ad hoc tribunal
  - ◆ For the adjudication of a dispute between two or more states in relation to the waters of an inter-state river or river valley.
  - ◆ Decision of the tribunal would be final and binding.
  - ◆ Neither the Supreme Court nor any other court is to have jurisdiction in respect of any water dispute which may be referred to such a tribunal under this Act.

#### Inter-State Water Dispute Tribunals Set-up So Far

S.No.	Name	Year of Set-up	States Involved
1	Krishna Water Disputes Tribunal-I	1969	Maharashtra, Karnataka and Andhra Pradesh
2	Godavari Water Disputes Tribunal	1969	Maharashtra, Karnataka, Andhra Pradesh, Madhya Pradesh and Odisha
3	Narmada Water Disputes Tribunal	1969	Rajasthan, Gujarat, Madhya Pradesh and Maharashtra
4	Ravi and Beas Water Disputes Tribunal	1986	Punjab, Haryana and Rajasthan
5	Cauvery Water Disputes Tribunal	1990	Karnataka, Kerala, Tamil Nadu and Puducherry
6	Krishna Water Disputes Tribunal-II	2004	Maharashtra, Karnataka and Andhra Pradesh
7	Vansadhara Water Disputes Tribunal	2010	Odisha and Andhra Pradesh
8	Mahadayi Water Disputes Tribunal	2010	Goa, Karnataka and Maharashtra
9	Mahanadi Water Disputes Tribunal	2018	Odisha and Chhattisgarh

## INTER-STATE COUNCILS

- **Article 263 :** Establishment of an Inter-State Council
- **President** can establish such a council
  - ◆ If & when it appears to him that the public interest would be served.
  - ◆ It can define the nature of duties, organisation and procedure of council

### Duties of Inter-State Council under Article 263

- Enquiring into and advising upon disputes which may arise between states;
- Investigating and discussing subjects in which the states or the Centre and the states have a common interest; and
- Making recommendations for the better coordination of policy and action on it.

### Councils made By President under Article 263

- Central Council of Health and Family Welfare.
- Central Council of Local Government
- Four Regional Councils for Sales Tax for the Northern, Eastern, Western and Southern Zones.

### Establishment of Inter-State Council

- Sarkaria Commission recommended the establishment of a permanent **Intergovernmental Council** under Art 263.
- V. P. Singh led Janata Dal established the Inter-State Council in 1990.

### Members:

- Prime minister (Chairman)
- Chief ministers of all the states
- Chief ministers/Administrators of union territories
- Governors of States under President's rule
- Home Minister + 5 more Central cabinet ministers nominated by the PM.
- Five Ministers of Cabinet rank / Minister of State (independent charge) nominated by PM (permanent invitees to the Council)

### Functions:

- Recommendatory body on issues relating to interstate, Centre-state and Centre-union territories relations.
- May meet at least thrice in a year. Only 11 meetings have been held till date.
- Meetings are held in camera
- All questions are decided by consensus.

### Standing Committee of the Council.

- Set up in 1996 for continuous consultation and processing of matters for the consideration of the Council.
- Members
  - ◆ Union Home Minister (Chairman)
  - ◆ Five Union Cabinet Ministers
  - ◆ Nine Chief Ministers
- Assisted by a secretariat called the **Inter-State Council Secretariat**.
  - ◆ Secretariat was set-up in 1991
  - ◆ Headed by a secretary to the Government of India.
  - ◆ Since 2011, it has also been functioning as the secretariat of the Zonal Councils.

## PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS

- Under the Constitution, the jurisdiction of each state is confined to its own territory. Hence, it is possible that the acts and records of one state may not be recognised in another state.

To remove any such difficulty, the Constitution contains the “**Full Faith and Credit**” clause which lays down the following:

- Full faith and credit is to be given throughout the territory of India to public acts, records and judicial proceedings of the Centre and every state.
- ‘Public Acts’ = Legislative + Executive Acts of the government.
- ‘Public Record’ = Any official book + Register/record made by a public servant in the discharge of his official duties is subject to the power of Parliament.
- Final judgements and orders of civil courts in any part of India are capable of execution anywhere within India.
- Rule applies only to civil judgements and not to criminal judgements.

## INTER-STATE TRADE AND COMMERCE

- **Articles 301 to 307 in Part XIII** of the Constitution deal with the trade, commerce and intercourse within the territory of India.
- **Article 301:** Trade, commerce and intercourse throughout the territory of India shall be free.
  - ◆ Objective: To break down the border barriers between the states and encourage the free flow of trade, commerce and intercourse in the country.
  - ◆ Provision is not only confined to the interstate but also extends to intra-state trade, commerce and intercourse.
- **Restrictions to Article 301**
  - ◆ **Article 302:** Power of Parliament to impose restrictions on trade, commerce and intercourse
  - ◆ **Article 303:** Restrictions on the legislative powers of the Union and of the states with regard to trade and commerce
  - ◆ **Article 304:** Restrictions on trade, commerce and intercourse among states
  - ◆ **Article 305:** Saving of existing laws and laws providing for state monopolies
  - ◆ **Article 307:** Parliament can appoint an authority for carrying out the purposes of Articles 301 to 304.
  - ◆ No such authority has been appointed so far.

## ZONAL COUNCIL

- Statutory Body
- Established by States Reorganisation Act of 1956.
  - ◆ Act provided five zonal councils Northern, Central, Eastern, Western and Southern.

### Factors taken into account while forming these zones

1. Natural divisions of the country,
2. River systems and means of communication,
3. Cultural and linguistic affinity and
4. Requirements of economic development, security and law and order.

### Members of Each Zonal Council

1. Home minister of the Central government (Common chairman of the five zonal councils)
2. Chief ministers of all the States in the zone. (Rotation of CMs as a vice-chairman of the council, Tenure one year at a time)
3. Two other ministers from each state in the zone.
4. Administrator of each union territory in the zone.

### Advisors of zonal council (Optional, No right to vote in the meetings):

1. A person nominated by the Planning Commission;
2. Chief secretary of the government of each state in the zone; and
3. Development commissioner of each state in the zone.

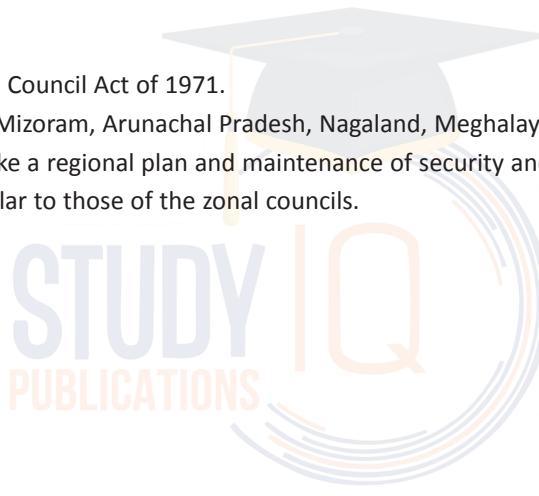
### The objectives of the zonal councils:

- Achieve emotional integration of the country & help in arresting the growth of separatist trends on the basis of state, language etc.
- To help in removing the after-effects of separation & promote the process of reorganisation, integration and economic advancement.
- To enable the cooperation between Centre and states in social and economic matters, help in evolving uniform policies and speedy execution of major development projects.
- To secure political equilibrium between different regions of the country.

S.No.	Name	Members	Headquarters
1	Northern Zonal Council	Himachal Pradesh, Haryana, Punjab, Rajasthan, Delhi, Chandigarh, Jammu and Kashmir and Ladakh	New Delhi
2	Central Zonal Council	Uttar Pradesh, Uttarakhand, Chhattisgarh, and Madhya Pradesh	Allahabad
3	Eastern Zonal Council	Bihar, Jharkhand, West Bengal and Odisha	Kolkata
4	Western Zonal Council	Gujarat, Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu	Mumbai
5	Southern Zonal Council	Andhra Pradesh, Telangana, Karnataka, Tamil Nadu, Kerala and Puducherry	Chennai

### North-Eastern Council

- Created by the North-Eastern Council Act of 1971.
- Members: Assam, Manipur, Mizoram, Arunachal Pradesh, Nagaland, Meghalaya, Tripura and Sikkim.
- Special responsibilities to make a regional plan and maintenance of security and Public order in the region.
- Rest of the functions are similar to those of the zonal councils.



## CHAPTER 16

# Emergency provisions

- **Constitutional provision:** Article 352 to 360 (Part XVIII)
- **Objective:** Enable Central Government to meet abnormal situation effectively.
- **Impact:** It turns the federal structure into a unitary one.
- **Types of Emergencies** – 3 types 1) National Emergency (Article 352) 2) President Rule (Article 356) 3) Financial Emergency (Article 360)
- **Borrowed:** From Weimar Constitution (Germany)
- **Declarations:** 1962, 1971 and 1975 (internal disturbance).
- **Shah commission:** to investigate on emergency in 1975.

### ARTICLE 352: NATIONAL EMERGENCY

Parameter	Related Facts
<b>Grounds of declaration</b>	When security of India (or part of it) is threatened by - 1) War or 2) External aggression or 3) Armed rebellion.
<b>Declaration</b>	By the President Can be done even in case of 'imminent danger' i.e. if there is a <b>threat</b> of war, external aggression or armed rebellion.
<b>Types</b>	National Emergency - 1) External emergency 2) Internal Emergency External Emergency: When declared on the ground of 'war' or 'external aggression' Internal emergency: When it is declared on the ground of 'armed rebellion'
<b>Amendments</b>	<b>38th amendment act</b> Empowered 'President' to declare different proclamations of national emergency on different grounds simultaneously. <b>42nd amendment act</b> Enabled President to 'limit' the operation of National Emergency to a specified part of India. <b>44th amendment act</b> It made a number of changes as follows: <ul style="list-style-type: none"><li>Substituted the words 'armed rebellion' instead of 'internal disturbance' as grounds of declaration.</li><li>Declaration of emergency can 'only' be made by the President on receiving a '<b>written recommendation</b> from the cabinet'.</li></ul>
<b>Judicial review</b>	National emergency is subject to Judicial review (44th amendment + Minerva Mills case)
<b>Parliamentary Approval</b>	Must be approved by ' <b>both</b> ' houses of Parliament within <b>1 month</b> (44th CA) <b>Special Majority</b> is needed for approval or continuance of Emergency (44th CA) Special majority: Majority of total membership + 2/3rd members present and voting
<b>Dissolution of Lok Sabha</b>	In case of dissolution of LS in one month in which emergency would be approved- Proclamation remains for 30 days after 1st sitting of LS (new) + RS should approve in the meantime.
<b>Duration</b>	After approval by both houses emergency continues for <b>6 months</b> It can be extended for an ' <b>Indefinite period</b> '. (Needs to be approved by Parliament every 6 month - Added by 44th CA). Special Majority is needed for continuance of emergency.

Parameter	Related Facts
<b>Revocation of National emergency</b>	<p>By 'President' or Lok Sabha by 'simple majority'</p> <p>President can revoke by proclamation. Does not need Parliamentary approval.</p> <p>Lok Sabha → 1/10th of total members of LS → 'written notice' → Speaker/President → Special session to discontinue emergency (within 14 days) Resolution needs 'Simple Majority' to be passed.</p>

## Effects of National Emergency

Impact of Emergency	Related Details
<b>Executive relations b/w centre – state</b>	<ul style="list-style-type: none"> <li>Centre can give direction to states on '<b>any</b>' matter</li> <li>In normal circumstances – directions on specified matter</li> <li>State Government – Not suspended , Under control of the centre.</li> </ul>
<b>Legislative relations b/w centre – state</b>	<ul style="list-style-type: none"> <li>Parliament → empowered' to make laws on subjects in State List .</li> <li>Duration of Parliamentary laws → Inoperative 6 months after end of emergency.</li> <li>Ordinance → Can be issued on state subjects by President.</li> <li>Parliament → Impose powers + Duties on Centre → Regards to matter outside Union list.</li> <li>State Legislature → Not suspended (but constitution becomes unitary).</li> </ul>
<b>Financial relations b/w centre – state</b>	<ul style="list-style-type: none"> <li>President can change 'constitutional distribution of revenues' between Centre and state.</li> <li><b>Meaning:</b> President can reduce/cancel the transfer of finances from Centre to states.</li> <li><b>Duration:</b> Modification continues till the end of the 'financial year' in which Emergency ends.</li> <li><b>Requirement:</b> Every order made by President should be laid before 'both houses of Parliament'.</li> </ul>
<b>Duration of Lok Sabha/ State Legislative relations</b>	<ul style="list-style-type: none"> <li>Life of Lok Sabha + Legislative Assembly can be extended by one year at a time by Law of Parliament. Can be extended by one year in definite number of times.</li> <li>Post emergency → can be extended for only 6 months</li> </ul>
<b>Effect on the Fundamental Rights</b>	<ul style="list-style-type: none"> <li><b>Article 358:</b> Suspension of the Fundamental Rights under Article 19</li> <li><b>Article 359:</b> Suspension of other Fundamental Rights (except Article 20 and 21).</li> </ul>
<b>Article 358</b>	<ul style="list-style-type: none"> <li>National emergency declared →Article 19 gets <b>automatic suspension</b>.</li> <li>Suspension only when national emergency is declared on the ground of war or external aggression (not armed rebellion)</li> <li>National emergency ends → Article 19 <b>automatically revives</b></li> <li>National emergency ends → Laws inconsistent with Article 19 cease to have effect.</li> <li>'Executive + Legislative action' inconsistent with Article 19 → cannot be challenged in courts. (during Emergency + after emergency ends).</li> <li>44th amendment: 'Only' acts/action related to emergency can't be challenged.</li> </ul>
<b>Article 359</b>	<ul style="list-style-type: none"> <li><b>Suspension of other Fundamental Rights</b></li> <li>Empowers President → suspend "enforcement" of any specified FR</li> <li>44th amendment → Article 20 and 21 cannot be suspended</li> <li>FR are not suspended only their enforcement (Right to move to court)</li> <li>Procedure → President order (mentioned FR whose enforcement is suspended → Laid before both houses for approval. Order can be for entire emergency or shorter period, for whole or part of India).</li> <li>National emergency ends → Laws inconsistent with FR cease to have effect</li> <li>Executive + Legislative action inconsistent with FR → cannot be challenged in courts. (during Emergency + after emergency ends).</li> <li>44th amendment: 'Only' acts/action related to emergency can't be challenged.</li> </ul>

## Comparison table – Article 358 vs Article 359

Comparison	Article 358	Article 359
<b>Fundamental Rights</b>	Deals with FR's under Article 19	Deals with FR's whose enforcement has been suspended by Presidential order

Comparison	Article 358	Article 359
Nature	Automatic suspension after National emergency is declared.	No automatic suspension only empowers the President to suspend enforcement of specified FR's
Extent	Entire country	Entire country or part of it
Suspension	Article 19 completely suspended	Article 20 and 21 enforcement cannot be suspended by the President.

## PRESIDENT RULE

Parameters	Related Facts
Grounds of Imposition	<ul style="list-style-type: none"> <li><b>Constitutional provision:</b> Article 355, Article 356, Article 365</li> <li><b>Article 355:</b> Duty of the Centre to ensure that the government of every state is carried on in accordance with the 'provisions of the Constitution'.</li> <li><b>Article 356:</b> Centre takes over the government of a state under Article 356 in case of failure of 'constitutional machinery' in state.</li> <li><b>Article 356:</b> President can issue a proclamation that government of state cannot be carried in accordance with the 'provisions of the constitution'. + can act with or without Governor report.</li> <li><b>Article 365:</b> Failure of state government to comply with the directions of the Centre → President can hold that State government cannot be carried in accordance with the 'provisions of the constitution' → President's Rule</li> </ul>
Approval	<ul style="list-style-type: none"> <li>Must be approved by both houses of Parliament within <b>two months</b></li> <li>Needs to be passed with <b>simple majority i.e.</b> Majority of the members of the house present and voting.</li> </ul>
Duration	<p>After approval by both houses' emergency continues for <b>six months</b>.      It can be extended for a maximum period of <b>three years</b> (Parliament approval every 6 months).      To extend President rule beyond a year → Condition need to be fulfilled (44th CA)</p> <ul style="list-style-type: none"> <li>National Emergency should be in operation in the whole/part of India, or in whole/part of the state.</li> <li>Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held due to difficulties.</li> </ul>
Dissolution of Lok Sabha	In case of dissolution of Lok Sabha within two months in which emergency would be approved- Proclamation remains for 30 days after 1st sitting of LS (new) + RS should approve in the meantime.
Revocation of President's rule	President proclamation (No Parliamentary approval is needed).

## Consequence of President's Rule

The major consequence of President rule is that the executive and legislative powers of the state are assumed by the centre. Below we will discuss in detail the consequences of President rule.

Parameters	Related Facts
Impact	Executive and Legislative powers of the state are assumed by Centre
State Executive	Dismissed
State Legislature	Either suspended or dissolved
Administration of the State	By President through Governor → Governor takes help of the chief secretary of the state or the advisors appointed by the President
Law making	Done by Parliament
Delegation of Law-making powers	Parliament can delegate the law-making powers to the President or his specified authority. Such laws are known as <b>President's Act</b> President makes these laws in consultation with MPs of that state.
Ordinances	President issues ordinances on subjects in state list
Fundamental Rights	No impact on Fundamental Rights
Power/duties on centre	President (or any authority specified by him) can make laws to confer power/duties on the centre.

Parameters	Related Facts
<b>Status of laws made by Parliament</b>	Continue to operate even after the end of President's rule. (State legislature can later repeal/amend/re-enact it)
<b>State High court</b>	Provisions related to State High court remain untouched

## Important Judgements

### SR Bommai case, 1994

- President Rule is subject to Judicial review.
- President satisfaction should be based on relevant material (It shall not be based on malafide, perverse, irrelevant or extraneous conditions.)
- Court cannot investigate correctness of material.
- Burden lies on centre to prove relevant material exists.
- Till Parliament approval, Legislative Assembly is suspended not dissolved.
- Courts can restore and revive the government and Assembly, if proclamation is unconstitutional.
- Confidence in state legislative assembly should be tested on 'floor of the house'.
- State following Anti - secular politics are liable for action under Art 356.

**Case of proper and Improper use of President' Rule** (listed under SR Bommai case based on Sarkaria commission report) -

### Acceptable Grounds for President Rule

- Hung Assembly:** No party secures majority after general elections.
- States failure to follow Constitutional direction given by the centre.
- Internal subversion:** Deliberate action by state government which are unconstitutional/unlawful and aimed at fomenting a violent revolt
- Physical breakdown:** State Government refuses to discharge its constitutional obligation endangering the security of the state.
- Failure to form ministry:** Majority party refuses – no alternate coalition exists; Ministry resigns after its defeat in assembly and no alternate is present.

### Unacceptable grounds

- President Rule is imposed without looking for an alternative ministry (after Ministry resigns or loses majority support).
- Governor does not give chance to the ministry to prove its majority on the floor of the house and recommends President's rule (based on his assessment of Ministry's support in the assembly).
- Internal disturbances** not amounting to internal subversion or physical breakdown.
- Mal-administration** or allegations of corruption.
- No prior warning** for rectification was given.
- If used to settle **intra-party disputes**.

## FINANCIAL EMERGENCY

Parameter	Related Facts
<b>Constitutional provision</b>	Article 360
<b>Parliamentary approval</b>	Must be approved by both houses of Parliament within <b>2 months</b> By Simple majority
<b>Duration</b>	After approval by both houses of Parliament emergency continues ' <b>indefinitely</b> ' No 'maximum period' prescribed for its operation Repeated Parliamentary approval is not needed

Parameter	Related Facts
<b>Revocation of financial emergency</b>	By President proclamation anytime
<b>Impact of Financial Emergency</b>	<p><b>Executive authority of the Centre</b> – 1) Give directions to state(any) to observe canons of financial propriety 2) Give other directions to state as the President deems necessary and adequate for the purpose.</p> <p><b>Directions which can be given:</b> Reducing salaries and allowances of persons serving in the state 2) Reserve money bills or other financial bills for the consideration of the President.</p> <p>President '<b>may</b>' also issue directions for reducing salary + allowances of 1) All persons serving the union 2) Judges of Supreme court and High court</p>

## COMPARISON AMONG DIFFERENT TYPES OF EMERGENCIES

Parameters	Article 352 (National emergency)	Article 356 (President rule)	Article 360 (Financial emergency)
<b>Grounds of declaration</b>	War, external aggression, Armed rebellion or eminent danger thereof	Constitutional machinery breakdown (On report of governor or otherwise.)	Threat to financial stability and credibility
<b>Written recommendation of cabinet</b>	Needed	Not needed	Not needed
<b>Parliamentary approval</b>	Within 1 month	Within 2 months	Within 2 months
<b>Duration</b>	Can be extended to Indefinite period (Parliamentary approval every 6 months)	Maximum duration - 3 years. Periodical approval is needed every 6 months. Beyond an year: National emergency or EC certification	Indefinite period. No intermittent approval is needed.
<b>Majority for approval and revision</b>	Special majority	Simple majority	Simple Majority
<b>Revocation</b>	President or by Lok Sabha with simple majority.	President	President
<b>Laws on the state subject</b>	State list becomes similar to concurrent list i.e. both Parliament and State legislature can make laws on it. Parliament can make laws on state list but cannot delegate it to other authority.	Parliament make laws on state list and can delegate law making power to President or any other authority specified by him	No laws are enacted on state list
<b>Continuation of laws</b>	Do not continue 6 months after revocation.	Will continue and state can amend/ repeal them	No laws are enacted on state list
<b>Other Impact</b>	Centre can give direction to states on 'any' matter. President can change constitutional distribution of revenues between Centre and state. Life of Loksabha and Legislative Assembly can be extended by one year at a time indefinitely. (post emergency only 6 months)	State executive is dismissed. State legislature can be dissolved or dismissed. Administration is done by President via Governor. Parliament get the power to make laws.	President can give directions for Reduction of salaries. (including judges and other constitutional authorities) Reservation of all money bills or financial bills for President consideration Direction to states to observe canons of financial propriety.
<b>Fundamental rights</b>	Are impacted	No impact	No impact
<b>Imposition</b>	3 times - 1962, 1971, 1975	More than 100 times	Not yet

## CHAPTER 17

# Union Executive

### PRESIDENT

- **Constitutional provision:** Article 52-78, Part V
- **Composition of Union executive:** President + Vice president + PM and council of ministers + Attorney General.
- **President:** Head of State + first citizen of India + Symbol of unity, integrity and solidarity of nation.

### Election of the President

Parameter	Related Details
<b>Qualifications of contestant</b>	<ul style="list-style-type: none"><li>• Constitutional requirement: 35 years + Indian citizen + Qualified to become Member of Lok Sabha + No office of Profit</li><li>• Other Requirements: Nomination needs to be subscribed by 50 electors (proposers) + 50 electors (seconders).</li><li>• Security deposit: Rs.15,000</li></ul>
<b>Election system</b>	<ul style="list-style-type: none"><li>• Indirect election</li><li>• Proportional representation by single transferable vote</li></ul>
<b>Voters in election</b>	<ul style="list-style-type: none"><li>• Elected MP's (Lok Sabha + Rajya Sabha)</li><li>• Elected MLA's of Legislative Assembly of states + Union Territory of Delhi + Puducherry</li><li>• Members who don't participate in the elections include nominated members of Parliament + State Legislative assembly + UT's with Legislature (Delhi + Puducherry)</li><li>• <b>Other Facts:</b> Members of dissolved assembly cannot vote in Presidential elections</li></ul>
<b>Value of Votes</b>	<ul style="list-style-type: none"><li>• Votes of each MLA = Total Population of a state/ Number of Elected MLA's in Assembly x 1000</li><li>• Votes of each MP = Total value of votes of all MLAs of all states/ Total number of elected MPs</li><li>Important:</li><li>• Vote of an MLA is not equal to vote of an MP</li><li>• Vote of all MLA = vote of all MPs</li></ul>
<b>Electoral quota</b>	<p><b>Electoral quota=</b></p> $\frac{\text{Total number of valid votes polled}}{1+1=(2)} +1$
<b>Disputes related to President election</b>	<ul style="list-style-type: none"><li>• Inquired and decided by Supreme court</li><li>• Acts done by President before election is declared void remain in force.</li></ul>
<b>Term and Re – election</b>	<ul style="list-style-type: none"><li>• Term: 5 years</li><li>• Eligible for re-election for any number of times</li></ul>

### Oath, Conditions and Vacancy

#### Oath

Administered by Chief Justice of India. In his absence the senior most Judge of SC.

- To faithfully execute the office.
- To preserve, protect and defend constitution and the law
- To devote himself to the service and well – being of the People of India.

### Conditions of office

- Have been laid down by the constitution.
- Should not be a member of either house of Parliament or State legislature. If such a member is elected as President he has to vacate his seat.
- Cannot hold any office of Profit
- Emoluments + Allowances + Privileges are determined by Parliament. These cannot be diminished during his term of office.

### Legal Immunity

- No criminal proceedings, during his term of office.
- Civil proceedings with 2 months of notice can be initiated only on personal acts.

### Vacancy in the President's Office

- Vacancy in President office happens in case tenure ends + Resignation + Impeached + Death + Other reasons (Disqualification).
- Expiration of term: Election should be held to fill vacancy before term expires. In case of delay in election the sitting President continues to prevent inter regnum.
- In case of vacancy due to resignation + removal + death + other reasons --> Vice President acts as President. In his absence Chief Justice of India (CJI). If CJI is absent the senior most Judge of Supreme court act as President. They serve for maximum period of six months. Within six months elections are to be held for electing the President.
- Newly elected president will be in office for full term (5 years).
- Resignation of President is submitted to Vice - President.

### Impeachment process

Parameters	Related Facts
<b>Grounds</b>	<ul style="list-style-type: none"> <li>• Constitutional violation (undefined)</li> </ul>
<b>Initiation of Charges</b>	<ul style="list-style-type: none"> <li>• Can be done by either House of the Parliament (Lok Sabha or Rajya Sabha)</li> </ul>
<b>Majority required</b>	<ul style="list-style-type: none"> <li>• Should be passed with 2/3rd majority of total strength of house independently in LS and RS.</li> </ul>
<b>Process of Impeachment</b>	<ul style="list-style-type: none"> <li>• Prior notice of 14 days should be given to President.</li> </ul> <p><b>First house (either LS or RS)</b></p> <ul style="list-style-type: none"> <li>• Lays charges and 1/4th members need to support it.</li> <li>• Chairman/ Speaker may or may not admit it.</li> <li>• Needs to be passed with 2/3rd majority of total strength of house.</li> </ul> <p><b>Second house:</b></p> <ul style="list-style-type: none"> <li>• Investigates the charges against the President. President holds right to appear + be represented in such investigation.</li> <li>• If the Second house (LS/RS) sustains the charges + passes with 2/3rd majority of total strength of house then President stands impeached.</li> </ul>
<b>Other Facts</b>	<ul style="list-style-type: none"> <li>• Impeachment → Quasi - Judicial process</li> <li>• Nominated members → Participate in Impeachment process</li> <li>• Members of State Legislative assemblies → Don't participate in Impeachment process.</li> <li>• UT's of Delhi and Puducherry → Don't participate in Impeachment process.</li> <li>• President actions prior to impeachment will not get affected.</li> </ul>

### Powers and Functions of the President

#### Executive power

Can be categorized into appointment and administrative powers.

- Appointment powers:
  - ◆ He appoints PM and his council of Ministers + Chief Justice of India + Governor + CAG, Chief Election Commissioner + Chairman and members of UPSC + Attorney General.

- Administrative powers and duties:
  - ◆ The executive powers of the Union are vested with the President of India.
  - ◆ Additional powers can be granted to President (by Parliament)
  - ◆ Can make rules for the convenient transactions of business of the Union government.
  - ◆ Can seek any information from the PM about administrative affairs and legislative proposals of the Union.
  - ◆ Administers Union Territories.
  - ◆ Can constitute an Inter-State Council.

### **Legislative powers**

- Power to summon, prorogue or dissolve the Lok Sabha.
- Bill can become law only after President assent.
- Can nominate 12 members to the Rajya Sabha
- Can send a bill back to the parliament (except money bill or constitutional amendment bill).
- Can call a joint sitting of both houses. (Article 108)
- Addresses the first session of parliament (post general election) + first session each year.
- Prior recommendation of President to introduce certain bills (reorganization of states).
- Can disqualify MP's on the recommendation of the Election Commission.
- He lays the reports of CAG, UPSC, Finance Commission and others before the Parliament.
- Promulgate ordinances when parliament is not in session.

### **Ordinance making power**

Parameter	Related Facts
<b>Constitutional provision</b>	<ul style="list-style-type: none"> <li>• Article 123</li> </ul>
<b>Promulgation of Ordinance</b>	<ul style="list-style-type: none"> <li>• Only when 'both' houses or when either of the two houses are not in session.</li> <li>• To deal with unforeseen emergencies which require immediate action.</li> </ul>
<b>Scope</b>	<ul style="list-style-type: none"> <li>• Co-extensive with legislative power of union.</li> <li>• Applicable from retrospective date (civil, tax laws not criminal laws)</li> <li>• Can't be issued to amend Constitution.</li> </ul>
<b>Approval of Parliament</b>	<ul style="list-style-type: none"> <li>• Ordinance is submitted for Parliamentary approval after reassembly. (statement should be present to explain circumstances which led to ordinance).</li> </ul>
<b>Duration</b>	<ul style="list-style-type: none"> <li>• Maximum life- 6 months and 6 weeks.</li> <li>• Ordinance expires six weeks after the reassembly of both houses of Parliament in case of non-approval.</li> </ul>
<b>Withdrawal of ordinance</b>	<ul style="list-style-type: none"> <li>• President can withdraw an ordinance at any time</li> </ul>
<b>Other Facts</b>	<ul style="list-style-type: none"> <li>• If parliament do not approve, actions taken under ordinances do not nullify.</li> </ul>
<b>Judgements of Supreme Court:</b>	<ul style="list-style-type: none"> <li>• <b>Coopers Case:</b> Ordinance power of President is subject to Judicial review on malafide grounds.</li> <li>• <b>DC Wadhwa Case:</b> Ordinance power should be used only in exceptional circumstances. It is not a substitute for the legislative power.</li> <li>• <b>Krishna Kumar Singh vs State of Bihar:</b> Re-promulgation of ordinances is a fraud on the Constitution and a subversion of democratic legislative processes</li> </ul>

### **Veto Power of the President**

- Constitutional provision: Article 111 (President can veto bills).
- The term 'Veto Power' is not mentioned in the Constitution.
- President can't veto Constitutional amendment bill (24th constitutional amendment act).
- Bills → President assent → Can give assent/withhold assent/return bill for re-consideration.
- Helps prevent unconstitutional legislation + hasty/ ill-considered legislation.

Types of Vets	Explanation	Availability with the President
Absolute Veto	<ul style="list-style-type: none"> <li>Power of the President to withhold his assent to a bill</li> <li>Bill does not become act</li> </ul>	<ul style="list-style-type: none"> <li>Private Members' Bills</li> <li>Cabinet resigns and the new cabinet advises the President not to give assent to such bills.</li> </ul>
Suspensive Veto	<ul style="list-style-type: none"> <li>President returns the bill for Parliament reconsideration.</li> <li>Parliament can resend the bill with/without changes. In this case President must give his assent.</li> </ul>	<ul style="list-style-type: none"> <li>President does not possess this veto in case of money bill.</li> </ul>
Pocket Veto	<ul style="list-style-type: none"> <li>No time limit prescribed for the President to give his assent to the bill.</li> </ul>	<ul style="list-style-type: none"> <li>President can postpone action on a bill for an indefinite time, and not return it to Parliament</li> </ul>
Presidential Veto over State legislation	<ul style="list-style-type: none"> <li>Governor can reserve bill for President consideration → President can give/withhold assent or can send it for re – consideration. If the state legislature resends bill President is not bound to accept it.</li> <li>No time limit has been given to the President for accepting the bill.</li> </ul>	

### Military powers

- President → Commander in chief of all the Indian armed forces + Appoints the chiefs of all the armed forces + Power to declare war or conclude peace (advice of PM + CoM).

### Diplomatic Powers

- All treaties with foreign countries are signed in President's name.
- Appoints Ambassadors and receives the credentials of the foreign diplomatic representatives.

### Financial Powers

- Prior recommendation of the President is needed for Introduction of Money Bills.
- Make advances from Contingency fund to meet any unforeseen expenditure.
- Lays down Annual Financial Statement (Union Budget) before parliament
- Constitutes a Finance Commission every 5 years

### Emergency Powers

President can proclaim three types of emergencies under: **National emergency (Art, 352)**, **President's Rule (Article 356)**, and **financial (Article 360)** respectively.

### Judicial Powers

- President can seek advice from SC on any question of law or fact. (Advice not binding on the President).
- Power to grant pardons, remit, commute, and respite (we will study in detail below)

### Pardoning Powers

Pardoning power are mentioned in Article 72 of Indian constitution. The scope of President pardoning power extends in cases of offense against Union law, punishment by military court and death sentence..

Pardon	Rerieve	Remission	Respite	Commutation
Remove both conviction and sentence + completely absolve the offender.	Stay on execution of the sentence (especially of death) for a temporary period	Reduce period of sentence without changing its character example 6 months for one year.	Lesser sentence due to special reason (ex. Pregnant women offender)	Substitute one form of punishment with a lighter character (ex death penalty to life imprisonment)

### Comparison b/w Pardoning power of the President and Governor

Pardoning power of the President	Pardoning Power of the Governor
Can pardon sentences inflicted by court-martial	Cannot pardon sentences inflicted by court-martial
Can pardon death sentences	Cannot pardon death sentences. Can only suspend, remit or commute a death sentence.

### Constitutional Position of the President

- **Art 53:** Executive power of Union lies with President
- **Art 74:** Aid and advice of council of ministers shall be available. Advice is binding (42nd CA) + Can send for re - consideration (44th CA)
- **Art 75(3):** Collective responsibility of Council of Ministers to Lok Sabha.
- **Art 78:** PM shall give information on laws, policies to President of India. President can call for any information from government. President can submit a Ministers decision to consideration of Council of Ministers.

### Discretionary Powers

No constitutional discretion. Enjoys situational discretion power in following cases

1. To appoint the PM in case of Hung Parliament
2. To dissolve Lok Sabha or to call for an alternative after no confidence motion is passed in LS
3. To send a bill for reconsideration (44th CAA)
4. Dismissal of Council of Ministers if they do not resign after No confidence Motion is passed
5. To ensure that six months do not lapse between two sessions of parliament.

## VICE PRESIDENT

### Key Facts related to the Office of Vice President

<b>About</b>	<ul style="list-style-type: none"> <li>• 2nd Highest constitutional office in India</li> <li>• Order of Precedence → Second rank after President</li> <li>• Ex – Officio Chairman of Rajya Sabha</li> </ul>
<b>Qualifications</b>	<ul style="list-style-type: none"> <li>• Constitutional requirement: 35 years + Indian citizen + Qualified to become Member of Rajya Sabha + No office of Profit</li> <li>• Other Requirements: Nomination needs to be subscribed by 20 electors (proposers) + 20 electors (seconders).</li> <li>• Security deposit: Rs.15,000</li> </ul>
<b>Election system</b>	<ul style="list-style-type: none"> <li>• Indirect election</li> <li>• Proportional representation by single transferable vote</li> </ul>
<b>Voters in election</b>	<ul style="list-style-type: none"> <li>• Elected by all the members of the Parliament (both elected and nominated). State Legislature members don't participate.</li> </ul>
<b>Dispute related to election</b>	<ul style="list-style-type: none"> <li>• Decision lies with Supreme court.</li> </ul>
<b>Term of Office</b>	<ul style="list-style-type: none"> <li>• 5 years, eligible for re-election any number of times</li> </ul>
<b>Oath or Affirmation:</b>	<ul style="list-style-type: none"> <li>• To bear true faith and allegiance to Indian constitution</li> <li>• To faithfully discharge duties of his office.</li> </ul>
<b>Emoluments</b>	<ul style="list-style-type: none"> <li>• Decided by the Parliament</li> </ul>
<b>Vacancy</b>	<ul style="list-style-type: none"> <li>• Tenure ends in case of Resignation + Removal + Death + Others (Election declared void).</li> <li>• Tenure ends: Election must be held before tenure ends.</li> <li>• In other cases Newly elected Vice President enjoys full term</li> <li>• In case of vacancy no substitution is mentioned in the constitution.</li> <li>• Deputy chairman performs the duty of Vice President.</li> </ul>

### Key Facts related to the Office of Vice President

<b>Removal of Vice -President</b>	<ul style="list-style-type: none"> <li>Can be removed by a resolution of RS with effective majority (By a majority of all the then members of the house) + Passed by Lok Sabha (by simple majority).</li> <li>14 days advance notice should be given.</li> <li>Such resolution cannot be introduced in the Lok Sabha</li> </ul>
<b>Functions of Vice – President</b>	<ul style="list-style-type: none"> <li>Acts as ex – officio chairman of the Rajya Sabha.</li> <li>Acts as President when vacancy occurs (due to resignation, impeachment, death or otherwise).</li> </ul>
<b>Comparison with American Vice President</b>	<ul style="list-style-type: none"> <li>Similar to India VP American vice president also chairs the senate (Upper house).</li> <li>Unlike Indian VP In case of death, illness of US President, Vice President takes office for the rest of the term.</li> </ul>

## PRIME MINISTER

- Our constitution provides for parliamentary system of government. Under it -
- President:** de jure executive - Nominal Executive Authority – Head of State
- Prime Minister:** de facto - Real Executive Authority – Head of Government

### Appointment of the Prime Minister

- Constitution:** No specific procedure is mentioned.
- Article 75:** Prime Minister shall be appointed by the president (Only mention w.r.t appointment)

### Convention of Parliamentary system (w.r.t appointment) -

- Leader of Majority Party** - President has to appoint the leader of the 'majority party' in the '**Lok Sabha**' as the Prime Minister. (But certain situations demand President discretion).

### Situation which requires President Discretion:

- When no party has clear majority (Lok Sabha):** President may exercise his personal discretion to select and appoint PM.
  - Course of Action:** President usually appoints the 'leader of the largest party' or 'coalition' in the Lok Sabha as the Prime Minister.
  - Selected leader needs to seek a vote of confidence in the House **within a month**.
  - Example:** President Neelam Sanjiva Reddy appointed Charan Singh exercising his discretion.
- When the **Prime Minister** in office **dies** suddenly and there is **no** obvious **successor**.
  - Example:** Death of Indira Gandhi, President Zail Singh – Appointed Rajiv Gandhi.
  - Exception:** If on the death of an incumbent Prime Minister, the **ruling party** elects a **new leader**, the President **must** appoint him as Prime Minister.

### Judiciary Rulings with regards to appointment of Prime Minister:

- Delhi High court 1980:** Constitution does not require that a person must prove his majority in the Lok Sabha before he is appointed as the Prime Minister.
  - Implication:** President '**may**' first appoint the Prime Minister and then ask him to prove his majority in the Lok Sabha within a reasonable period.
  - Examples** - Charan Singh (1979), V.P. Singh (1989), Chandrasekhar (1990), P.V. Narasimha Rao (1991).
- Supreme Court Ruling 1997:** Person who is **not** a member of either House of Parliament can be appointed as Prime Minister. (6 months)
  - Special Requirement:** He can be appointed Prime Minister **only** for **six months**, within which, he should become a member of either House of Parliament.
  - According to the Constitution, Prime Minister may be a member of **any** of the **two** Houses of parliament. (Lok Sabha or Rajya Sabha).
  - Example:** 3 Prime Ministers - Indira Gandhi (1966), Deve Gowda (1996) and Manmohan Singh (2004), were members of the Rajya Sabha.

## **Oath, Term and Salary**

### **Oath**

- Administered by **President**.
- To bear true faith and allegiance to the Constitution of India + uphold the sovereignty and integrity of India + faithfully and conscientiously discharge the duties of his office + Do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.
- Oath of Secrecy: Not to communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a union minister. (Exception – Required for due to discharge of his duties).

### **Term**

- '**Not**' fixed - he holds office during the '**pleasure**' of the president.
- President cannot dismiss Prime Minister at any time Cannot be dismissed till PM holds the '**majority support**' in LS,
- PM loses the confidence of the LS: Resign or the President dismisses him.

### **Salary and Allowances**

- It is determined by **Parliament**.

## **Power and Functions of the Prime Minister**

### **In relation to the Council of Ministers**

- **Appointment of the Ministers** - President can appoint '**only**' those persons who are recommended by PM.
- **Allocation of Portfolios:** PM allocates and reshuffles various portfolios among the ministers.
- **Removal of Minister:** PM can ask a minister to resign or advise the President to dismiss him.
- **Council of Ministers:** PM presides over the meeting of CoM and influences its decisions.
- **Administrative role:** He guides, directs, controls, and coordinates the activities of all the ministers.
- **Resignation (or death)** of PM automatically dissolves the council of ministers.

### **In Relation to the President**

- **Main channel of communication** between the '**President**' and the '**council of ministers**'.
- **Communicate to President** all decisions of council of ministers with regards to 1) Administration of the affairs of the Union 2) Proposals for legislation.
- **To furnish information** about 1) Administration of the affairs of the Union 2) Proposals for legislation (Whatever information the President asks for).
- In case the President wants - To submit any matter for the '**consideration**' of the CoM on which a decision has been taken by a minister but has not been considered by the council.
- **Advisory role:** PM advises the President regarding the appointment of important officials like Attorney general of India, CAG, Chairman and members of the UPSC.

### **In relation to the Parliament**

- **Advises** the President regarding summoning and proroguing the **sessions** of the **Parliament**.
- **Dissolution of the Lok Sabha:** PM can recommend dissolution of the Lok Sabha to the President at any time.
- Announcement of **Government policies** on the floor of the House.

## **List of Bodies where Prime Minister is the Chairman**

### **Prime Minister presides over these Bodies**

NITI Aayog, (Executive Body)

Indian Board of wildlife (statutory – wildlife protection act 1972)

National Ganga River Basin authority – statutory body under Environmental Protection act 1986.

National commission on Population: Executive body

### Prime Minister presides over these Bodies

- Nuclear command authority
- National disaster management authority
- Interstate council
- National integration council
- CSIR
- Department of space, atomic energy, DoPT
- Cabinet committee on appointments, economic affairs and political affairs
- National water resource council.

### Facts related to Prime Minister

#### Key Facts Related to Prime Minister

First Prime Minister of India who was a member of the Rajya Sabha	Indira Gandhi
Longest-Serving Indian Prime Minister	Jawaharlal Nehru
The first woman Prime Minister to receive the Bharat Ratna	Indira Gandhi
Indian Prime Minister received Pakistan's highest civilian award	Morarji Desai
First Prime Minister from South India	P.V. Narasimha Rao

### UNION EXECUTIVE: COUNCIL OF MINISTERS

- Parliamentary system in India is modelled on the **British** pattern.
- Council of ministers headed by the Prime minister are the **real** executive authority

### Constitutional Provisions

#### Article 74 - Council of Ministers to aid and advise President

- Council of Ministers headed by Prime Minister 'aid and advise' the President
- President '**shall**' act in accordance with such advice. Shall means the advice is **binding**.
- President 'may' require the CoM to **reconsider** such advice.
- After reconsideration the President '**shall**' act in accordance with the advice tendered. (It is upto the council of minister to change their advice or keep it the same).

#### Nature of advice tendered by the Council of Ministers

- 42nd(binding) and 44th (Reconsideration) Constitutional Amendment Acts have made the advice binding on the President.
- Nature of advice tendered by ministers to the President **cannot** be enquired by any **court**.

#### Supreme Court Ruling (1971):

- After dissolution of the Lok Sabha, the Council of Ministers do not cease to hold office.
- Article 74 is mandatory: The president cannot exercise the executive power without the aid and advise of the council of ministers.
- Supreme Court Ruling (1974): The satisfaction of the President in the constitution in fact means the satisfaction of the council of Ministers (This is the reason why the office of the President is considered as a "Rubber Stamp")

#### Article 75 – Other provisions as to Ministers

- Prime Minister '**shall**' be appointed by the President.
- Other Ministers shall be appointed by the President on the advice of the Prime Minister.

- This means only those persons recommended by the Prime Minister can be appointed by the President.
- Members of **both** houses (Lok Sabha or Rajya Sabha) can be appointed as Ministers.
- Strength of the Council of Ministers '**shall**' not exceed **15%** of the total strength of the Lok Sabha. (**91st Amendment Act**)
- **Anti-defection law:** A member of either house of Parliament (any political party) who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. (**91st Amendment act**).
- The ministers shall hold office during the 'pleasure of the President'.
- **Collective Responsibility:** Council of Ministers are collectively responsible to the Lok Sabha
- **Administration of Oath:** The President shall administer the oaths of office and secrecy to a minister.
- **Condition to remain a Minister:** A minister who is not a member of the Parliament (either house) for period of six consecutive months ceases to be a minister.
- **Salaries and allowances of ministers:** These are determined by the Parliament.
- **Right to Speak:** Minister who is a member of one House of Parliament (suppose Lok Sabha) has the right to speak and to take part in the proceedings of the other House (Rajya Sabha).
- **Right to Vote:** Minister can vote **only** in the House of which he is a member.

### **Responsibility of Ministers**

#### **Collective Responsibility**

- Lies to the Lok Sabha: (Mentioned under Article 75(3) of constitution) . This means
  1. Council of ministers own joint responsibility to the Lok Sabha for all their acts
  2. **No confidence motion** - When this motion is passed in Lok Sabha all the ministers '**must**' resign including those ministers who are from the Rajya Sabha.
- **Dissolution of the Lok Sabha:** Council of ministers can advise the president to 'dissolve' the Lok Sabha.
  - ◆ **Grounds:** House does not represent the views of the electorate faithfully.
  - ◆ If the CoM has lost the confidence of Lok Sabha President 'may' not oblige them.
- **Binding Decision:** Cabinet Decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting.
  - ◆ Minister who disagrees with a cabinet decision and is not prepared to defend it, must resign.
  - ◆ **Examples:** Dr. B.R. Ambedkar (Hindu Code Bill in 1953), C.D. Deshmukh (reorganization of states), Arif Mohammed (Women (Protection of Rights on Divorce) Act, 1986).

#### **Individual Responsibility**

- **Article 75** also contains the provision for Individual Responsibility.
- **Implication:** President can 'remove' a minister even when the council of ministers enjoy the confidence of the Lok Sabha.
- However, the President removes a minister **only** on the advice of the Prime Minister.

#### **No Legal Responsibility**

- In India Minister do not countersign an order of President. (In UK, minister must countersign the order of queen). This means that there is no provision in Indian Constitution for the system of legal responsibility of a minister.

### **Types of Ministers**

- In practice, India has following types of Ministers (no such classification mentioned in the constitution) -
- **Cabinet Minister:** He is present and participates in every meeting of the Cabinet. Head the important ministries of the Central government like home, defense, finance, external affairs and so forth.
  - **Minister of State with independent charge:** He does not work under a cabinet minister. When any matter concerning his Department is on the agenda of the Cabinet, he is invited to attend the meeting.
  - **Minister of State:** He is a Minister who does not have independent charge of any Department and works under a cabinet minister. The work to such Minister is allotted by his cabinet minister.
  - **Deputy Minister:** He is a Minister who works under a cabinet minister or a Minister of State with independent charge. His work is allotted by the Minister under whom he is working.

One associated topic is Parliamentary Secretaries -

- **Parliamentary Secretaries:** They have no department under their control. They are attached to the senior ministers and assist them in the discharge of their parliamentary duties.

### Council of Ministers vs Cabinet

Point of Difference	Council of Minister	Cabinet
<b>Size</b>	A wider body consisting of 60 to 70 ministers	Smaller Body consisting of 15 to 20 members.
<b>Composition</b>	Includes all the three categories of ministers, that is, cabinet ministers, Ministers of State and Deputy Minister.	Includes Cabinet Ministers only, thus it is a part of the council of Ministers.
<b>Meeting</b>	No collective functions - It does not meet, as a body, to transact government business.	Collective Functions - It meets, as a body, frequently and usually once in a week to deliberate and take decisions.
<b>Powers</b>	Theoretically, it is vested with all the powers.	The powers vested in the CoM theoretically are actually exercised by the Cabinet
<b>Functions</b>	Determined by the cabinet.	Directs the council of ministers by taking policy decisions which are binding on all ministers.
<b>Role</b>	It implements the decisions taken by the cabinet.	Supervises the implementation of its decisions by the council of ministers.
<b>Constitutional Status</b>	It is a constitutional body (Article 74 and Article 75)	It was conferred the status of a constitutional body after the passing of 44th Constitutional Amendment Act 1978. (Article 352)
<b>Collective Responsibility</b>	Collectively responsible to the Lower House of the Parliament.	Enforces the collective responsibility of the council of ministers to the Lower House of Parliament.

## CABINET COMMITTEES

### Features of Cabinet Committees

- **Extra – constitutional bodies:** They are extra-constitutional (Neither constitutional nor statutory). It means they are not mentioned in the Constitution.
- **Source:** ‘Rules of Business’ provide for their establishment.
- **Types:** 2 types 1) Standing and 2) Ad hoc.
  - ◆ **Standing committees** are of a permanent nature.
  - ◆ **Ad Hoc committees** are of a temporary nature. These are constituted from time to time to deal with special problems. They are disbanded after their task is completed.
  - ◆ **Who forms them:** They are set up by the Prime Minister from time to time.
- **Nature:** Their number, nomenclature, and composition keep varying.
- **Membership:** Varies from 3 to 8. They usually include only Cabinet Ministers.
- However, remember that the **non-cabinet** Ministers can **also** become members.
- Senior Minister also form part of these committees.
- **Head:** Mostly by Prime Minister. (Sometimes other cabinet minister like finance or Home Minister). In case Prime Minister (PM) is a member of a committee, he **ALWAYS** presides it.
- **Decision Making:** Cabinet committees can take decisions but their decisions can be reviewed by the cabinet.
- **Purpose:** 1) Organizational device to reduce the workload of the Cabinet. 2) Facilitate in-depth examination of policy issues 3) Effective coordination.

### **List of functioning Cabinet Committees**

- Appointments Committee of the Cabinet.
- Cabinet Committee on Economic Affairs.
- Cabinet Committee on Political Affairs.
- Cabinet Committee on Investment and Growth.
- Cabinet Committee on Security.
- Cabinet Committee on Parliamentary Affairs.
- Cabinet Committee on Employment & Skill Development.
- Cabinet Committee on Accommodation.

### **Function of Cabinet Committees**

Give a brief reading for your understanding:

- **Political Affairs Committee:** (Head – PM) deals with all policy matters pertaining to domestic and foreign affairs. This is the most powerful committee often described as a '**Super Cabinet.**'
- **Economic Affairs Committee:** (Head – PM) directs and coordinates the governmental activities in the economic sphere.
- **Appointments Committee:** (Head – PM) decides all higher-level appointments in the Central Secretariat, Public Enterprises, Banks and Financial Institutions.
- **Parliamentary Affairs Committee:** (Head – HM) looks after the progress of government business in the Parliament.
- **Cabinet committee on Security:** (Head – PM) - To deal with all Defense related issues. (Law and Order, Atomic Energy).

### **Group of Ministers – (GoM)**

- In addition to cabinet committees, Groups of Ministers (GoMs) are constituted to investigate different issues / subjects.
- Few GoMs are empowered to take decisions on behalf of the Cabinet. While others make recommendations to the Cabinet.
- **Purpose:** Instrument for coordination among the ministries.
- **Nature:** Ad hoc bodies formed to give recommendations to the cabinet on certain emergent issues and critical problem areas. (Once objective is attained, they are disbanded).

## CHAPTER 18

# State Executive

### GOVERNOR

#### Appointment and other provisions

Parameters	Related Facts
<b>Constitutional provision</b>	<ul style="list-style-type: none"><li>Articles 153 to 162 (Part VI)</li></ul>
<b>Composition of State executive</b>	<ul style="list-style-type: none"><li>Governor + Chief Minister + Council of Minister + Advocate General</li></ul>
<b>Dual role</b>	<ul style="list-style-type: none"><li>Chief executive head of the state (Nominal head) + Agent of the centre.</li></ul>
<b>Appointment of Governor</b>	<ul style="list-style-type: none"><li>Can be appointed for <b>each state</b> + also for <b>two or more states</b> (7th Constitutional Amendment).</li><li>By <b>President</b> (Warrant under his hand and seal).</li><li><b>Qualifications:</b> Age: 35+ years, Citizen of India</li><li><b>Convention:</b> Should not belong to the state in which he/she is being appointed. + President consults the Chief Minister of the state before appointment (Both have been violated).</li></ul>
<b>Conditions of Governor office</b>	<ul style="list-style-type: none"><li>Should not be a member of either House of Parliament or State Legislature.</li><li>No Office of Profit.</li><li>Emoluments, allowances and privileges: Determined by Parliament</li><li>Cannot be diminished during term of office.</li><li>Sharing of emoluments as determined by President in case where the same person is appointed as Governor of two or more states.</li><li>Has to subscribe to Oath/Affirmation</li></ul>
<b>Oath/Affirmation</b>	<ul style="list-style-type: none"><li>To faithfully execute the office; to preserve + protect and defend the Constitution and the law + to devote himself to the service and well-being of the people of the state.</li></ul>
<b>Term of Governor Office</b>	<ul style="list-style-type: none"><li>Holds office for 5 year</li><li>No security of term or tenure as he is subject to pleasure of President.</li><li>No grounds laid down in constitution → Governor <b>may</b> be removed by the President.</li><li>Can be transferred from one state to another state for the rest of the term.</li><li>Can be re – appointed in the same state or another state.</li><li>President → Can make provisions for discharge of Governor functions for contingency not provided in the constitution.</li><li>Resign by writing to the President</li></ul>

#### Powers and Functions of the Governor

##### **Executive power**

Can be categorized into appointment and administrative powers.

##### **Appointment powers**

- He appoints CM and his council of Ministers + State Election Commissioner + Chairman and members of SPSC + Advocate General + acts as the chancellor of State universities + appoints Vice chancellor of universities.

##### **Administrative powers and duties:**

- Executive actions of State Government are formally taken in his name.
- Can make rules for the convenient transactions of business of the State government.

- Can seek any information from the CM about administrative affairs and legislative proposals of the State.
- Can require CM to submit for the consideration of CoM any matter which has not been considered by them but a decision has been taken by the Minister.
- Can recommend imposition of constitutional emergency. Governor gets extensive executive power during President rule.

### **Legislative power**

- Power to Summon + prorogue + dissolve the State legislature.
- Address state legislature → at 1) commencement of first session after each general election 2) first session of each year.
- Send messages to house → Bill pending in the legislature or otherwise.
- Appoint any member of the State legislative assembly/State legislative council to preside over its proceedings → Office of Speaker/Chairman + Deputy Speaker/Chairman fall vacant.
- Nominates one-sixth of the members of the state legislative council (literature, science, art, cooperative movement and social service).
- Decides on disqualification of members of the state legislature (Consult Election Commission).
- Bill passed → Give his assent/Withhold assent/Return bill/Reserve bill for President consideration (reservation mandatory in case of State High court).
- Reservation of bill (Other cases): (i) Ultra-vires constitution. (ii) Opposed to DPSP (iii) Against the larger interest of the country. (iv) Of grave national importance. (v) Dealing with compulsory acquisition of property under Article 31A.
- Promulgate ordinances when the state legislature is not in session
- Lays the reports of the State Finance Commission, the State Public Service Commission and the CAG before the state legislature.

### **Financial Powers**

- Annual Financial Statement (state budget) is laid before the state legislature.
- Prior recommendation of Governor → Introduce Money bills in State legislature
- No demand for a grant can be made except on Governor recommendation.
- Make advances out of the Contingency Fund of the state (unforeseen expenditure).
- Constitutes a finance commission after every five years to review the financial position of Panchayats and the Municipalities.

### **Judicial Powers**

- Can grant pardons + reprieves + respites + remissions + commutation of sentence. Offense should be related to a matter to which executive power of state extends.
- President consults Governor → Appointment Judges of State high court.
- Appointment + Posting + Promotion of District Judges (should consult State high court).
- Appoints persons to the judicial service of the state (consults with State high court + State Public Service Commission).

### **Constitutional Position of Governor**

- **Articles 154:** Executive power of the state → vested in Governor → shall be exercised by him either 'directly' or through subordinate officers in accordance with Constitution.
- **Article 163:** CoM with Chief Minister to aid and advise the Governor. The article explicitly states that Governor can act under in his discretion in exercise of his functions
- **Article 164:** Council of ministers shall be collectively responsible to the legislative assembly of the state.

### **Governor Discretion**

- Decision on whether any matter falls in Governor Discretion or not → decided by Governor himself. It cannot be questioned in Court of Law.
- 42nd constitution amendment act: Made ministerial advice binding on President. No such provision exists for Governor.
- Thus, Governor enjoys Constitutional (Given below) + situational discretion (Similar as President).

### **Governor shall enjoy constitutional discretion in the following cases:**

- Reservation of any bill for consideration of President (Obligatory if a bill endangers position of High Court)
- Recommendation for imposition of President rule.
- Exercising function with regards to additional charge of adjoining UT.
- Determining amount to be paid by the Government of Assam + Meghalaya + Tripura + Mizoram to an Autonomous Tribal District Council (Royalty from licenses for mineral exploration).
- Seeking information from CM.

### **Special responsibilities of Governor**

These special responsibilities need to be discharged according to Directions issued by the Governor. Governor needs to consult the Council of Ministers but final decision is taken on his discretion.

State	Responsibility
Maharashtra	Establishment of Separate Developmental Board, Vidarbha and Marathwada
Gujarat	Establishment of Separate Developmental Board, Saurashtra and Kutch
Nagaland	Law and Order in Naga Hills, Tuensang Area
Assam	Administration of Tribal Areas
Manipur	Administration of Hill Areas
Sikkim	Social and Economic Advancement + Peace for People of Sikkim
Arunachal Pradesh	Law and Order
Karnataka	Development of Hyderabad + Karnataka Region

## **CHIEF MINISTER**

- Our constitution provides for Parliamentary system of government. Under it:
- **Governor:** de jure executive: Nominal Executive Authority - Head of State
- **Chief Minister:** de facto: Real Executive Authority - Head of Government

### **Appointment of the Chief Minister**

- **Constitution:** No specific procedure is mentioned.
- **Article 164:** Chief Minister shall be appointed by the Governor (Only mention w.r.t appointment)

### **Convention with respect to appointment**

- **Leader of Majority Party:** Governor has to appoint the leader of the 'majority party' in the '**State Legislative assembly'** as the Chief Minister. (But certain situations demand Governor discretion).

### **Situation which requires Governor Discretion**

1. **When no party has clear majority (State Legislative assembly):** Governor may exercise his personal discretion to select and appoint CM.
  - ◆ **Course of Action:** Governor usually appoints the 'leader of the largest party' or 'coalition' in the State Legislative assembly as the Chief Minister.
  - ◆ Selected leader needs to seek a vote of confidence in the House **within a month**.
2. When the **Chief Minister** in office **dies** suddenly and there is **no** obvious **successor**.
  - ◆ If on the death of an incumbent Chief Minister, the **ruling party** elects a **new leader**, the Governor **must** appoint him as Chief Minister.

### **Other Facts with regards to appointment**

- Person who is **not** a member of State legislature can be appointed as Chief Minister. (6 months)

- **Special Requirement:** He can be appointed Chief Minister **only for six months**, within which, he should become a member of State legislature.
- According to the Constitution, Chief Minister may be a member of **any** of the **two** Houses of State legislature

### **Oath, term and Salary**

#### **Oath**

- Administered by **Governor**.
- To bear true faith and allegiance to the Constitution of India + uphold the sovereignty and integrity of India + faithfully and conscientiously discharge the duties of his office + Do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.
- **Oath of Secrecy:** Not to communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a State minister. (Exception - Required for due to discharge of his duties).

#### **Term**

- '**Not**' fixed: He holds office during the '**pleasure**' of the Governor.
- Governor cannot dismiss Chief Minister at any time (Cannot be dismissed till CM holds the '**majority support**' in Legislative Assembly),
- CM loses the confidence of the Legislative Assembly: Resign or the Governor dismisses him.

#### **Salary and Allowances of CM**

- They are determined by **State Legislature**.

### **Power and Functions of the Chief Minister**

#### **In relation to the Council of Ministers**

- **Appointment of the Ministers:** Governor can appoint '**only**' those persons who are recommended by CM.
- **Allocation of Portfolios:** CM allocates and reshuffles various portfolios among the ministers.
- **Removal of Minister:** CM can ask a minister to resign or advise the Governor to dismiss him.
- **Council of Ministers:** CM presides over the meeting of CoM and influences its decisions.
- **Administrative role:** He guides, directs, controls, and coordinates the activities of all the ministers.
- **Resignation (or death)** of CM automatically dissolves the council of ministers.

#### **In Relation to the Governor**

- **Main** channel of **communication** between the 'Governor' and the 'council of ministers'.
- **Communicate to Governor** all decisions of council of ministers with regards to 1) Administration of the affairs of the State 2) Proposals for legislation.
- **To furnish information** about 1) Administration of the affairs of the State 2) Proposals for legislation (Whatever information the Governor asks for).
- In case the Governor wants: To submit any matter for the '**consideration**' of the CoM on which a decision has been taken by a minister but has not been considered by the council.
- **Advisory role:** CM advises the Governor regarding the appointment of important officials like advocate general, Chairman and members of the SPSC, state election commissioner.

#### **In relation to the State Legislature**

- Advises the Governor regarding summoning and proroguing the sessions of the State Legislature.
- Dissolution of the State Legislative assembly: CM can recommend dissolution of the State Legislative assembly to the Governor at any time.
- Announcement of Government policies on the floor of the House.

#### **Other Functions**

- Chairman of the State Planning Board.
- Acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.

- Member of the Inter-State Council + Governing Council of NITI Aayog.
- Chief spokesman of the state government.
- Crisis manager-in-chief at the political level during emergencies.

## **STATE EXECUTIVE: COUNCIL OF MINISTERS**

- Parliamentary system in states is on similar patterns as that of union
- Council of ministers headed by the Chief Minister are the **real** executive authority

### **Constitutional Provisions**

#### **Article 163: Council of Minister to aid and advise the Governor**

- Council of Ministers headed by Chief Minister ‘aid and advise’ the Governor
- Governor acts in accordance with such advice except where he must exercise discretion.
- Governor himself decides if any matters is within his discretion or not
- Nature of advice tendered by ministers to the Governor **cannot** be enquired by any **court**.
- Supreme Court: Council of ministers must always exist to advise the governor.
- Ministry continues even after SLA dissolves or Council of Ministers resign
- Existing Ministry continues until successor comes.

#### **Article 164: Other provisions related to Ministers**

- Chief Minister **shall** be appointed by the Governor.
- Other Ministers: Shall be appointed by Governor (on advice of the CM).
- Minister in charge of tribal welfare → State of Chhattisgarh + Jharkhand + Madhya Pradesh + Odisha (May have addition charge of the welfare of the SC/ backward classes/Other work).
- Total Ministers (including CM): Can't exceed 15% of total strength of Legislative assembly. Also cannot be less than 12 (91st Amendment).
- Member disqualified on the ground of defection → disqualified to be a Minister (91st Amendment).
- Ministers shall hold office during the pleasure of the Governor.
- CoM → shall be collectively responsible to the state Legislative Assembly.
- Oaths of office and secrecy to a minister → administered by Governor.
- Cease to be a Minister → If not a member of the State legislature for six consecutive months.
- Salaries and allowances of ministers: State legislature determines.
- Minister's right in other house (where he is not a member): Right to speak + Right to take part in proceeding + No right to vote.

#### **Article 166: Conduct of Business of the Government of a State**

- All executive actions of State are taken in Governor's name.
- Orders and other instruments in Governor's name shall be authenticated in a manner as may be specified in rules made by Governor.
- Governor shall make rules for 1) convenient transaction of the business of State government 2) for the allocation of business among ministers

#### **Article 167: Duties of Chief Minister**

- Communicate to Governor → All decisions of CoM relating to the administration of affairs of the state + proposals for legislation.
- Furnish Information → relating to administration of affairs of state + Proposals for legislation if Governor may call for.
- Submit for consideration of CoM any matter on which a decision has been taken by a minister but not been considered by council (If Governor requires).

#### **Article 177: Rights of Ministers as Respects the Houses:**

- Right to speak + take part in Assembly proceedings of the Assembly + any Committee of the State Legislature (he is named a member but will not have right to vote).

**Responsibility of Ministers:**

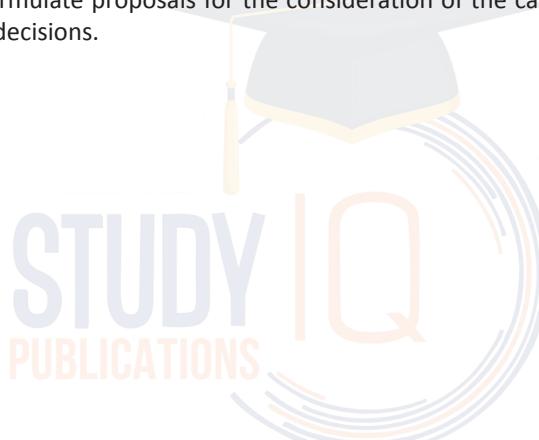
- Similar to Union Ministers i.e. they possess Collective responsibility + Individual responsibility + No legal responsibility

**Composition of Council of Ministers:**

- **Cabinet Minister:** He is present and participates in every meeting of the Cabinet.
- **Minister of State with independent charge:** He does not work under a cabinet minister. When any matter concerning his Department is on the agenda of the Cabinet, he is invited to attend the meeting.
- **Minister of State:** He is a Minister who does not have independent charge of any Department and works under a cabinet minister. The work to such Minister is allotted by his cabinet minister.
- **Deputy Minister:** He is a Minister who works under a cabinet minister or a Minister of State with independent charge. His work is allotted by the Minister under whom he is working

**CABINET COMMITTEES**

- Cabinet works through various committees called **cabinet committees**.
- **Two types** - standing (permanent) and ad hoc (temporary).
- Set up by CM according to the exigencies and requirements of the situation.
- **Composition:** Number, nomenclature and composition varies from time to time.
- **Purpose:** Sort out issues + formulate proposals for the consideration of the cabinet + can take decisions. However, the cabinet can review their decisions.



## CHAPTER 19

# Union Legislature

### PARLIAMENT

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#### **Organisation of Parliament**

- **Parliament:** ‘Legislative organ’ of the Union government.
- **Source:** British Government ('Westminster' model of Government)
- **Constitutional provision:** Article 79 to 122 (Part V)
- **Composition:** President + Lok Sabha (i.e. House of People) + Rajya Sabha (i.e. Council of States).

#### **President (Integral part of the Parliament)**

- President is ‘not’ a member of either House of Parliament (doesn’t attend its meetings).
- **Integral part of Parliament:** Bill passed by both houses of Parliament ‘cannot’ become a law without President’s assent
- **Other Functions:** Summon, prorogue session of Parliament, pass ordinances, Address both houses of Parliament etc.
- Unlike Indian President the American president is ‘not’ regarded as a constituent part of the Congress (US Parliament).

### COMPOSITION OF BOTH HOUSES

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#### **Rajya Sabha**

- Maximum strength: 250 members (238 are representatives of state + 12 are nominated).
- **Present Situation:** Total - 245 members 1) 229 members - States 2) 4 member - UTs 3) 12 members – Nominated by President).

#### **Representation of States in Rajya Sabha**

- **Mode of Election:** ‘Indirectly’ elected by elected MLA’s of the states.
- **Election System:** ‘Proportional representation’ by ‘single transferable vote’
- **Allocation of Seat:** On the basis of ‘Population’ (1971 census)
- **Variability in representation:** Representation of states in RS is different for different states. For example; Uttar Pradesh has 31 members while Tripura has 1 member only.
- **Comparison with US:** In USA all states are given equal representation in the senate irrespective of their population.

#### **Representation of Union Territories in Rajya Sabha**

- **Mode of Election:** ‘Indirectly elected’ by an Electoral College is specifically constituted for the purpose.
- **Election System:** ‘Proportional representation’ by a ‘single transferable vote’.
- **Representation in RS:** Union Territories of Delhi, Puducherry and Jammu and Kashmir have representation in RS. Other UT’s populations are too small to be represented.

#### **Nominated members in Rajya Sabha**

- **Mode of selection:** President ‘nominates’ 12 members to the Rajya Sabha.
- **Qualifications:** People who have ‘special knowledge’ or ‘practical experience’ in 1) Art 2) literature 3) science and 4) social service
- **Comparison with US constitution:** The US Senate has ‘no’ nominated members.
- **Fourth Schedule:** Schedule dealing with the allocation of seats in the RS to the states and UTs.

## Composition of the Lok Sabha

- Maximum strength of Lok Sabha: 552 (530 are the representatives of states + 20 are from UT's + 2 used to be nominated from the Anglo Indian community (Removed by 104th CAA)
- **Present situation:** 543 members - 530 (States) + 13 (Union Territories)

## Election of members of Lok Sabha

### Representation of States

- **Mode of election:** 'Directly' elected by people from the territorial constituencies of the state.
- **Election system:** First past the post system
- **Principle:** Universal Adult Franchise - Every 'Indian citizen' who is 'above' 18 years of age (61st constitutional amendment act reduced the voting age from 21 years to 18).
- **Disqualification:** Can be disqualified under provisions of the constitution or any law.

### Representation of Union Territories

- **Constitutional Provision:** Constitution has 'empowered' the Parliament to prescribe the manner of choosing the representatives of UT's in the Lok Sabha.
- **Union Territories (Direct Election to the House of the People) Act, 1965** was enacted by Parliament to fulfill the constitutional provision.
- **Mode of election:** 'Directly' elected by the people of Union Territories.
- **Election system:** First past the post system

## Other facts

### Territorial Constituency

- **Objective:** For the purpose of holding 'direct elections' to the Lok Sabha, each state is divided into territorial constituencies.

### Provision related to territorial constituencies

- **Seat allocation to states in Lok Sabha:** Allocation is done in a manner which ensures that the 'ratio' between the number of seats and population is the same for all states.
- **Seat allocation to different territorial constituencies:** Allocation is done in such a manner that the 'ratio' between the population of each constituency and the number of seats allotted to it is the same throughout the state.

## Method of election

- **First-past-the-post (FPTP) system** is also known as the 'simple majority' system.
- **Procedure:** In this voting method, a person is elected because they get more votes than anyone else in the constituency they want to represent. They need not get the majority votes.
- **Example:** In the 2014 election, NDA got only 31% of the total votes cast and still won (as it was more than everyone else). Total of 69% of those who voted did not vote in favor of BJP.
- **Proportional Representation:** A political system in which parties are represented in parliament according to the number of people who voted for them.
- **Single transferable vote:** In this system, the voters rank candidates in 'order of preference'. Their vote is allotted to their 'first' preference. If no one emerges with a majority - then the 'least voted' candidate is removed from consideration and the 'second' choices of those who voted for him are taken into consideration. This process continues till a winner with a majority emerges.
- In **India**, Proportional Representation is 'found' in election of 1) President 2) Vice President 3) Members of Rajya Sabha 4) Members of state legislative council.

## DURATION OF BOTH HOUSES

### Rajya Sabha

- Permanent house or continuing chamber (i.e., cannot be dissolved).
- Members do retire. One-third of its members retire every second year.
- They are eligible for **re-election** and **re nomination** any number of times.
- Term of member of the Rajya Sabha is not given in the constitution - 'Parliament' decides.
- Parliament passed Representation of people Act (1951) - Term of office of RS member - 6 years.

### Lok Sabha

- **Term of Lok Sabha:** 5 years.
- **Subject to dissolution:** 1) Automatic dissolution – After completion of the term of 5 years. 2) President is authorized to dissolve the Lok Sabha at any time.
- **Extension:** Term can be extended during 'national emergency'

## MEMBERSHIP OF PARLIAMENT

Parameters	Related Facts
<b>Qualifications</b>	<p><b>Constitutional requirement:</b></p> <ol style="list-style-type: none"> <li>1. Make and subscribe to oath or affirmation (Schedule 3)</li> <li>2. Citizen of India</li> <li>3. Age: Rajya Sabha (30 years), Lok Sabha (25 years).</li> <li>4. Other qualifications prescribed by Parliament.</li> </ol> <p><b>Representation of People Act, 1951:</b></p> <ol style="list-style-type: none"> <li>1. Must be registered as an elector for parliamentary constituency.</li> <li>2. Must be member of SC/ST community in any state or UT → for reserved seat</li> </ol>
<b>Disqualifications</b>	<p><b>Constitutional requirement:</b></p> <ol style="list-style-type: none"> <li>1. Holds Office of Profit</li> <li>2. Unsound mind and stand so declared by court.</li> <li>3. Undischarged insolvent</li> <li>4. Not a citizen of India</li> <li>5. Parliament via legislation (RPA Act, 1951)</li> </ol> <p><b>Representation of People Act (1951):</b></p> <ol style="list-style-type: none"> <li>1. Found guilty of certain <b>election offences or corrupt practices</b> in the elections.</li> <li>2. Convicted for any offence resulting in <b>imprisonment for two or more years</b>. Not disqualified in case of Preventive Detention.</li> <li>3. Failed to lodge an account of his <b>election expenses</b> in time.</li> <li>4. Has any interest in Government contracts, Works or services.</li> <li>5. Holds <b>office of Profit/Director/Managing agent</b> in corporation where Govt has 25% stake.</li> <li>6. Dismissed from Government service due to <b>corruption or disloyalty</b>.</li> <li>7. Convicted for promoting enmity b/w groups or for offence of bribery.</li> <li>8. Has been punished for preaching and practicing <b>social crimes</b> like Sati.</li> </ol> <p>Decision of Disqualification → By President (based on Election commission opinion)</p> <p><b>Grounds of Defection:</b></p> <ol style="list-style-type: none"> <li>1. Voluntarily gives up party membership</li> <li>2. Votes or abstains from voting contrary to given direction</li> <li>3. Independently elected member joins any party</li> <li>4. Nominated members join any party after expiry of 6 months.</li> </ol> <p>Decision of Disqualification → By Speaker (Lok Sabha) or Chairman (Rajya Sabha)</p>

Parameters	Related Facts				
Vacation of Seats	Double Membership	Election	Process	Vacation of seats	
Vacation of Seats	Double Membership	Elected to both Houses of Parliament	Inform within 10 days the house he wants to serve	If doesn't inform his seat in Rajya Sabha becomes vacant	
		Sitting member of one house (LS/RS) is elected to other house (LS/RS)	-	Seat in the first house becomes vacant.	
		Elected to two seats in a House	He should exercise his option for one	If not done both seats become vacant.	
		Elected to both Parliament + State legislature	Needs to resign from his seat in SL within 14 days	If this is not done his seat in Parliament becomes vacant.	
<b>Disqualification</b>		Based on defection or grounds given in the constitution.			
<b>Resignation</b>		To Presiding officer of house.			
<b>Absent</b>		More than 60 days without permission.			
<b>Other cases</b>		Election is declared void + expelled from house + Elected to office of President or Vice President + Appointed to Office of Governor.			
<b>Note</b>		No constitutional provision is laid down to declare election of a Disqualified person as void. Dealt by RPA. 1951 which has enabled HC to declare such election as void. Appeal lies before SC in such case.			
<b>Oath or Affirmation</b>		Before President (or person appointed by President). Bear true faith and allegiance to the constitution + Uphold sovereignty and integrity of India + Discharge duty on which he is about to enter. Person cannot vote or participate in parliamentary proceeding or becomes eligible for Parliamentary proceeding without taking oath/affirmation.			
<b>Salary and allowances</b>		As determined by Parliament Salary, allowances and pension of MP's Act, 1954 provides pension for MP's Speaker/Deputy Speaker + Chairman/Deputy Chairman: Salary charged on Consolidated Fund of India.			

## PRESIDING OFFICER

- **Lok Sabha:** Speaker + Deputy Speaker + Panel of Chairpersons.
- **Rajya Sabha:** Chairman + Deputy Chairman + Panel of Vice Chairpersons

### Lok Sabha Speaker

- **Election:** Elected by 'Lok Sabha' from amongst its members + shall be a member of LS at the time of election + Date of election is 'fixed' by the president.
- **Vacation in office:** When Speaker ceases to be a member of the LS + Resignation (given to Deputy Speaker) + **Removal** by a 'resolution'

### Removal by Resolution

- **Requirements:** 14 days advance notice + Support of 50 members to admit Motion for removal.
- **Majority:** Needs 'effective majority' to be passed.
- **Impact on power of the Speaker:** During consideration of motion Speaker '**cannot**' preside over LS + Has **no casting vote** i.e. he can 'vote' during the first instance but not in case of equality of votes.
- **Note:** Lok Sabha dissolution does not lead to Speaker immediately vacating office. He continues till the next Lok Sabha meets.

## **Speaker**

- **Source of power:** Constitution + Rules of Procedure and conduct of business + Parliamentary conventions.

### **Role, Powers and Function:**

- Primary responsibility is to maintains **order and decorum** in the House for conduct of business and regulates its proceedings. He has the 'final power' in this regard.
- **Final interpreter** of the provisions of (a) the Constitution of India, (b) the Rules of Procedure and Conduct of Business of Lok Sabha, and (c) the parliamentary precedents, within the House.
- Adjourns the House or suspends the meeting in absence of a **quorum**.
- 'Does not' vote in the first instance. But he can exercise a **casting vote** in the case of a tie.
- Presides over a '**joint setting**' of the two Houses of Parliament. Joint sitting is 'summoned' by the President to settle a 'deadlock' between the two Houses over a bill.
- Speaker can allow a '**secret**' **sitting** of the House at the request of the Leader of the House.
- Final authority to certify a '**money bill**.' His decision on this question is final. (Endorses it as money bill before it sent to RS and President for approval).
- **Disqualify an MP** under defection law. (Lok Sabha). Power is subject to 'Judicial Review'.
- **Ex-officio chairman** of the Indian Parliamentary Group (link between Indian Parliament and various parliaments of the world).
- Ex-officio chairman of the conference of presiding officers of legislative bodies in the country.
- Appoints the chairman of all the parliamentary committees of the Lok Sabha.
- **Chairman of various committees** like Business Advisory Committee, the Rules Committee and the General-Purpose Committee.

### **Provisions for Impartiality and Independence of the Speaker**

- **Position in order of Precedence:** Equivalent to 'Chief Justice of India' (7th Position in order of Precedence (above cabinet ministers but below Prime Minister and Deputy Prime Minister)).
- **Speaker and Anti – Defection law:** Speaker does not need to resign from his party but if he resigns won't be disqualified under the provisions of Anti – Defection law.
- **Security of Tenure:** A proper procedure is prescribed for his removal.
- Salaries and allowances are '**charged**' on the consolidated Fund of India
- **Substantive Motion** is needed to discuss and criticize his work in the Lok Sabha
- Casting Vote 'only' - Cannot vote in the first instance while presiding the house. (Impartiality)

## **Deputy Speaker of the Lok Sabha**

- **Election:** Elected from amongst from the members of Lok Sabha. Election date is fixed by 'Speaker' (not president), in case of speaker it is President.
- **Special Privilege:** Whenever appointed as member of a Parliamentary Committee, he automatically becomes its chairman
- **Removal:** He is removed as like the Speaker of Lok Sabha.
- **Provisions for Voting:** He votes like an MP of Lok Sabha when he is not presiding, when he presides exercises a casting vote (like the Speaker).
- **Note:** Deputy Speaker is not subordinate to speaker, he is directly responsible to house.
- **Salary and allowances** are charged to consolidated fund of India (Speaker and Deputy Speaker)
- **Resignation:** He submits his resignation to the Speaker.

## **Some facts related to both Offices**

- **Origin:** Both offices came into existence as per the provisions of the 'Govt. Of India Act. 1919'.
- **Central Legislative Assembly:** First Speaker - Fredrick white; Deputy Speaker - Sachidananda Sinha
- **Vithalbhai Patel:** First 'elected' Indian speaker of central legislative assembly.
- **Post-Independence:** First Speaker - G.B. Mavlankar Deputy Speaker - Anantha Sayanam Iyyengar.

### **Speaker Pro tem**

- Presides over 'first' sitting of newly elected Lok Sabha
- Appointed by 'President'
- 'Senior most member' is selected (convention).
- Oath by the President
- Has all the powers of the Speaker.
- Ceases to exist after speaker is elected (temporary office).
- His 'main' duty is to administer 'oath' to the new members.

### **PRESIDING OFFICERS OF RAJYA SABHA**

- **Chairman:** Vice President
- **Deputy Chairman:** Elected from its members
- **Panel of Vice Chairpersons:** Nominated by Chairman, there is 'no' pro tem Chairman.
- All other points are similar to Speaker and Deputy Speaker.

### **Leader of the House (In USA Majority Leader)**

- PM (if he is a member of the Lok Sabha, if not any minister nominated by PM)
- Not mentioned in constitution.
- Provisions related to it are found in the 'Rules of the house'.
- Prime Minister is 'leader of the house' from the house he comes from. He 'nominates' the leader of the house for other house.

### **Leader of the Opposition**

- Lok Sabha + Rajya Sabha
- **Qualification:** The leader of the 'largest Opposition party' having 'not' less than 'one-tenth' seats of the total strength of the House is recognized as the leader of the Opposition in that House. (Mavlankar Rule)
- Not mentioned in constitution.
- **Recognition:** Statutory status through the - Salary and allowance of the opposition and parliament act, 1977.
- Recognition given by Speaker in case of Lok Sabha, Chairman in case of Rajya Sabha.
- **Fact:** Post is equivalent to rank of Cabinet Minister.
- **Similar provisions in UK and USA:** Britain – Shadow cabinet (Leader of Opposition is called as alternative Prime Minister in UK). USA – Minority leader.

### **Whip**

- Assistant floor leader
- Appointed by political party
- 'Not' mentioned in Constitution nor in the Rules of the House nor in a Parliamentary Statute.
- It is based on the 'conventions of the parliamentary government'.

### **SESSIONS OF THE PARLIAMENT**

Keywords	Related Facts
Session	<ul style="list-style-type: none"> <li>• Period spanning between the 1st sitting of a House and its prorogation (or dissolution in the case of LS).</li> <li>• Normally '3 sessions' are held: Budget, Monsoon, Winter session.</li> </ul>
Budget Session	February to May
Monsoon Session	July to September
Winter Session	November to December

Keywords	Related Facts
<b>Sitting</b>	<ul style="list-style-type: none"> <li>Session of Parliament consists of many meetings (Everyday meeting).</li> <li>Each meeting of a day consists of two sittings. (Morning Sitting, Post Lunch sitting).</li> </ul>
<b>Constitutional requirement</b>	<ul style="list-style-type: none"> <li>'Maximum gap' between two sessions '<b>shall</b>' not be more than 6 months</li> </ul>
<b>Recess</b>	<ul style="list-style-type: none"> <li>The house between sessions is set to be in recess</li> </ul>
<b>Summon</b>	<ul style="list-style-type: none"> <li>Issuing a call to be present</li> <li>By President (Atleast twice a year)</li> </ul>
<b>Adjournment</b>	<ul style="list-style-type: none"> <li><b>Suspends the work</b> in a 'sitting' for a 'specified' time, which may be hours, days or weeks.</li> <li>Done by '<b>presiding</b>' officer.</li> </ul>
<b>Adjournment sine die</b>	<ul style="list-style-type: none"> <li>Terminating a '<b>sitting</b>' of Parliament for an <b>indefinite</b> period</li> <li>Declared when the business of the house is finished</li> <li>Done by '<b>presiding</b>' officer</li> </ul>
<b>Quorum</b>	<ul style="list-style-type: none"> <li>'Minimum number of members' (1/10th of total members including Presiding officer) required before house can transact any business +</li> <li>No Quorum → 'Presiding' officer can either choose to 'adjourn' the House or to 'suspend' the meeting until Quorum is there.</li> </ul>
<b>Prorogation</b>	<ul style="list-style-type: none"> <li>Usually follows Adjournment Sine die</li> <li>Terminate sitting' + 'session' of the House. It is done by the President.</li> </ul>
<b>Dissolution</b>	<ul style="list-style-type: none"> <li>Done by 'President'.</li> <li>Applies only in case of Lok Sabha, RS is never dissolved (since it is a permanent house).</li> <li><b>Types</b> – 2 Types 1) Automatic Dissolution - After 5 years Lok Sabha gets automatically dissolved. 2) Whenever the President decides to dissolve the House (which he is authorized to do).</li> <li><b>Impact:</b> All business including bills, motions, resolutions, notices, petitions and so on pending before it or its committee's lapse (Exception mentioned below).</li> </ul>
<b>Lame-duck Session</b>	<ul style="list-style-type: none"> <li>Last session of the existing Lok Sabha, after a new Lok Sabha has been elected</li> </ul>

### Dissolution of LS and lapse of the bills

Bills which Lapse	Bills which do not Lapse
<ul style="list-style-type: none"> <li>All pending bills which originated in Lok Sabha + are present in Lok Sabha → lapse</li> <li>Certain bills that are to be examined committee on government assurances do not lapse.</li> </ul>	<ul style="list-style-type: none"> <li>A bill originated and pending in Rajya Sabha does not lapse.</li> <li>A bill passed by both houses and pending assent by 'President' does not lapse.</li> <li>A bill sent for 'reconsideration' by president does not lapse.</li> </ul>

### Adjournment vs Prorogation

Comparison	Adjournment	Prorogation
Terminates	Sitting	Session (also sitting)
Who does it?	Presiding officer	President
Impact	No impact on bills	Lapses all pending notices but not bills (exception – 'notice' for introducing bills do not lapse).

### VOTING IN THE HOUSE

- All matters at any sitting are decided by a majority of votes of the members present and voting, 'excluding' the presiding officer (Only casting vote in case of equality of votes).
- Voting → Ordinary Majority → Usually used Special Majority → Certain Special Circumstances.
- Examples** of cases for special majority (only few) - Impeachment of President, Amendment of Constitution etc.

### **Procedure for Voting**

- Debate concludes → Speaker puts the question for ‘voting.’
- **Voice Voting** → ‘Ayes’ (favor the motion) and ‘No’ (who do not favor the motion).
- **Final Opinion** → given by Speaker in favour of Ayes or Noes. (his discretion)
- If the speaker opinion is not challenged, then he gives his decision.
- **Final decision** → Speaker - The Ayes (or the Noes, as the case may be) have it’
- Thus, the question before the House is determined (after the decision of the Speaker).

### **Speaker decision is challenged - Procedure ‘continues’**

- Speaker orders the lobby to be cleared. (3 and half minute lapses)
  - Voice voting procedure is repeated, and Speaker again gives his opinion.
- In case the Decision is again challenged - Procedure continues.
- Following ‘options’ lie before the Speaker
- Automatic vote recorder
  - ‘Aye’ and ‘No’ Slips in the House
  - Members going into the Lobbies: Speaker can ask members to rise in their places (those in favour and against) and, after a count has been taken gives his decision (voters name are not recorded).

### **Language in the Parliament**

- **Constitutional Provision:** ‘Hindi’ + ‘English’ - languages for transacting business in Parliament.
- **English** was to be ‘discontinued’ as a ‘floor language’ after 15 years from commencement of constitution.
- **Official Languages Act (1963)** allowed English to be continued along with Hindi.
- **Provision for other languages:** A member can address the House in his ‘mother-tongue’ with ‘prior permission’ from the Presiding officer.

## **DEVICES OF PARLIAMENTARY PROCEEDING**

### **Question Hour**

- **Definition:** Usually ‘First hour’ of every parliamentary sitting
- **Purpose:** Members (of Parliament) ask questions and the ministers (Executive) give answers.
- ‘3 kinds’ of questions are asked in the Question hour – Starred, Unstarred, Short notice.

Types of Questions	Response
<b>Starred question</b>	Oral answer, Supplementary questions - Yes
<b>Unstarred question</b>	Written answer, Supplementary questions – No
<b>Short Notice</b>	Asked on Notice of less than ten days - answered orally

- It is ‘mentioned’ in the Rules of procedure

### **Zero Hour**

- **Definition:** It starts ‘immediately’ after the question hour and lasts until the agenda for the day is taken up.
- It is ‘not’ mentioned in the ‘Rules of Procedure’
- No prior notice is needed to raise issue + Informal nature + Indian innovation.

### **Motion**

- **Definition:** It is a procedural device to start ‘discussion’ in the House on a matter of general public interest.
- **Purpose** - It can be understood as a proposal submitted to the House for eliciting its decision.

### Nature of Motions

- **Substantive Motion:** Self-contained motion. Deal with very important matter (Impeachment of President, Removal of chief election commission).
- **Substitute Motion:** It's substitute to change the existing motion. Adoption by the House, supersedes the original motion.
- **Subsidiary Motion:** To add on to the existing motion.

### Types of Motion

#### Closure Motion

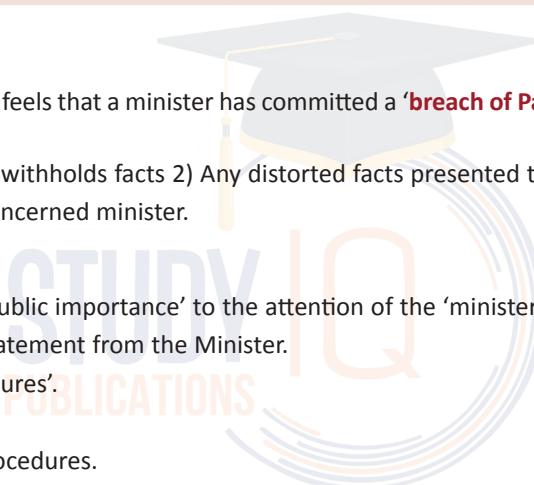
- **Purpose:** To cut short the debate in the house and put the matter to vote.

##### Types of Closure Motions

Simple closure	Matter has been discussed enough now all should vote
Closure by compartment	A lengthy bill is grouped in 'parts'. These parts are discussed as a whole and then they are put to vote.
Kangaroo closure	'Only' important clauses are taken for discussion and voted on
Guillotine closures	'Undiscussed clauses' of a bill are put to vote due to less time

#### Privilege Motion

- Moved by a member when he feels that a minister has committed a '**breach of Parliamentary privileges**' of the House / members.
- Breach means If a minister 1) withholds facts 2) Any distorted facts presented to the house.
- Purpose is to 'Censure' the concerned minister.



#### Calling Attention Motion

- To bring a matter of urgent 'public importance' to the attention of the 'minister'.
- Also seeks an authoritative statement from the Minister.
- Mentioned in 'rules of procedures'.
- Indian innovation
- It is mentioned in 'rules of procedures'.

#### Adjournment Motion

- It seeks to bring a matter of urgent 'public importance' to attention of the 'house'.
- **Extraordinary device** as it interrupts the 'normal business of the House'.
- Allowed 'only' in Lok Sabha.
- It needs the support of '50 members' to be admitted.
- **Should** raise a matter which is definite + factual + urgent + specific + recent occurrence.
- **Should not** deal with privileges + matters in court + Matters completely discussed' in the same session.

#### Confidence motion

- President calls Government to prove majority in the house (or Government itself seeks it).
- Confidence motion is not passed → Government falls.
- It is allowed 'only' in the 'Lok Sabha'.
- It needs the support of 50 members to be admitted.

#### No-Confidence Motion

- Enforces the provision of 'collective responsibility' which is found in Article 75(3).
- Moved against the 'entire council of ministers'.
- No reason is necessary, can be introduced by any member
- If it is passed government shall resign.

### Facts related to no – confidence motion

Key Facts Related to No-Confidence Motion	
'First' ever 'no confidence motion'	Year – 1963 (Acharya Kriplani)
'Maximum number' of 'No confidence motion' faced	Indira Gandhi (15)
'Total number' of 'No confidence motion' since Independence.	27
Recent 'no confidence motion'	Narendra Modi Government (Defeated the motion)
PM who resigned due to 'no confidence motion'	Morarji Desai

### Censure Motion

- Against 'individual' or 'group of ministers'.
- Reasons for censure need to be stated.
- Different from no confidence motion:** If passed the Ministers need not resign.
- Impact:** The passing of this motion may invite 'no confidence motion'.

### Motion of Thanks

- To 'thank' President of India for his address to the parliament.
- The first session after each general election and the first session of every year is addressed by the President.
- The programs and performance of the government are presented to the house by the President.
- If this motion is not passed it leads to **defeat of the government**.

### Point of Order

- It is a device to discipline and bring order to the house.
- It is raised when proceedings of the house don't follow the normal rules and procedure.
- It suspends the proceeding of the house.
- Provisions related to Point of Order** – 1) No debate is allowed 2) It is usually raised by an opposition member in order to control the government.

### Short duration discussion

- No voting takes place, no formal motion exists related to this in the house.

### Resolution

- A resolution can be moved by a member or Minister on a matter of general public interest.
- Resolution is similar to a 'substantive motion' – Used for very important issues.
- Different from Motion:** All motions are not substantive, nor all motions need to be put to vote. In contrast all 'resolution' are 'substantive' and needed to be put to 'vote'.

### Types of Resolution

- Private Member Resolution:** Moved by private member. Private member are member of the house other than minister. Discussion on it is fixed - Alternate Fridays and Afternoon sittings.
- Government Resolution:** Moved by a minister. Can be taken any day – Monday to Thursday.
- Statutory resolution:** It can be moved either by a private member or a minister.
- It is known as 'statutory' resolution because it is always tabled in pursuance of a provision in the Constitution or an Act of Parliament.

## LEGISLATIVE PROCEDURE IN THE PARLIAMENT

- Procedure for legislation:** The procedure to make law is 'identical' in both houses.
- Bill:** It is a 'proposal' for legislation.
- Act/Law:** Only when the bill (proposal for legislation) is passed it become an act or a law.
- 2 Kinds of bills:** Bill introduced in the Parliament are of 2 types – 1) Public Bills 2) Private bills.

### Difference between a public and private bill

Comparison	Public bill	Private bill
<b>Introduction</b>	By Minister	Other than a Minister
<b>Notice Period</b>	7 days	30 days
<b>Approval chance</b>	Greater chance	Lesser chance
<b>Implications</b>	Rejection – Want of Parliamentary confidence	Rejection – No implication on Government
<b>Assistance</b>	Concerned Department assistance	No Assistance

### Ordinary bill

- **Introduction** – 1) ‘Either’ house of Parliament (LS or RS) 2) By a ‘Minister’ or ‘any other member’.

It goes through three readings -

#### Process of Passing Ordinary Bill in the Parliament

<b>First House</b>	<ul style="list-style-type: none"> <li>• <b>First Reading:</b> 1) Bill Published in the ‘official gazette’ 2) No discussion</li> <li>• <b>Second Reading:</b> 1) General Discussions 2) Committee stage - It is given for select committee (depends on the discretion of the government), 3) Consideration stage - Amendment are passed.</li> <li>• <b>Third Reading:</b> Final Acceptance or Rejection of the bill through voting.</li> <li>• After being passed with ‘Simple majority’ in the 1st house (LS/RS), bill is authenticated by the ‘Presiding officer’ and transmitted to the 2nd house.</li> </ul>
<b>Second House</b>	<ul style="list-style-type: none"> <li>• Goes through all three readings again.</li> <li>• After consideration the 2nd house can pass the bill (without amendment)/ Reject the bill/Keep the bill pending without taking any action/ Pass the bill (with amendment) and send to the 1st house for reconsideration.</li> </ul>
<b>Bill is considered passed if</b>	<ul style="list-style-type: none"> <li>• Second house passes with no amendment</li> <li>• First house accepts the bill passed with amendment.</li> </ul>
<b>Deadlock</b>	<ul style="list-style-type: none"> <li>• Second house rejects the bill</li> <li>• Second house doesn’t take any action for six months</li> <li>• First house rejects amendments proposed by the second house.</li> <li>• In case of Deadlock → Provision of Joint Sitting exists</li> </ul>
<b>Joint Sitting</b>	<ul style="list-style-type: none"> <li>• Constitutional provision: Article 108</li> <li>• Presidency in order: Presided by Speaker → Deputy Speaker → Deputy Chairman of Rajya Sabha (Chairman of RS does not preside Joint Sitting).</li> <li>• The bills need to be passed by ‘Simple majority’ at Joint sitting</li> <li>• Domination of LS due to numbers.</li> <li>• Governed by rules and proceedings of Lok Sabha.</li> <li>• President assent → bill becomes act (equal power w.r.t ordinary bill).</li> <li>• Provision of Joint Sitting has ‘only’ been used 3 times - 1) Dowry Prohibition Bill, 1960 2) Banking Service commission bill, 1977 3) Prevention of Terrorism bill, 2002</li> </ul>

### Assent of the President

Assent	Implications
President gives assent	Bill becomes an act/law
President doesn't assent	Bill does not become an act/law
President send the bill for reconsideration	It will be reconsidered but if it is passed by both houses again (with or without amendment) President ‘must’ give his assent.

## Money bills

Constitutional provision	Article 110
<b>Article 110</b>	<p>Money bill should contain 'only' provisions related to -</p> <ol style="list-style-type: none"> <li><b>Taxes:</b> The imposition, abolition, remission, alteration or regulation of any tax.</li> <li><b>Regulation of 'Borrowing of money'</b> by the 'union government.'</li> <li><b>Custody</b> of the 'consolidated of India' or 'contingency fund of India'</li> <li><b>Appropriation'</b> of money out of 'consolidated fund of India.'</li> <li><b>Declaration'</b> of an expenditure 'charged' on the consolidated fund of India</li> <li><b>Receipt'</b> of money on account of 'consolidated fund of India' or the 'public accounts of India'.</li> <li>Any matter incidental to any of the matters specified above</li> </ol>
<b>Matters which are not money bill:</b>	<ol style="list-style-type: none"> <li>Fines &amp; penalties</li> <li>Taxes of local government</li> <li>Service fees.</li> </ol>
<b>Facts</b>	<p>Prior permission of President is needed.      President cannot send the bill for reconsideration.      Introduced 'only' in the Lok Sabha. 'Only' by a minister.      Final decision with regards to whether a bill is a money bill or not is taken by Speaker.      Decision cannot be questioned at any court of law.      Limited role of RS 1) Cannot reject or amend a money bill 2) Should return it within 14 days of consideration 3) Can 'only' recommend changes which LS may or may not accept.      Provision of joint sitting is not available in case of money bill.</p>

## Financial bills

**Constitutional provision:** Article 117

### Financial bills 1

- Definition:** 117(1) A bill that contains matters of Articles 110 + other matters of general legislation
- Procedure:** 1) It can be introduced in 'Lok Sabha' with 'prior recommendation' of President 2) In remaining aspects it is just like ordinary bill.

### Financial bill 2

- Definition:** Article 117 (2) contains the provision involving expenditure from 'consolidation fund of India', doesn't include any matters mentioned under article 110.
- It is similar to an 'ordinary bill'
- Exception:** It can't be passed unless President has recommended to the house to consider that bill. (The recommendation is only required at consideration stage not at introduction stage).

Objective	Ordinary bill	Money bill	Financial bill 1	Financial bill 2
<b>Introduction</b>	LS/ RS	Lok Sabha only	Lok Sabha only	LS + RS
<b>Prior Prez. permission</b>	No	Yes	Yes	No
<b>Joint Sitting</b>	Yes	No	Yes	Yes
<b>Status of LS vs RS</b>	LS = RS	LS>> RS	LS = RS	LS = RS
<b>Recommendation of President</b>	Not needed	Needed	Needed	Not needed
<b>Duration (RS can keep the bill)</b>	6 months	14 days	6 months	6 months

## BUDGET IN THE PARLIAMENT

- Constitution refers to the budget as 'Annual financial statement.'
- Article 112 deals with 'Annual financial statement'

### **Constitutional Provisions**

- President** lays before both 'houses of Parliament' the '**Annual financial statement**'.
- Demand for Grants:** Need to have 'Prior recommendation' of the President.
- To 'withdraw' money from the 'consolidated fund of India' → Pass 'Appropriation bill.'
- Tax can be levied and collected '**only**' via authority of law → Pass Finance bill. Parliament can 'reduce' or 'abolish' a tax but 'cannot' increase it. **Finance bill** (Taxation) can be introduced 'only' in the Lok Sabha + Prior recommendation of President.
- Voting on demand for Grants** is the 'Exclusive' privilege of the Lok Sabha
- Expenditure is of 'two types': Expenditure 'charged' upon the consolidated fund of India (NON-VOTABLE) 2) The expenditure 'made' from the Consolidated Fund of India. (VOTED).
- Budget '**shall**' (this means compulsorily) distinguish expenditure on 'revenue account' from other expenditure.

### **List of 'Charged expenditure' on the 'Consolidated Fund of India.'**

- 'Expenditure' related to → President, 'Chairman' and 'Deputy Chairman' of the Rajya Sabha, 'Speaker' and 'Deputy Speaker' of the Lok Sabha, 'Judges' of Supreme Court, Judges of high courts (**only** pension), Comptroller and Auditor General of India, Union Public Service Commission, Administrative expenses of the Supreme Court, office of the Comptroller and Auditor General of India and the Union Public Service Commission. (including the salaries, allowances and pensions of the persons serving in these offices).
- 'Debt charges' for which the Government of India is liable.
- Any sum required to 'satisfy' any judgement, decree or award of any court or arbitral tribunal.
- Any other expenditure 'declared' by the Parliament to be charged on Consolidated Fund of India.

### **Stages in Budget**

- Presentation of the Budget → General discussion → Scrutiny by departmental committees → Voting on demand for Grants → Passing of Appropriation bill → Passing of finance bill .

### **Presentation of Budget**

- Date** - Budget is presented on 1st February.
- Finance minister presents the 'General Budget' with a speech known as the 'budget speech'.
- After the budget speech in the Lok Sabha → Budget is laid before the 'Rajya Sabha'
- Rajya Sabha can '**only**' discuss it and has no power to vote on the demand for grants.

### **General Discussion**

- Only discussion takes place no motion is moved or submitted in the house.

### **Scrutiny by departmental committees**

- 24 'departmental standing committees' of Parliament examine and discuss in detail the demands for grants of the concerned ministers.

### **Voting on demand for Grants**

- The voting on demands for grants is the exclusive privilege of the Lok Sabha.
- 'Charged expenditure' on the Consolidated Fund of India can only be 'discussed'.
- Each demand is voted separately by the Lok Sabha.
- Members can also move to reduce any demand for grants (through cut motions)
- But increase or upward revisions of estimates are not permissible.
- Cut motions are moved to bring 'moral pressure' on the executive (rarely passed as it would amount to want of parliamentary confidence).

### Types of Cut motions

Types of Cut Motions	
<b>Policy Cut Motion (Amount of demand be reduced to Re 1.)</b>	Represents the disapproval of the policy underlying the demand. Members advocate for an alternative policy.
<b>Economy Cut Motion: (Amount of demand be reduced by specified amount)</b>	Can be a lump sum reduction in the demand or omission or reduction of an item in the demand. Notice should precisely indicate the matter on which discussion is sought. Discussion should be confined to talk about how economy would be effected.
<b>Token cut motion (Amount be reduced by ₹ 100)</b>	Aims to ventilate grievance within sphere of Government. Grievance should be confined to particular grievance specified in motion.

Articles 113 and 114 provide for the presentation of various kinds of demands for grants by the Parliament.

Grant or Budget	Reason
<b>Supplementary grant</b>	When amount granted for a particular service is found to be insufficient
<b>Additional grant</b>	Additional expenditure upon new service
<b>Excess grant</b>	When money has been spent more than the amount granted
<b>Token Grant</b>	To make appropriation from one service to other
<b>Vote on Credit</b>	To meet an unexpected demand
<b>Vote on account</b>	Budget for less than a year

- '**Appropriation bill**' is presented → To take money out of consolidated fund of India
- '**Finance bill**' → It consists of revenues (taxes of the government). Last stage of the Budget. Needs to be passed within **75 days** (Provisional Collection of Taxes Act of 1931).

Name of the Fund	Article	Custody	Objective
<b>Consolidated Fund</b>	266	Parliament	Revenues (Tax & Non-Tax), Treasury Bills, Ways and means advances
<b>Public account of India</b>	266	Executive	All other public money received by govt (other than what goes to consolidated fund) Ex: PF, Post Office Savings etc,
<b>Contingency Fund</b>	267	President - Finance Secretary handles it -Post expenditure the Parliament approves it.	To meet emergency expenditure fund size is determined by the parliament.

### PARLIAMENTARY PRIVILEGES

- **Constitutional provision:** Article 105
- Refer to special rights, immunities and exceptions enjoyed by both houses, committees and members.
- Aims to secure independence, autonomy and dignity of houses.
- '**Not**' codified, enforced by presiding officer.
- These are available to Attorney General; Union Ministers extend to Parliament Committees too.
- **Article 105** It talks about '**only**' certain privileges 1). Freedom of Speech in Parliament, 2. Non liability in court regarding his work in Parliament.
- Other privileges are stated those are related to 'British house of commons'.
- Does not extend to President.

### Collective Privileges

- **Publish:** To publish reports and debates and prohibit others from publishing them.
- **Regulatory powers:** It can regulate its proceedings, procedure, conduct of business

- **Penal powers:** It can punish people for breach of privileges
- **Legal proceedings:** No legal process can be served without the permission of the presiding officer
- **Right to be informed:** Right to receive immediate information of arrest/ detention of its member
- **Prohibition on court:** Courts are prohibited to inquire into proceedings of the Parliament.

### **Individual Privileges**

- Cannot be arrested during the session and 40 days before and after the session (only in civil cases)
- Exempted from jury service.
- Freedom of speech, no member is liable to any court.

## **PARLIAMENTARY COMMITTEES**

Parliamentary committee deal with varied and complex nature of Parliamentary work + in depth consideration of all the legislative and other matters.

### **What is a Parliamentary committee?**

- Parliamentary Committee: 'Committee' which is 'appointed' or 'elected' by the House or 'nominated' by the Speaker (Lok Sabha) or Chairman (Rajya Sabha).
- Works under the direction of the Speaker/Chairman.
- Present its report to 1) The House or 2) Speaker/Chairman
- Provided with a secretariat in Rajya Sabha or Lok Sabha

### **Classification of Parliamentary committee**

- 2 kinds – 1) Standing Committees 2) Ad hoc Committees.

#### **Standing Committees**

- 'Permanent' and 'regular' committees which are constituted from time to time in pursuance of the provisions of an Act of Parliament/Rules of Procedure/Conduct of Business in Lok Sabha.
- Continuous nature of work
- **Example** - The Financial Committees, DRSCs and some other Committees come under the category of Standing Committees.

#### **Ad - hoc Committees**

- They are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report.
- The 'principal' Ad hoc Committees are the Select and Joint Committees on Bills.
- **Other examples:** Railway Convention Committee, Joint Committee on Food Management in Parliament House Complex etc.

### **Financial committees (Standing committees)**

#### **Public Accounts committee**

##### **Key Facts Related to Public Accounts Committee**

<b>Year of establishment</b>	1921 (Montagu – Chelmsford reforms)
<b>Members</b>	22 (15 – Lok Sabha 7 – Rajya Sabha)
<b>Election of Members</b>	Proportional Representation – Single transferable vote Fact – A 'minister' cannot be appointed
<b>Term of office</b>	1 year
<b>Chairman</b>	'Speaker' appoints from among the members Note – Since 1967 convention to appoint from the opposition

#### Key Facts Related to Public Accounts Committee

<b>Function</b>	To examine the annual audit reports of the Comptroller and Auditor General of India (CAG), which are laid before the Parliament by the President.
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#### Functions of Public Accounts Committee

- Examine 'appropriation' + 'finance' accounts of the Central government which is laid before LS.
- Scrutinizes the 'audit' reports of CAG to satisfy 'itself' that 1) Money that was disbursed was legally available for the service or purpose 2) Expenditure conforms to the authority that governs it 3) Every re-appropriation has been made in accordance with the related rules.
- It examines the accounts of 1) State corporations 2) Trading concerns 3) Manufacturing projects  
The audit report of these bodies are made by the CAG.
- It examines the accounts of 1) Autonomous bodies 2) Semi-autonomous bodies. (Audit report made by CAG).
- It keeps a check on the money spent on any service during a financial year. If the money is in excess of the amount granted by the Lok Sabha for that purpose, it goes on to its report.

#### Limitation of Public Accounts Committee

- Cannot intervene in the questions of policy.
- Post facto analysis: It can keep a tab on the expenses only after they are incurred.
- It has no power to limit expenses.
- Cannot intervene in matters of day-to-day administration.
- Advisory Nature: Any recommendation that the committee makes is only advisory.
- It is not vested with the power of disallowance of expenditures by the departments.
- Not an executive body hence it 'cannot' issue an order. Only the Parliament can take a final decision on its findings.

#### Estimates Committee

##### Key Facts Related to Estimates Committee

<b>Year of Establishment</b>	1921 (post-Independence: 1950, on the recommendations of Finance Minister John Mathai)
<b>Members</b>	30 (All members belong to the Lok Sabha only)
<b>Election of Members</b>	By Lok Sabha (PR – STV) Fact - A minister cannot be elected
<b>Term of Office</b>	1 Year
<b>Chairman</b>	Speaker appoints him/her from amongst the members (Ruling Party)
<b>Function</b>	To examine 1) The estimates included in the budget presented in the parliament 2) To suggest economies in public expenditure.

#### Functions of the Estimates committee

- It reports on the budget estimates and its impact.
- Seeks to bring efficiency and economy in governmental administration
- Suggests alternative policies
- It examines whether the money is well laid out within the limits of the policy implied in the estimates
- To suggest the way in which the estimates are to be presented to Parliament.

#### Limitations of Estimates committee

- The committee can only examine the budget after it is voted upon and not before that.
- Cannot question the policies of the Parliament.
- The recommendation made by the committee are 'advisory' in nature and stand 'non-binding' for the parliament.
- Estimates committee examines 'only' certain selected ministries and departments every year. Thus, by rotation, it would cover all the ministries over several years.

## **Committee on Public Undertakings**

<b>Key Facts Related to Public Undertaking</b>	
<b>Year of Establishment</b>	1964 (On the recommendation of Krishna Menon Committee)
<b>Members</b>	22 (15 – Lok Sabha 7 – Rajya Sabha)
<b>Election of Members</b>	By Parliament every year (PR – STV)
<b>Term of Office</b>	1 year
<b>Chairman</b>	By Speaker (Chairman belongs only to Lok Sabha)
<b>Function</b>	To examine the reports and accounts of the Public Sector Undertakings

### **Functions of the committee**

- Reports and Accounts of Public Sector Undertakings (PSUs) are examined by the committee,
- CAG's reports on PSUs is also taken up by this committee
- Check the credibility of the business of public sector undertakings.
- Checks the efficiency and autonomy of PSUs
- Performs those functions related to PSUs that are given to it by the Lok Sabha speaker

### **Limitations**

Cap on PSU it can examine, post facto analysis, lack of technical expertise, Advisory nature.

## **Departmental Standing Committees**

- There are a total of 24 'Departmental Standing Committees' - 8 under Rajya Sabha and 16 under Lok Sabha.
- **Facts:** Advisory Nature, Does not look into day-to-day administration.
- **Functions:**
  1. Look into 'demand for grants' of the concerned ministries. They don't propose any cut-motion
  2. Examine the bills of the concerned ministry
  3. Work upon the annual reports of the ministries
  4. Consider policy documents presented the ministries before both the houses

## **Comparison Among Different Committees**

Criteria	Estimates committee	Public Accounts Committee	Committee on Public Undertaking	Departmental Standing committee
<b>Year</b>	1950	1921	1964	1993
<b>Committee/Acts</b>	John Mathay committee	Montagu Chelmsford Act	Krishna Menon committee	Rules of committee LS
<b>Composition</b>	30 (Lok Sabha)	22 (15 – LS 7 – RS)	22 (15 – LS 7- RS)	31 (21 – LS 10 – RS)
<b>Supportive officer</b>	No	CAG	No	No
<b>Policy involvement</b>	Yes, can suggest alternative policy to bring economies in expenditure	No	No	No
<b>Function</b>	Examine the budget and suggests economies of public expenditure.	Examine CAG Audit report and discover the irregularities.	Examine reports and accounts of public sector undertakings (Doesn't involve itself with day-to-day administration.	Examine bills, demands of grants and other matters recommended to them. Ensure financial accountability of executives of the parliament

## CHAPTER 20

# State Legislature

- **Constitutional provision:** Articles 168 to 212 (Part VI)
- **Composition:** Governor, Assembly, Council (in some states)

### ORGANISATION OF STATE LEGISLATURE

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- **No uniformity:** Unicameral system (most states) + Bicameral system (other states)
- **Present status:** Six states have bicameral system (Andhra Pradesh, Telangana, Uttar Pradesh, Bihar, Maharashtra and Karnataka). Rest 22 states have unicameral legislature.
- **Upper house:** legislative council (Vidhan Parishad), **Lower House:** legislative assembly (Vidhan Sabha)
- **Legislation council:** Constitution provides for the abolition or creation of legislative councils (Article 169). Can be done by Parliament based on resolution passed by State Legislative assembly (Needs to be passed by Special majority). Parliament needs to approve this by Simple majority (It is not considered as an amendment under Article 368).

### COMPOSITION OF THE HOUSES

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#### **Legislative Assembly**

- Direct election, Based on Universal Adult Franchise.
- Maximum strength - 500, Minimum - 60, [ Exception (Arunachal Pradesh, Sikkim, Goa Minimum Number is 30, Mizoram - 40, Nagaland - 60
- **Nominated Member:** Nomination of Member from Anglo Indian Community was done away by 104th Constitutional amendment.
- **Territorial constituencies:** Division for purpose of Direct Election + Uniformity is maintained b/w different constituencies + Re adjustment done after every census (in total number of seats in assembly + division of each state into territorial constituencies, done by Delimitation commission).
- Seats are reserved for SC's and ST's in proportionate to their population

#### **Legislative Council**

- Indirectly elected
- Minimum 40, Maximum one - third of the size of Legislative Assembly (Given in constitution)
- Actual strength of the House: Fixed by Parliament

#### **Manner of Election**

- Indirectly elected (5/6 members) + Nominated by Governor (1/6 members).
- Members are nominated from fields of Art, Literature, Cooperative movement, Science and Social Services.
- Election on basis of Proportional representation with Single transferable vote.

Member in Legislative council	Elected or Nominated By
• 1/3rd members	Members of Local bodies
• 1/12th members	By Graduates (residing within states)
• 1/12th members	By Teachers (3 years + At least secondary school)
• 1/3rd members	MLAs (Both elected and nominated)
• Remaining 1/6th members	Nominated by Governor

## DURATION OF BOTH HOUSES

### **Legislative Council**

- Permanent house or continuing chamber (i.e., cannot be dissolved but, can be abolished by an act of Parliament).
- Members do retire. One-third of its members retire every second year.
- They are eligible for **re-election** and **re nomination** any number of times.

### **Legislative assembly**

- **Term of Legislative assembly:** 5 years.
- **Subject to dissolution:** 1) Automatic dissolution – After completion of the term of 5 years. 2) Governor is authorized to dissolve the Legislative assembly at any time.
- **Extension:** Term can be extended during 'national emergency'

## MEMBERSHIP OF STATE LEGISLATURE

Parameters	Related Facts
<b>Qualifications</b>	<p><b>Constitutional requirement:</b></p> <ol style="list-style-type: none"> <li>1. Make and subscribe to oath or affirmation.</li> <li>2. Citizen of India</li> <li>3. Age: Legislative council (30 years), Legislative Assembly (25 years).</li> <li>4. Other qualifications prescribed by Parliament.</li> </ol> <p><b>Representation of People Act, 1951:</b></p> <ol style="list-style-type: none"> <li>1. Election to Legislative council: Must be registered as an elector for Assembly constituency in the concerned state. For Governor nomination needs to be a resident in the State.</li> <li>2. Election to Legislative assembly: Must be an elector for assembly constituency in the concerned state.</li> <li>3. Must be member of SC/ST community if he/she wants to contest seat reserved for them.</li> </ol>
<b>Disqualifications</b>	<p><b>Constitutional requirement:</b></p> <ol style="list-style-type: none"> <li>1. Holds Office of Profit</li> <li>2. Unsound mind and stand so declared by court.</li> <li>3. Undischarged insolvent</li> <li>4. Not a citizen of India</li> <li>5. Parliament via legislation (RPA Act, 1951)</li> </ol> <p><b>Representation of People Act (1951):</b></p> <ol style="list-style-type: none"> <li>1. Found guilty of certain <b>election offences or corrupt practices</b> in the elections.</li> <li>2. Convicted for any offence resulting in <b>imprisonment for two or more years</b>. Not disqualified in case of Preventive Detention.</li> <li>3. Failed to lodge an account of his <b>election expenses</b> in time.</li> <li>4. Has any interest in Government contracts, Works or services.</li> <li>5. Holds <b>office of Profit/Director/Managing agent</b> in corporation where Govt has 25% stake.</li> <li>6. Dismissed from Government service due to <b>corruption or disloyalty</b>.</li> <li>7. Convicted for promoting enmity b/w groups or for offence of bribery.</li> <li>8. Has been punished for preaching and practicing <b>social crimes</b> like Sati.</li> </ol> <p>Decision of Disqualification: By Governor (based on Election commission opinion)</p> <p><b>Grounds of Defection:</b></p> <ol style="list-style-type: none"> <li>1. Voluntarily gives up party membership</li> <li>2. Votes or abstains from voting contrary to given direction</li> <li>3. Independently elected member joins any party</li> <li>4. Nominated members join any party after expiry of 6 months.</li> </ol> <p>Decision of Disqualification: By Speaker (Legislative Assembly) or Chairman (Legislative council). Decision is subject to Judicial review (Kihota Hollohan vs. Zachilhu Case).</p>

Parameters	Related Facts
<b>Vacation of Seats</b>	<p><b>Double Membership</b> Cannot be a member of both houses of State Legislature. If elected to both houses his seat in one of the houses becomes vacant according to provisions made by State Legislature via law.</p> <p><b>Disqualification</b> Based on defection or grounds given in the constitution.</p> <p><b>Resignation</b> To Presiding officer of house.</p> <p><b>Absent</b> More than 60 days without permission.</p> <p><b>Other cases</b> Election is declared void + expelled from house + Elected to office of President or Vice President + Appointed to Office of Governor.</p>
<b>Oath or Affirmation</b>	<ul style="list-style-type: none"> <li>Before Governor (or person appointed by Governor).</li> <li>Bear true faith and allegiance to the constitution + Uphold sovereignty and integrity of India + Discharge duty on which he is about to enter.</li> <li>Person cannot vote or participate in the house or becomes eligible for its proceeding without taking oath/ affirmation.</li> </ul>
<b>Salary and allowances</b>	<ul style="list-style-type: none"> <li>As determined by State Legislature</li> <li>Speaker/Deputy Speaker + Chairman/Deputy Chairman: Salary charged on Consolidated Fund of the state.</li> </ul>

## PRESIDING OFFICER OF STATE LEGISLATURE

- Legislative Assembly:** Speaker + Deputy Speaker + Panel of Chairpersons.
- Legislative Council:** Chairman + Deputy Chairman + Panel of Vice Chairpersons

### Speaker of Assembly

- Election:** Elected by 'Legislative Assembly' from amongst its members
- Vacation in office:** When Speaker ceases to be a member of the Assembly + Resignation (given to Deputy Speaker) + **Removal** by a 'resolution' (14 days advance notice + Majority of all the then members of Assembly must support it.)

### Role, Powers and Function

- Primary responsibility is to maintain **order and decorum** in the House for conduct of business and regulates its proceedings. He has the 'final power' in this regard.
- Final interpreter** of the provisions of (a) the Constitution of India, (b) the Rules of Procedure and Conduct of Business of Legislative Assembly, and (c) Precedents, within the House.
- Adjourns the House or suspends the meeting in absence of a **quorum**.
- 'Does not' vote in the first instance. But he can exercise a **casting vote** in the case of a tie.
- Can allow a '**secret**' sitting of the House at the request of the Leader of the House.
- Final authority to certify a '**money bill**'. His decision on this question is final.
- Disqualify an MLA** under defection law. Power is subject to 'Judicial Review'.
- Appoints Chairman of various committees** + himself is Chairman of Business Advisory Committee, the Rules Committee and the General-Purpose Committee.

### Deputy Speaker of the Legislative Assembly

- Election:** Elected from amongst the members of Legislative Assembly.
- Vacation:** In case he ceases to be a member + Resignation + Removal.
- Removal:** He is removed as like the Speaker of Legislative Assembly.
- Resignation:** He submits his resignation to the Speaker.

### Presiding Officers of Legislative Council

- Chairman:** Elected by members from among themselves

- **Deputy Chairman:** Elected from its members
- **Panel of Vice Chairpersons:** Nominated by Chairman.
- All other points are similar to Speaker (except in case of ‘Money bill’) and Deputy Speaker.

#### Key Facts Related to State Legislature

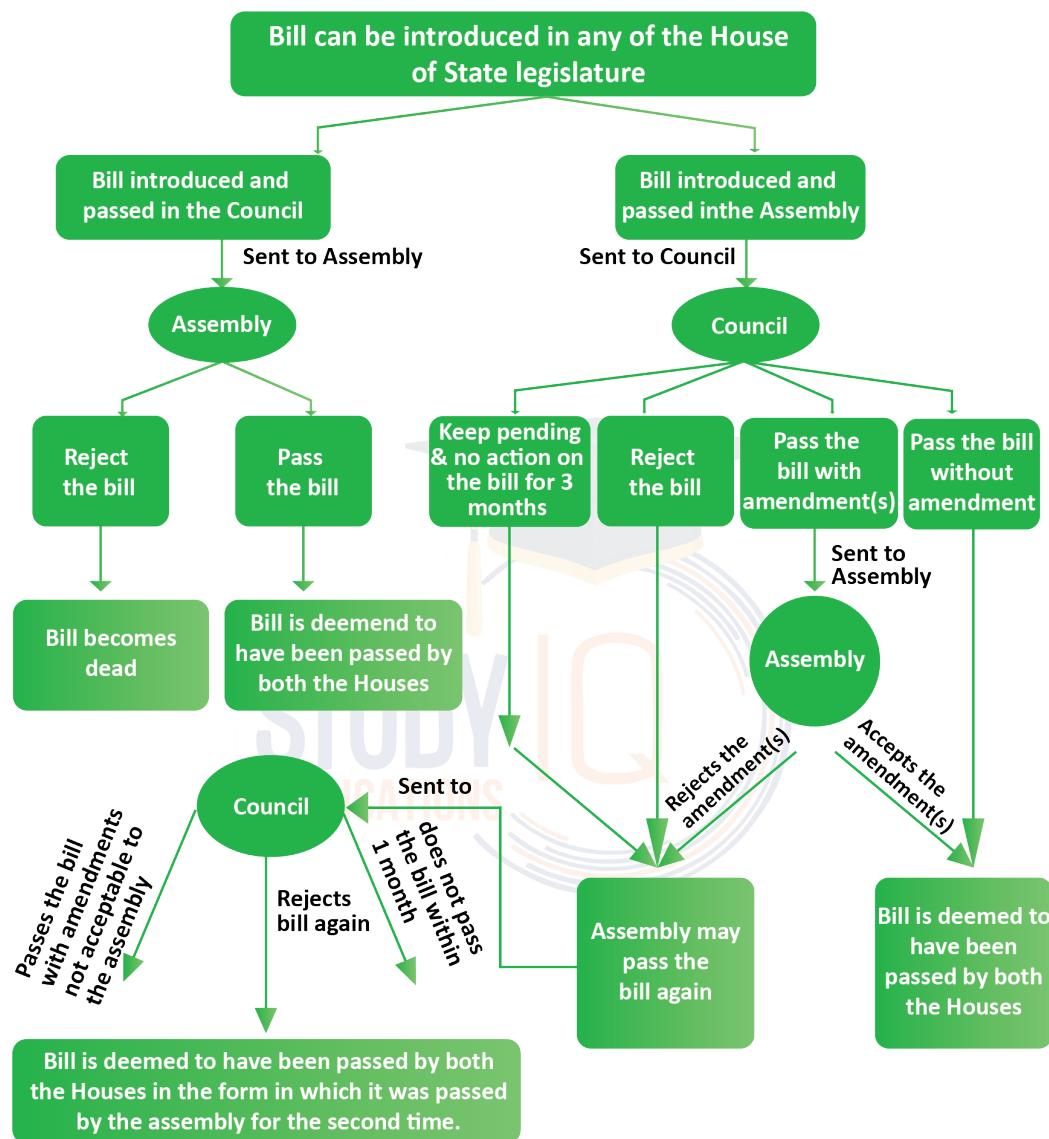
<b>Summon</b>	<ul style="list-style-type: none"> <li>• Issuing a call to be present</li> <li>• By Governor (At least twice a year). Maximum gap between two sessions cannot be more than six months.</li> </ul>
<b>Adjournment</b>	<ul style="list-style-type: none"> <li>• <b>Suspends the work</b> in a ‘sitting’ for a ‘specified’ time, which may be hours, days or weeks.</li> <li>• Done by ‘presiding’ officer.</li> </ul>
<b>Adjournment sine die</b>	<ul style="list-style-type: none"> <li>• Terminating a ‘sitting’ of State Legislature for an <b>indefinite</b> period</li> <li>• Declared when the business of the house is finished</li> <li>• Done by ‘presiding’ officer</li> </ul>
<b>Quorum</b>	<ul style="list-style-type: none"> <li>• ‘Minimum number of members’ (10 members or 1/10th of total members including Presiding officer) required before house can transact any business</li> <li>• No Quorum: ‘Presiding’ officer can either choose to ‘adjourn’ the House or to ‘suspend’ the meeting until Quorum is there.</li> </ul>
<b>Prorogation</b>	<ul style="list-style-type: none"> <li>• Usually follows Adjournment Sine die</li> <li>• Terminate sitting + ‘session’ of the House.</li> <li>• Done by the Governor</li> </ul>
<b>Dissolution</b>	<ul style="list-style-type: none"> <li>• Ends the very existence of the house. Applicable to Legislative assembly.</li> </ul>

<b>Dissolution and bills</b>	<b>Bills which Lapse on dissolution</b>	<b>Bills which do not Lapse on dissolution</b>
	<ul style="list-style-type: none"> <li>• All pending bills in Assembly (whether originating in Assembly or transmitted by Council).</li> <li>• A bill passed by Assembly but pending in the council lapses</li> </ul>	<ul style="list-style-type: none"> <li>• Bill pending in Council but not passed by assembly does not lapse.</li> <li>• A bill passed by Assembly (unicameral legislature)/ both houses (bicameral legislature) and pending assent with ‘President’/ Governor does not lapse.</li> <li>• A bill sent for ‘reconsideration’ by president does not lapse</li> </ul>
<b>Voting in House</b>	<ul style="list-style-type: none"> <li>• Simple majority for majority matters.</li> <li>• Special majority: Resolution for creation or abolition of Legislative Council</li> <li>• Effective Majority: Removal of speaker or chairman</li> <li>• Speaker &amp; chairman does not vote in first instance (exercise a casting vote).</li> </ul>	
<b>Language in state legislature</b>	<ul style="list-style-type: none"> <li>• Official Languages: Hindi + English for transacting business.</li> <li>• Presiding officer can permit to address the house in Mother tongue.</li> <li>• State Legislature is authorised to continue/discontinue English as a floor language (15 years after commencement of the constitution).</li> </ul>	
<b>Rights of ministers &amp; Advocate General</b>	<ul style="list-style-type: none"> <li>• Minister can speak + participate in the proceeding of the House where he is not a member (without right to vote).</li> <li>• Minister (who isn’t a member of either house) can participate in the proceeding of both houses (without right to vote)</li> <li>• Advocate General can speak + participate in the proceeding of both Houses (without Right to vote).</li> </ul>	

## LEGISLATIVE PROCEDURE IN STATE LEGISLATURE

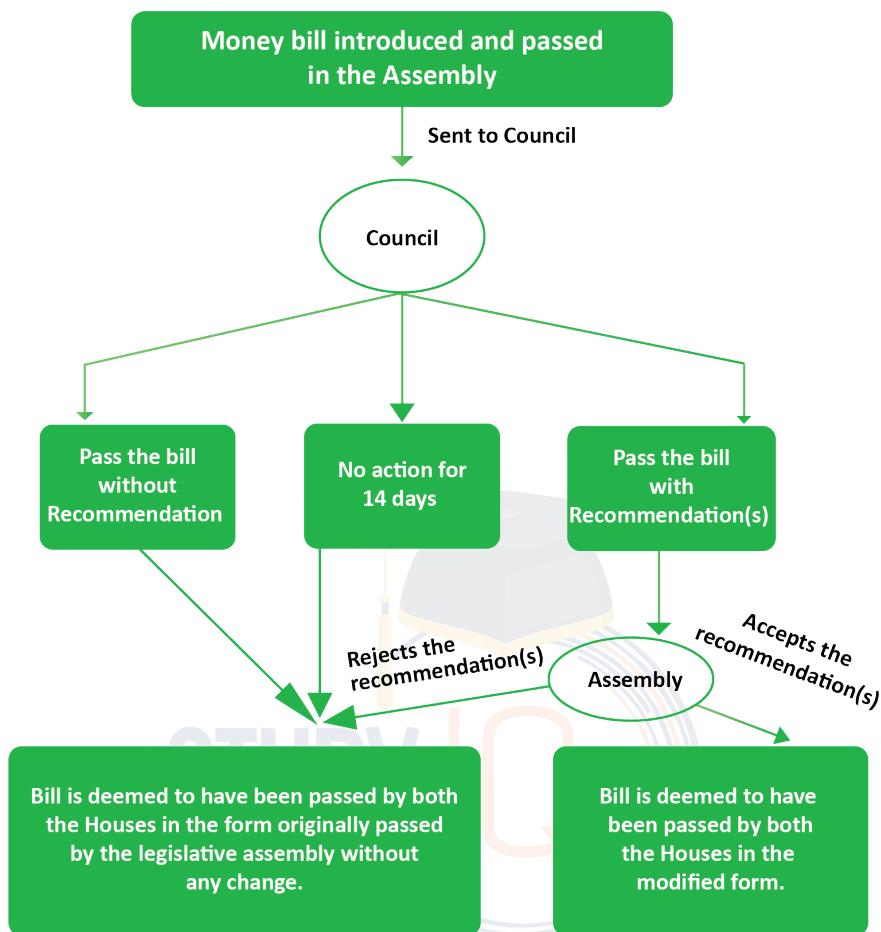
### Ordinary Bills

#### Procedure of Passing Ordinary Bills



## **Money bill**

### **Procedure of Passing Money**



### **Important Facts**

- State Legislative Council: Does not have powers equivalent to Rajya Sabha
- Legislative Council can delay an ordinary bill by a maximum of 4 months.
- There is no provision of Joint Sitting in case of deadlock b/w two houses.
- Bills can be reserved by Governor for consideration by the President (Article 200).
- President can send the bill for re - consideration. Such re – considerations needs to be done within 6 months. It is not binding on the President to give his assent after re – consideration.
- Mandatory reservation needs to be done by the Governor if the bill damages the position of High court.
- Other cases where the Governor can reserve the bill if it 1) Ultra vires provisions of the constitution 2) Opposite to the DPSP 3) Affects Larger interest of the Country 4) Is of Grave national importance 5) link with compulsory acquisition of the property under Article 31(A) of the constitution.
- Constitutional amendment cannot be introduced in state legislature.

### **POSITION OF LEGISLATIVE COUNCIL**

#### **Equal with Legislative Assembly**

- Introduction and passage of **Ordinary bill** (Disagreement – will of Assembly prevails).
- Approval of ordinances (Article 213).

- Selection of ministers including CM (responsible only to assembly).
- Consideration of reports of constitutional bodies like State Finance Commission, Finance Commission, CAG.
- Enlargement of the jurisdiction of state public service commission.

### **Unequal with Assembly**

- Money Bill: Introduction only in the assembly (not in council).
- Limited powers of Council: Cannot amend/reject a money bill/Return money bill to the assembly within 14 days. No obligation on the Assembly to accept recommendations.
- Final power to decide a bill is a money bill → Speaker of the Assembly.
- Legislative assembly holds final power → passing an ordinary bill. Council can at maximum delay passing the bill by 4 months (3 months – first instance + 1 month – second instance).
- Council can only discuss the budget but cannot vote on the demands for grants.
- Council cannot remove the council of ministers by passing a no-confidence motion.
- Ordinary bill → Origin in council → Rejected by assembly → bill dead.
- Council → No role in President election + electing state representatives in RS.
- Council → No say in constitutional amendment bill.
- Existence of the council depends on the will of the assembly. Can be abolished by the Parliament based on assembly recommendation.



## CHAPTER 21

# Judiciary

- Indian constitution has established an '**integrated Judiciary**' (SC → HC → District courts).
- This system 'enforces' both central + state laws

### SUPREME COURT

- **Constitutional provision:** Article 124 to 147 (Part V).
- **Background:** It 'succeeded' the Federal court of India which was established by Gol Act, 1935.
- **Seat of Supreme court:** New Delhi.
- **Regional Benches:** Can be 'established' by CJI with the approval of President (Article 130).
- **Procedure of Supreme court:** Decided by SC itself with the approval of President.

### Composition and Appointment

Parameters	Related Facts	
<b>Composition</b>	<ul style="list-style-type: none"><li>Chief Justice of India (CJI) + other Judges (Originally 7)</li><li><b>Change in composition:</b> It can be increased by Parliament through making a 'law'.</li><li><b>Present composition:</b> 34 Judges (1 CJI + 33 other Judges)</li></ul>	
<b>CJI appointment</b>	<b>Appointment</b>	By 'President'
	<b>Provision</b>	No' constitutional provision hence we rely on 'convention'
	<b>Convention:</b>	'Outgoing' CJI recommends his successor → strictly based on 'seniority'. Seniority is 'not' defined by age, but number of years the Judge has served the SC. Thus, after CJI 'retires' the senior most Judge becomes the CJI.
	<b>Exception</b>	3 times this convention has not been followed 1) P. B. Gajendragadkar (1964) 2) Justice AN Ray (1973) 3) Justice M.H Beg (1977).
	<b>Present CJI</b>	Dhananjaya Yeshwant Chandrachud (50th CJI)
<b>Other Judges Appointment</b>	<ul style="list-style-type: none"><li>By 'President' (by 'warrant under his hand and seal').</li><li>Constitution provides that 'President' shall '<b>consult</b>' CJI + other judges of 'Supreme court' and 'High court' as he deems necessary.</li><li>Constitution makes the consultation of CJI mandatory</li></ul>	
<b>SC Rulings</b>	<ul style="list-style-type: none"><li>3 Judges case led to the institutionalisation of the collegium system.</li><li>In these cases the court inquired into the implication of the word 'consultation'.</li></ul>	
Case	Judgment	Implication
<b>1st Judges case, 1981</b>	'Consultation' does not amount to 'concurrence.'	Ruling gave the Executive primacy over the Judiciary in judicial appointment.
<b>2nd Judges case, 1993</b>	'Consultation' means 'concurrence'	Advice of CJI is 'binding' on the President. Introduced 'collegium system'- 2 senior most Judges to consult the CJI.
<b>3rd Judges case, 1998</b>	'Institutionalized' the 'consultation' process	CJI needs to consult plurality of Judges. 4 senior most Judges of the Supreme court. If CJI make recommendation 'without' consultation it is 'not' binding on the government.

Parameters	Related Facts
<b>NJAC verdict</b>	<ul style="list-style-type: none"> <li>• Judgment on NJAC Act (National Judicial appointments commission)</li> <li>• Known as the 4th Judges case.</li> <li>• NJAC aimed to replace the collegium system by establishing National Judicial appointment commission.</li> <li>• 99th constitutional amendment was brought by the Parliament.</li> <li>• In the verdict SC declared both NJAC + 99th CA as unconstitutional.</li> <li>• Reason: The act violated the doctrine of 'Separation of Powers' which as the act led to executive interference in the Judiciary.</li> </ul>

## Qualification, Oath and Salary

### **Qualifications of Judges**

To become Judge of Supreme court the person 'should' be -

1. Citizen of India
2. Judge of High court (or high courts in succession) for five years or Advocate of High court (or high courts in succession) for ten years or should be 'Distinguished Jurist' in the 'opinion' of the President.

### **Oath**

- By President (or some person appointed by him)
- **Oath:** True faith and allegiance to the constitution of India + Uphold Sovereignty and integrity of India + duly and faithfully discharge the duties of the office + Uphold constitution and the laws.

### **Salaries and allowances**

- 'Charged expenditure' on the 'Consolidated Fund of India'

## Tenure and Removal

### **Tenure of Judges**

- 'No' fixed tenure in the constitution.
- Maximum age: 65 years (No minimum age has been prescribed by constitution).
- Resignation: Need to write to the President.
- Removal: By 'President' on the 'recommendation' of the Parliament.

### **Removal of Judges**

Parameters	Facts Related to Removal of Judges
<b>Constitutional provision</b>	<ul style="list-style-type: none"> <li>• By an 'order' of the President after an address by each House of Parliament.</li> </ul>
<b>Majority needed</b>	<ul style="list-style-type: none"> <li>• Removal motion should be passed by Special majority</li> <li>• Special majority: Majority of total membership + 2/3rd members of the house present and voting.</li> </ul>
<b>Grounds of removal</b>	<ul style="list-style-type: none"> <li>• Proved 'misbehavior' or 'incapacity'.</li> </ul>
<b>Regulation of removal procedure</b>	<ul style="list-style-type: none"> <li>• Done by <b>Judges Inquiry act, 1968</b></li> </ul>
<b>Process of removal</b>	<ul style="list-style-type: none"> <li>• Removal Motion can originate in either Rajya Sabha or Lok Sabha.</li> <li>• Such motion needs to be signed by 100 members (LS) or 50 members (RS).</li> <li>• Motion can be accepted or rejected by Speaker/Chairman.</li> <li>• If accepted by Speaker/Chairman he creates a '3 member committee'</li> <li>• Purpose of committee is to investigates the charges.</li> <li>• Composition: It consists of – 1) CJI or Judge of the Supreme Court 2) Chief Justice of High court 3) A 'distinguished' jurist (in the opinion of speaker/chairman).</li> <li>• Motion needs to be passed by both houses of Parliament by 'Special majority'.</li> <li>• Motion is passed → 'Parliament' addresses the 'President.'</li> <li>• <b>'President'</b> passes the order for 'Impeachment'</li> <li>• <b>'No'</b> Judge of 'Supreme court' has been impeached so far.</li> <li>• First case of removal was against Justice V Ramaswami (motion defeated in LS).</li> </ul>

## **Acting, Adhoc and Retired Judges**

### **Acting Chief Justice of India**

President can appoint a Judge of Supreme court as acting CJI in case where CJI is temporarily absent/unable to perform his duties/office of CJI is vacant.

### **Ad – hoc**

- To meet the quorum of the judges in Supreme court.
- Judge of High court can be appointed by Chief Justice of India.
- CJI needs to consult 1) Chief Justice of High court 2) Previous consent of President.
- Qualifications: Judge of High Court qualified to become a Supreme Court Judge.
- Jurisdiction/Power/Privilege are similar to Supreme court Judge

### **Retired Judges**

- To meet increased work load
- CJI can appoint both a retired Judge of High court or Supreme court.
- Needs the prior consent of President and the person to be appointed.
- Judge is entitled to allowances which the President determines.

Parameters	Ad - hoc Judge	Retired Judges
<b>Objective:</b>	To meet the ‘quorum’ of Judges	To meet increased workload.
<b>Appointment</b>	By Chief Justice of India	By Chief Justice of India
<b>Consultation</b>	CJI needs to consult the following 1) Chief Justice of High court 2) Previous consent of President	CJI needs to consult the following 1) Person who is to be appointed 2) Previous consent of President
<b>Other Facts</b>	Jurisdiction/Power/Privilege are similar to Supreme court Judge.	Allowances are determined by the President.

## **Jurisdiction and powers of Supreme court**

### **Original Jurisdiction**

- ‘Original’ means the SC can hear the case in first instance i.e., not by way of appeal.
- This jurisdiction extends to Federal disputes i.e. disputes involving Centre vs state/states, Centre + State vs States, States vs States.
- SC has Exclusive Original Jurisdiction in federal disputes. This means no other court can decide on federal disputes and SC has the power to hear these disputes in first instance.
- Disputes which have Exclusive Original Jurisdiction should involve a question on which existence of legal rights depends (question of political nature have to be excluded) + Suit by a private citizen against the Centre or a state do not come under it.

### **Exceptions to Original Jurisdiction**

Jurisdiction of Supreme court does not extend to the following:

- Pre-constitution – Disputes arising from any pre-constitution treaty/agreement/covenant/ engagement etc.
- Dispute arising due to treaty which clearly mention that Supreme court Jurisdiction does not apply.
- Inter State Water disputes
- Matters with Finance commission
- Financial disputes like centre vs state on expenses, pensions etc.
- Commercial disputes between centre and states
- Recovery of damages by a State against the Centre

### **Writ Jurisdiction**

Explained in the FR chapter.

#### **Comparison SC Original Jurisdiction in case of Fundamental Right vs Federal disputes -**

Comparison	Federal Dispute	Fundamental Rights
Nature	Original + Exclusive Jurisdiction	Original (concurrent with High court)
Parties involved	Centre + States	Citizen + Government

### **Appellate Jurisdiction**

Done by way of appeal against judgments by lower courts

Matters	Cases in which appeal can be made to Supreme Court
<b>Constitutional Matters</b>	<ul style="list-style-type: none"> <li>Case in High court (Party in dispute can 'appeal' if it gets a certificate).</li> <li>HC should 'certify' that the case involves a 'substantial question of law' which requires 'interpretation of the constitution'.</li> </ul>
<b>Civil Matters</b>	<ul style="list-style-type: none"> <li>Appeal to the SC from any judgment by High court.</li> <li>HC should certify that the case involves substantial question of law + Question needs to be decided by Supreme court.</li> <li>Monetary limit was removed by the 30th Constitutional amendment.</li> </ul>
<b>Criminal Matters</b>	<ul style="list-style-type: none"> <li>Death Sentence given by High court (By way of appeal + Has taken the case on itself).</li> <li>Life imprisonment given by High court by reversing the order of a lower court.</li> <li>High court certifies that the case is fit for Supreme court hearing</li> </ul>
<b>Special leave</b>	<ul style="list-style-type: none"> <li>It refers to the power of Supreme court to allow 'appeal' against any judgement of any court or tribunal. This power has 4 aspects</li> <li><b>Discretionary</b> power: Cannot be claimed as a matter of right.</li> <li>Can be granted against <b>any judgment</b>: final or interlocutory.</li> <li>Can relate to <b>any matter</b>: constitutional, civil, criminal, income-tax, labour etc.</li> <li>Can be granted against '<b>any</b>' court.</li> <li>Exception: Not applicable in case of military tribunal and court martial.</li> </ul>

### **Advisory Jurisdiction: (Article 143)**

President can take advise of the Supreme court in 2 cases -

- Question of law or fact of public importance. (SC may or may not give its advice)
- Pre - constitutional disputes: Dispute arising out of any pre-constitution treaty, agreement, covenant, engagement etc. (SC 'must' tender its advice).

### **Court of Record**

- 'Supreme Court' Judgement and proceedings can be used as 'evidence' in any court.
- Contempt Powers includes – Power to punish for 1) Civil contempt 2) Criminal contempt.
- Term 'contempt of court' has not been defined in the constitution.
- Contempt of Court Act, 1971 (brought on recommendation of H.N. Sanyal Committee) defines both civil and criminal contempt.

Civil Contempt	Criminal Contempt
For wilful disobedience of any judgement or order or undertaking given by court	<ul style="list-style-type: none"> <li>a) For 'scandalizing' court</li> <li>b) For prejudicing or interfering with due course of judicial proceeding.</li> <li>c) Interferes or obstructs the administration of justice</li> </ul>
<ul style="list-style-type: none"> <li>Following do not amount to 'Contempt of court': Innocent publication and distribution of some matter + fair and accurate report of judicial proceedings + fair and reasonable criticism of judicial acts + comment on administrative side.</li> </ul>	

### **Power of Judicial Review**

- Power of the Supreme court to examine the ‘constitutionality’ of ‘legislative enactments’ and ‘executive orders’ of the government (Both central and state).

### **Other Powers**

- Decides disputes → ‘Election’ of ‘President’ and ‘Vice President’ → Court has original + exclusive + Final authority.
- On reference of President → Inquires into conduct and behaviour of chairman/members of UPSC → Decision taken by SC is binding on the President.
- Power to ‘review’ its own judgments given in the past.
- Withdraw the cases pending before other High courts and dispose them.
- Transfer case from one high court to another high court
- Its Law is ‘binding’ on all courts in India → Its decree or order is ‘enforceable’ throughout country.
- It has power of Judicial superintendence over all courts and tribunals in India.
- Supreme court jurisdiction → matters in Union list → Can be enlarged by Parliament.

### **Independence of Supreme court**

- Appointment by Collegium (No interference by executive).
- Expenditure of Court and Judges is charged from consolidated fund of India.
- Judges and their conduct cannot be discussed in the Parliament except during the removal.
- SC judges are barred from practice after the retirement (High court Judges can practice if appointed in Supreme Court).
- Supreme Court can appoint its own staff
- Parliament cannot curtail jurisdiction of Supreme Court but can extend it.
- Judges have been provided with Security of tenure.

## **HIGH COURT**

Parameters	Related Facts								
<b>Constitutional provisions</b>	<ul style="list-style-type: none"> <li>• Articles 214 to 231 (Part VI).</li> </ul>								
<b>Origin</b>	<ul style="list-style-type: none"> <li>• 1862 - High courts were set up at Calcutta, Bombay and Madras</li> </ul>								
<b>State Judiciary</b>	<ul style="list-style-type: none"> <li>• Composed of High Court + Subordinate Courts</li> </ul>								
<b>Constitutional provision (original)</b>	<ul style="list-style-type: none"> <li>• There shall be a ‘High court’ for each state (Article 214)</li> <li>• <b>7th constitutional amendment:</b> Authorized ‘Parliament’ to establish a single high court for two or more states, two or more state + Union Territory</li> </ul>								
<b>Territorial Jurisdiction</b>	<ul style="list-style-type: none"> <li>• Co terminus with the state. For common high court (State + Union territory).</li> </ul>								
<b>Power of Parliament</b>	<ul style="list-style-type: none"> <li>• Possesses the power to ‘extend’ or ‘exclude’ jurisdiction of any High court from UTs.</li> </ul>								
<b>Composition of HC</b>	<ul style="list-style-type: none"> <li>• Chief Justice of HC + other Judges</li> <li>• President determines strength of the High court.</li> <li>• In case of the SC strength is determined by the Parliament.</li> </ul>								
<b>Appointment of HC Judges</b>	<table border="1"> <tr> <td><b>Appointment</b></td><td>By President</td></tr> <tr> <td><b>Chief Justice – High court</b></td><td>President Consultation with CJI + Governor of state concerned.</td></tr> <tr> <td><b>Other Judges</b></td><td>President Consultation with CJI + Governor of state concerned + Chief Justice – High court (Particular state)</td></tr> <tr> <td><b>3 Judges case and HC</b></td><td>2nd Judges case: No appointment of High court Judge unless it's in conformity with opinion of CJI. 3rd Judges case: CJI should consult 2 ‘senior most Judges’ (In case of SC it is 4 senior most Judges).</td></tr> </table>	<b>Appointment</b>	By President	<b>Chief Justice – High court</b>	President Consultation with CJI + Governor of state concerned.	<b>Other Judges</b>	President Consultation with CJI + Governor of state concerned + Chief Justice – High court (Particular state)	<b>3 Judges case and HC</b>	2nd Judges case: No appointment of High court Judge unless it's in conformity with opinion of CJI. 3rd Judges case: CJI should consult 2 ‘senior most Judges’ (In case of SC it is 4 senior most Judges).
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Parameters	Related Facts								
<b>Qualifications of High Court Judges</b>	<ul style="list-style-type: none"> <li>1. Citizen of India.</li> <li>2. A) Held 'Judicial office' for 10 years or b)'Advocate of High court' (or High courts in succession) for 10 years. <ul style="list-style-type: none"> <li>• No 'minimum age' has been prescribed.</li> <li>• No provision exists for 'appointment' of a 'distinguished Jurist' in High court.</li> <li>• <b>Retirement age</b> – 62 (In case of Supreme court it is 65)</li> <li>• Any question about age can be settled by 'President'</li> <li>• In case of Supreme court it is Parliament</li> </ul> </li> </ul>								
<b>Oath by High Court Judges</b>	<ul style="list-style-type: none"> <li>• Administered by Governor</li> <li>• Faith and allegiance to the constitution of India + Sovereignty and integrity of India, to faithfully discharge the duties of the office + to uphold constitution and the laws</li> </ul>								
<b>Salaries and Allowances of High Court Judges</b>	<ul style="list-style-type: none"> <li>• Determined by 'Parliament' from time to time</li> <li>• <b>Salaries:</b> Charged on 'consolidated fund of the state'</li> <li>• <b>Pension:</b> Charged on 'consolidated fund of India'.</li> </ul>								
<b>Tenure of High Court Judges</b>	<table border="0"> <tr> <td><b>Maximum age</b></td><td>62 (Question regarding age determined by President)</td></tr> <tr> <td><b>Resignation</b></td><td>To President</td></tr> <tr> <td><b>Vacation in office</b></td><td>Becomes the judge of Supreme court, or he is transferred to other High court.</td></tr> <tr> <td><b>Removal</b></td><td>President on 'recommendation' of the Parliament.</td></tr> </table>	<b>Maximum age</b>	62 (Question regarding age determined by President)	<b>Resignation</b>	To President	<b>Vacation in office</b>	Becomes the judge of Supreme court, or he is transferred to other High court.	<b>Removal</b>	President on 'recommendation' of the Parliament.
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<b>Removal</b>	President on 'recommendation' of the Parliament.								
<b>Removal procedure</b>	<ul style="list-style-type: none"> <li>• Same as Supreme court Judges</li> </ul>								
<b>Transfer of High court Judges</b>	<ul style="list-style-type: none"> <li>• Done by President</li> <li>• President needs to consult CJI</li> <li>• CJI needs to consult the following: <ul style="list-style-type: none"> <li>1. His collegium (4 senior most judges of the Supreme court) +</li> <li>2. CJI of two High courts (One – From where the 'Judge' is transferred Second – To where the 'Judge' of High court is transferred).</li> </ul> </li> </ul>								
<b>Acting, Additional and Retired Judges</b>	<p><b>Acting Chief Justice of High court</b></p> <ul style="list-style-type: none"> <li>• Appointed by President.</li> <li>• Reason: Office of CJ is vacant + temporarily absent + Unable to perform his duties.</li> </ul> <p><b>Additional Judges</b></p> <ul style="list-style-type: none"> <li>• Appointed by President for maximum period of 2 years.</li> <li>• Reason: Temporary increase in High court business + Arrears of work in high court. Maximum age till 62</li> </ul> <p><b>Acting Judges</b></p> <ul style="list-style-type: none"> <li>• Appointed by President.</li> <li>• Reason: Unable to perform duties due to absence or other reason + Appointed as Chief Justice of High court.</li> <li>• Holds office until permanent Judge returns. Maximum age till 62.</li> </ul> <p><b>Retired Judges</b></p> <ul style="list-style-type: none"> <li>• Appointed by the 'Chief Justice of High Court' with previous consent of President and person to be appointed.</li> <li>• Salaries and allowances: Determined by 'President'.</li> <li>• He is 'not' deemed to be Judge of High Court.</li> </ul>								

## Original Jurisdiction

- Hear disputes in the 1st instance not by way of appeal
- Matters related to admiralty and contempt of court.
- Disputes relating to the election of members of 'Parliament' and 'State legislatures'.
- Revenue matter
- 'Enforcement' of Fundamental Right
- Cases transferred from subordinate court – Those involving interpretation of the constitution.
- 4 High courts (Calcutta, Bombay, Madras and Delhi HC) have original civil jurisdiction in cases of higher value.

### **Writ Jurisdiction: (Discussed in detail in FR chapter)**

- Article 226 of the constitution
- Wider than the Supreme court (HC can issue writ for both FRs + Ordinary legal Rights).
- Writ Jurisdictions forms part of the ‘basic structure’ of the constitution.

### **Appellate Jurisdiction: (By way of appeal)**

- Major job of High court is as a court of appeal.
- The appeal before high court lies in both civil + criminal cases.
- Criminal matter: Punishment which is greater than 7 years.
- Death sentence – given by district court shall be confirmed by the High court.

### **Supervisory Jurisdiction**

- High Court ‘supervises’ and ‘controls’ subordinate courts + Tribunals within its territorial Jurisdiction (except military courts or Tribunals).
- Any matter adjudged by tribunal can be appealed to High Court. (No direct appeal to Supreme Court).
- This is a very broad power and covers the following
  - i. It extends to all courts and tribunals (even if not subjected to appellate jurisdiction of High court or not)
  - ii. Covers both administrative + Judicial superintendence
  - iii. It is a revisional jurisdiction
  - iv. It can be suo-motu (on its own)

**However, this is not an unlimited authority and usually it is limited to,**

- i. Excess of jurisdiction
- ii. Gross violation of natural justice
- iii. error of law
- iv. disregard to the law of superior courts
- v. perverse findings
- vi. manifest injustice.

### **Control over Subordinate Courts**

- High court deals with matter of promotion, transfer, discipline of Judicial members of subordinate courts.

### **Court of Record (Similar to Supreme court)**

- Judgements are recorded for perpetual memory.
- Power to punish for ‘contempt of court.’

## **SUBORDINATE COURT**

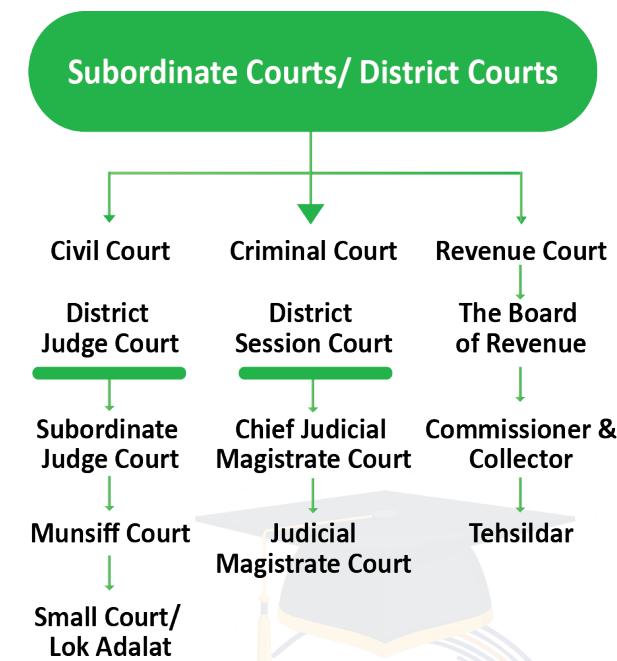
- **State judiciary:** High court + Subordinate courts

### **Provisions related to Subordinate Court**

- **Constitutional provisions:** Article 233-237 (Part VI)
- **Appointment of District judges:** By Governor in consultation with HC
- **Qualification of District Judge:** 1) Not in service of Central or State government 2) Have been advocate or pleader for seven years 3) Recommended by HC for appointment.

## Structure and Jurisdiction

### Structure of Subordinate Judiciary



### District Judge

- Highest judicial authority of district.
- Has appellate Jurisdiction in both civil (as district judge) + criminal matters (as sessions Judge).
- Has both Judicial + administrative power.
- Supervises all sub – ordinate courts in the district.
- Appeal lies to high court
- Can give both Life imprisonment and capital punishment (death sentence).
- Capital punishment needs to be confirmed by High Court (appeal or not).

### Hierarchy of Subordinate courts

#### Civil side:

- Below district and session court → Court of Subordinate Judge → Court of Munsiff.
- Subordinate judge → Has unlimited ‘pecuniary jurisdiction’ over civil suits.
- Court of Munsiff → Limited Jurisdiction → civil cases of small pecuniary stake.

#### Criminal side:

- Below district and session court → chief judicial magistrate → judicial magistrate.
- Chief judicial magistrate → Punished with imprisonment up to term of seven years.
- Judicial magistrate → Punished with imprisonment up to term of three years.

## **NATIONAL LEGAL SERVICES AUTHORITY**

Parameters	Related Facts
Background (constitutional provision)	<ul style="list-style-type: none"> <li>• Article 39A: free legal aid to the poor and weaker sections of the society and ensure justice for all.</li> <li>• Article 14 &amp; 22(1): Ensures equality before law and legal system which promotes justice on basis of equality of opportunity for all.</li> </ul>

Parameters	Related Facts
<b>Establishment</b>	<ul style="list-style-type: none"> <li>Under 'Legal services authority act'</li> <li>Came into force on 9th November 1995.</li> </ul>
<b>Objective of NALSA</b>	<ul style="list-style-type: none"> <li>Free and competent 'legal services' to eligible persons</li> <li>Organize <b>Lok Adalats</b> for amicable settlement of disputes.</li> <li>Organize <b>legal awareness campaigns</b> in rural areas.</li> </ul>
<b>Authorities</b>	<ul style="list-style-type: none"> <li>National level → National legal services authorities</li> <li>State level → State legal services authorities</li> <li>District level → District legal services authority</li> <li>Every high court – High court legal services committee</li> </ul>

## LOK ADALAT

- Cases or disputes which are pending in court or in **Pre-litigation stage**.
- Cases are compromised or settled in an **amicable manner**.
- Component of ADR (**Alternative dispute redressal**).
- Viable, informal, cheap, expeditious form of dispute settlement.
- First Lok Adalat** was organized in **Gujarat** in 1982
- Statutory status → **Legal Services Authorities Act, 1987**.
- Organised by State/District/SC/HC/Taluk legal services authority
- SC legal services authority or HC legal services authority or taluk legal services
- Composition:** Such number of serving or retired officers and other persons of the area as may be specified by the agency.
- No jurisdiction** for **non-compoundable** offences.
- Has same powers as civil + criminal court (civil procedure and code of criminal procedure).
- Lok Adalats have power to specify its procedure + all its proceeding are deemed to be Judicial procedure.
- Decree of civil court/order of any court. No appeal lies to award

### Permanent Lok Adalats

- Legal service authority act, 1987 → amended in 2002 to provide for permanent Lok Adalat.
- Provides for compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services.

#### Feature

- Chairman: Person who is /has been district judge or additional district judge or has held judicial officer rank higher than that of district judge
- Persons having experience in Public utility services.
- Has jurisdiction in respect of one or more utility services (transport, telephone services etc.)
- Pecuniary jurisdiction – up to 10 lakh (may be increased by Central government).
- No jurisdiction – non compoundable cases
- Award is final and bidding

## FAMILY COURT

- Family court act 1984 was enacted.
- Objective: conciliation + speedy settlement of disputes related to marriage and family issues

#### Features

- Establishment: By state government with consultation with high court.

- Exclusive jurisdiction: matrimonial relief; property of spouses ; declaration of legitimacy of one person ; guardianship of a person or custody of any minor ; maintenance of wife , children and parents.
- Need to have reconciliation proceeding which will be informal and non - rigid.
- No right to be represented by a legal practitioner.
- Only one right to appeal high court.

## GRAM NYAYALAYAS

- Established under Gram nyayalayas act, 2008 → Grassroot level

### Features

- Gram nyayalayas → shall be court of judicial Magistrate of the first class.
- Presiding officer of Gram nyayalayas → appointed by the state government in consultation with high court.
- Established at intermediate level for every panchayat.
- Mobile court → shall exercise the powers of both criminal + civil courts.
- Seat is located at the headquarters of the intermediate panchayat.
- Jurisdiction: Shall try criminal cases, civil suits, claims or disputes which are specified in the 1st Schedule and 2nd Schedule of the act.
- Conciliation to settle disputes will be used by Gram Nyayalayas.
- They will not be bound by Indian Evidence Act, 1872. Guided by principles of natural justice + rule made by the High court.
- Appeal in criminal cases → court of session → shall be heard and disposed within six months.
- Appeal in civil cases → district court → shall be heard and disposed within six months

## TRIBUNALS

- Tribunals are not found in the original constitution.
- Added on recommendation of Swaran Singh Committee.
- Added by 42nd constitutional amendment Act.
- New Part XIV-A and Article 323A and 323B were added by the amendment.
- Tribunals are quasi – Judicial bodies, They have some powers of a civil court
- Tenure, terms and conditions of the services → Executive decides
- Tribunals do not abide by civil procedure code and Evidence Act
- They work upon the principles of natural justice
- Decision of these tribunals may be subjective rather than objective i.e. based on account departmental policy.

Article 323 A	Article 323 B
<ul style="list-style-type: none"> <li>• Tribunals are established only for <b>Public Service Matters.</b></li> <li>• Can be established only by <b>Parliament</b></li> <li>• Only one tribunal for the Centre and one for each state or two or more states may be established.</li> <li>• No hierarchy exists.</li> </ul> <ul style="list-style-type: none"> <li>• Under Article 323A à Parliament passed The Administrative Tribunals Act, 1985.</li> <li>• The act authorizes the central government to establish one CAT and SAT.</li> </ul>	<ul style="list-style-type: none"> <li>• Tribunals are established for certain other matters. E.g. Taxation, Land reforms etc.</li> <li>• Can be established both by Parliament + state legislatures.</li> <li>• Each can establish tribunals for matters falling within their legislative competence</li> <li>• Hierarchy of tribunals may be created.</li> </ul>

### Central Administrative Tribunal (CAT)

- **Appointment:** By President on recommendation of High powered selection committee.
- **Selection Committee:** Chaired by a sitting SC Judge (whom CJI nominates).

- Post CJI concurrence → Appointments are done with the approval of **Appointments Committee of the Cabinet** (headed by PM).
- Composition:** Multimember Body consists of 1 Chairperson and 65 members (2019).
- Term:** Chairperson- 5 years or age of 65 years, Members - 5 years or age of 62 years.
- Principal bench:** Delhi + additional 17 regular benches. (15 at the seats of HC + 2 at Jaipur and Lucknow).
- Not bound by the CrPC. It is guided by the Principles of Natural Justice.
- Members drawn from both Judicial + Administrative Streams.
- Allows applicant to appear either in person or through a lawyer.
- Jurisdiction extends to the all-India services, Central civil Central civil services and civil posts under the Centre and Civilian employees of defense services.

### **State Administrative Tribunal (SAT)**

- Appointed by the president after consultation with the governor of the state concerned.
- Provision for setting up of joint administrative tribunal (JAT) for two or more states.
- SATs have been set up in the 9 states of Andhra Pradesh, Himachal Pradesh, Odisha, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, West Bengal and Kerala.
- Jurisdiction extends to recruitment and all service matters of state government

### **Other Facts (Article 323 A):**

- Enables Parliament to take out service matters disputes from the civil + high court and place it before the administrative tribunals.
- Chandra Kumar case: SC declared those which excluded the jurisdiction of the high court and the Supreme Court over disputes of tribunal as unconstitutional.
- Thus, orders of the CAT shall lie before the division bench of the concerned High Court.

### **Recent developments**

#### **Tribunals Reforms Act, 2021**

##### **Provisions under the act :**

###### **Background:**

- An Ordinance was brought in April 2021 which sought to dissolve **8 tribunals**.
- Finance Act, 2017** had merged tribunals based on domains. This act had empowered the Central Government to notify rules on –
  - Composition of search – cum – selection committees.
  - Qualification of tribunal members.
  - Terms and conditions of service.
- The act removed the provisions under the Finance act. Provisions under the **Tribunal reforms act, 2021**.

Parameters	Related Facts
Appointment of <b>Chairperson</b> and <b>members of Tribunals</b>	<ul style="list-style-type: none"> <li><b>Appointment</b> – Central Government.</li> <li><b>Basis</b> – On the <b>recommendation</b> of <b>Search – cum – selection committee</b>.</li> <li><b>Composition of Search cum Selection committee</b> <ol style="list-style-type: none"> <li>CJI or SC Judge nominated by CJI</li> <li>Secretaries – nominated by Central Govt.</li> <li>Chairperson (Sitting or Outgoing) / Retired Supreme court Judge / Retired CJ – HC.</li> <li>Secretary of Ministry under which Tribunal is constituted.</li> <li>A <b>separate Search – cum – selection committee</b> shall be constituted.</li> </ol> </li> </ul>

Parameters	Related Facts
Eligibility (Age)	<b>Maximum Age</b> <ul style="list-style-type: none"> <li>Chairperson – 70 years.</li> <li>Other Members – 67 years</li> </ul> <b>Provides for “Minimum age” as well</b> <ul style="list-style-type: none"> <li>50 Years – For both “Chairperson” and “Members”</li> </ul>
Removal of Members / Chairperson	<ul style="list-style-type: none"> <li>By <b>Central Government</b> based on the recommendation of <b>Search cum selection committee</b>.</li> </ul>
Other Provisions	<ul style="list-style-type: none"> <li>Provides for <b>uniform pay and rules</b> for the search and selection commission across <b>Tribunals</b>.</li> </ul>

## JUDICIAL REVIEW

- Definition:** It is the power of the Judiciary to examine the constitutionality of ‘legislation enacted’ and ‘executive orders’ of governments (both central and state).
- Power of **‘Judicial Review’** lies with both Supreme court + High court.
- Forms part of **‘basic structure’** of the constitution.
- Origin:** USA (Marbury vs Madison case)
- Constitutionality:** Judicial Review is **not** found in the constitution. Various articles in the constitution explicitly confer these powers on the Supreme court (mentioned below).

Articles	Provisions
Article 13	Laws inconsistent or in derogation of FRs to be declared null and void
Article 32	Right to move to supreme court for enforcement of FRs (SC can issue writs)
Article 131	Original Jurisdiction to supreme court in case of federal disputes
Article 132	Appellate Jurisdiction of Supreme court in constitutional cases
Article 133	Appellate Jurisdiction of Supreme court in civil cases
Article 134	Appellate Jurisdiction of Supreme court in criminal cases.
Article 134 A	Certificate of appeal to Supreme court from High court
Article 135	Exercise powers of Federal court under any preconstitution laws
Article 136	Special leave power of Supreme court
Article 143	President can seek the opinion of the President
Article 226	High court writ power
Article 227	High court - Power of Superintendence over all courts and tribunals within their respective territorial jurisdiction.
Article 245	Territorial extent of laws made by Parliament and State legislature
Article 246	Subject matter of laws made by Parliament + State Legislature
Article 251/254	Central vs state laws – The state laws prevail.
Article 372	Continuance in force of Pre constitution laws

### Grounds for Judicial review

Constitutional validity of legislative enactment or an executive order can be challenged in the Supreme Court or in the High Courts on the following three grounds.

- It infringes the ‘Fundamental Rights’ (Part III).
- It is ‘outside’ the ‘competence of the authority’ which has framed it.
- It is ‘repugnant’ to the ‘constitutional provisions’.

### Judicial review: Nature of Powers

- **Narrow compared to USA** as Indian constitution only provides for ‘procedure established by law’ instead of ‘due process of law’.
- In effect: India is a blend of American principle of ‘Judicial supremacy’ + British principle of ‘Parliamentary supremacy’.

### Judicial Review and 9th schedule:

- **Article 31 B:** Saves ‘acts’ + ‘regulations’ included in the 9th schedule from being challenged and invalidated on the grounds of ‘contravention’ of Fundamental Rights (added by the **1st constitutional amendment act**).
- Originally 9th schedule had 13 acts and regulations. But it kept increasing (2016 – Number was 282).
- **Composition of 9th schedule:** Contains provisions regarding land reforms + abolition of Zamindari system + other matters.
- **I.R Coelho judgment:** Supreme court stated 1) No blanket immunity from judicial reviews of laws included in the 9th schedule. 2) Laws placed under the Ninth Schedule after Kesavananda Bharti case (April 24th, 1973) are open to challenge in court if they violate the ‘basic structure’ of the Constitution.

### Judicial Activism

- **Definition:** Active role played by the Judiciary to uphold the right of citizens + Preserve the legal and constitutional system is known as ‘Judicial Activism’
- **Origin:** USA
- **Introduction in India:** Justice V.R. Krishna Iyer, Justice P.N. Bhagwati, Justice O. Chinnappa Reddy and Justice D.A. Desai laid the foundations of judicial activism in the country.

## PUBLIC INTEREST LITIGATION (PIL)

- It is an outcome of Judicial review.
- **Definition:** PIL refers to case filed in court to protect ‘public interest’ (example pollution, road safety etc.)
- **Scope:** ‘Any’ matter where interest of ‘public at large’ is affected can be addressed by filing PIL.
- **Fact:** ‘Not defined in any statute or act. It was a power given by court to public
- **Ways:** Suo motu (courts on their own) or any public-spirited individual can file the case.
- **Who can file a PIL:** Any citizen by filing a petition under Article 32, Article 226, Section 133 criminal procedure code.
- **Against whom can it be filed:** State Government +Central Government +Municipal authority. It ‘cannot’ be filed against a private party.

### Some important cases related to PIL

#### Hussainara khatoon vs State of Bihar

- It is the first reported case of PIL
- Case focused on inhuman conditions of prisons and led to release of more than 40,000 under - trial prisoners.

#### SP Gupta vs Union of India

- PIL became a ‘potent’ weapon for public interest via this case.
- **Justice PN Bhagwati** clearly enunciated PIL in this case.
- **Definition of PIL:** Any member of the public/social action group can file PIL. It can be filed by invoking writ Jurisdiction of Courts - both High court or Supreme court. The purpose is to seek remedy for violation of legal or constitutional rights of persons who cannot approach court themselves due to social or economic or any other disability.
- ‘Private interest case’→ can also be treated as ‘public interest case’: If an individual moves to court to remedy personal grievance the court can take it necessary to enquire into the situation to further ‘public interest’ (Case - Indian Banks’ Association, Bombay & Ors. vs. M/s Devkala Consultancy Service and Ors).

## CHAPTER 22

# Local Self Government

### PANCHAYATI RAJ INSTITUTIONS (PRI)

#### **Historical evolution (Facts)**

- Father of local self-government in India: Lord ‘Ripon’
- Gol Act 1919: LSG was placed in the ‘transferred’ list.
- Gol Act 1935: LSG was placed in the ‘Provincial’ list.
- Constitution of India: LSG was placed in the ‘state’ list.

#### **Important committees related to Panchayats (Timeline is important)**

Year	Committee
1957	Balwanth Rai Mehta Committee
1977	Ashok Mehta Committee
1983	Hanumanth Rao committee
1985	G.V.K. Rao Committee
1986	LM Singhvi committee
1989	P.K Thungan committee

#### **About Panchayati Raj Institutions (PRI)**

- **Definition:** System of ‘Local self-government’ in ‘rural’ areas
- **Establishment:** In all states by act of State Legislature
- **Objective:** To build ‘democracy’ at ‘grassroot’ level
- **Constitutionalized:** By the 73rd constitutional amendment
- **Constitutional provisions:** Article 40: Organization of ‘Village Panchayats’.
- Practical shape to the provisions of Article 40 was given by 73rd Constitutional amendment.

#### **73rd Constitutional amendment**

- **Passed:** Year 1992
- **Enforcement:** 24th April 1993 (24th April is celebrated as Panchayati Raj diwas)
- **Significance:** Gave ‘constitutional status’ to the PRIs
- **Provisions added:** **Part-IX:** Article 243 to 243(O) + **Schedule 11:** Contains 29 functional items of Panchayats.

#### **Salient Features of Panchayati Raj Institutions (PRI)**

##### **Gram Sabha (Article 243 A)**

- Foundation of the Panchayati raj system.
- Compulsory provisions: It is ‘compulsory’ to have a Gram Sabha for every Gram Panchayat.
- All ‘registered voters’ of a ‘Gram Panchayat’ make up the ‘Gram Sabha’.

- Powers + Function of Gram Sabha are decided by 'State'
- Thus, powers of Gram Sabha can vary from 'state to 'state'.

### **Structure of Panchayats (Article 243 B)**

- 3 tier structure of Panchayats has been provided in every state.
- Panchayats shall be constituted at village level → Intermediate level → District level.
- Structure is 'compulsory' in all states with more than 20 lakh population.
- For states having 'less than 20 lakh population 'intermediate level' 'may' not be constituted.

### **Composition of Panchayats (Article 243 C)**

- Composed of Chairperson (popularly called as Sarpanch). + Members.
- All Panchayati Raj members are '**directly elected**'
- Election of Chairperson (village level) is done in a manner as **state legislature** determines.
- Chairperson at district + Intermediate level are '**Indirectly elected**'
- **Right to vote** in meeting of Panchayats is given to all elected members (whether elected from direct or Indirect elections).
- Age Qualification for contesting Panchayati elections is **21 years**.
- Provision is also provided which allows 'state' to decide participation of MPs + MLAs + MLCs in panchayats
- Participation of MPs + MLAs + MLCs can '**only**' be provided at intermediary + district level but not at village level.
- MP's of Lok Sabha + MLA's can attend 'Panchayat meeting' in their '**constituency**'.
- MP's of Rajya Sabha + MLC's can attend 'Panchayat meeting' where they are **registered as voters**.

### **Reservation of seats (Article 243 D)**

#### **Members**

- Reservation is provided for **SC/ST's at all three levels** (In proportion of their population).
- **Minimum 33%** reservation is provided for **women**. It means more than 33% reservation can be provided for women.
- Reservation 'may' be provided by states for BC's. Constitution has empowered State legislature to make provision for reservation in seats for backward classes.

#### **Chairperson**

- Women: 1/3rd of chairperson office is reserved for women at all levels.
- SC/ST reservation: State legislature 'shall' provide for reservation of offices of chairperson at village or any other level  
**Note:** No provision for reservation for SC (both members + Chairperson) exists in case of Arunachal Pradesh as the state is inhabited fully by indigenous people.

### **Duration of Panchayats (Article 243 E)**

- **Duration:** 5 years
- **Elections;** 'Must' be held before completion of tenure.
- **'Dissolution' of Panchayats:** If dissolved before five years, elections 'must' be held within 6 months.
- **Duration of the newly constituted Panchayat:** It continues 'only' for the remainder of the period. Example, Panchayat dissolved in 3 years, New Panchayat will continue for 2 years only.

### **State Finance commission (Article 243 I)**

- **Appointment:** Governor
- **Report:** Submitted to Governor
- Composition/conditions of service/ salaries and allowances are determined by 'State legislature by law'

#### **Recommendation**

- State Finance commission 'shall' recommend on –
- 'Distribution' of net proceeds of tax, duties etc.

- ‘Grant in aid’ provided to ‘panchayat’ from ‘consolidated fund of state’.
- Taxes, duties tolls that ‘may’ be assigned to panchayat
- Devolution of power to prepare plans for economic development
- Also Central finance commission can recommend measures to augment the of Consolidated fund of a state and supplement the resources of panchayat in the state.

### **State Election commission (Article 243 K)**

- Constitutional body
- ‘Single’ member body unlike ‘Election commission’ which a ‘multi member body.’
- Appointed by the Governor.
- Condition of service and tenure is determined by the ‘Governor’.
- Removal Procedure is same as like the Judge of High Court.
- Service conditions cannot be varied for his or her disadvantage.
- Provision of proceedings related to ‘conduct of elections’ are determined by ‘State Legislature’.

### **Application to Union Territories (Article 243 L)**

- Not automatically applicable to Union territories
- Applicable only when ‘President’ issues an order

### **Audit & Accounts**

- State Legislature may make a provision of accounts and audit of Panchayat.

### **Exempted States and Areas (Article 243 M)**

#### **The provisions do not apply to the following regions**

- Tribal areas in states → Autonomous and Regional council exists.
- Scheduled Areas in states → ‘PESA’ is applicable
- Hills areas of Manipur → District councils exist
- Darjeeling → Darjeeling Gorkha Hill Council exists.
- Not applicable to Nagaland, Mizoram, Meghalaya.

### **Bar to Interference by Courts in Electoral Matters**

- Validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court.
- **Election Petition against Disputes** will be presented to such authority as determined by the State legislature.
- Questions of disqualifications ‘shall’ be referred to such authority as the state legislature determines.

### **Type of Provisions**

- **Voluntary provisions:** Provision which ‘may’ be enforced. They are left to the discretion of the state therefore they vary from state to state for example functions, powers and resources of PRI’s.
- **Compulsory provisions:** Provision which ‘shall’ be enforced. Thus, these provisions are uniform across India for example structure, composition, term, tenure etc. of PRI’s.

### **Compulsory Provisions**

1. Organization of Gram Sabha.
2. Establishment of panchayats at the village + intermediate + district levels.
3. Direct elections to all seats in Panchayats at all three levels.
4. Indirect elections → Chairperson of panchayats at intermediate + district levels.
5. Voting rights → Chairperson + other members of Panchayat (elected directly or indirectly).
6. 21 years → Minimum age for contesting elections to panchayats.

7. Reservation of seats for SCs and STs in panchayats (all three levels)
8. Reservation of one-third seats for women in panchayats (all three levels).
9. Fixed tenure of five years for panchayats at all levels + Holding fresh elections within six months in the event of supersession of any panchayat.
10. State Election Commission → for conducting elections to the panchayats.
11. State Finance Commission → after every five years to review the financial position of the panchayats.

### **Voluntary Provisions**

1. Endowing the Gram Sabha with powers + functions at the village level.
2. Determination of manner of election of the chairperson of the village panchayat.
3. Representation to the chairpersons of the village panchayats in the intermediate panchayats
4. Representation to MP's + MLA's in the panchayats at different levels.
5. Reservation of seats for backward classes in panchayats at any level.
6. Granting powers and authority to the panchayats to make them autonomous bodies.
7. Devolution of powers and responsibilities upon panchayats → to prepare plans for economic development and social justice; and to perform some or all of the 29 functions listed in the Eleventh Schedule of the Constitution.
8. Granting financial powers to the panchayats → levy, collect and appropriate taxes, duties, tolls and fees.
9. Assigning to a panchayat the taxes, duties, tolls and fees levied and collected by the state government.
10. Making the grants-in-aid to the panchayats from the consolidated fund of the state.
11. Providing for constitution of funds for crediting all moneys of the panchayats.

## **PANCHAYAT EXTENSION TO SCHEDULED AREAS**

- Part IX: Not applicable to 5th schedule areas.
- Parliament 'may' extend its provisions to these Schedule areas with 'modification' to under PESA Act of 1996

### **Objective**

- To provide 'self-rule' for tribal population
- To safeguard and preserve 'traditions and customs' of tribal
- To ensure 'participatory democracy' at village level
- Evolve suitable administrative framework consistent with traditional practices.
- Prevent Panchayats at higher level from assuming powers + authority of lower level of Gram Sabha.

### **Features**

- State legislation on "Panchayats in Scheduled Areas" shall be in consonance with 'customary Law', "social and religious practices' etc.
- Every village shall have a Gram Sabha. Gram Sabha consists of person whose names are included in electoral roll of Panchayats at village level.
- Gram Sabha empowered to protect custom and traditions + cultural identity + community resources + customary mode of dispute resolution.

### **Gram Sabha**

- Approve plans, programmes and projects of 'socio-economic development'.
- 'Identification of beneficiaries' under poverty alleviation programme.
- Panchayat at village level obtain from Gram Sabha certification for utilization of funds related to completion of projects.
- Recommendation of Gram Sabha or Panchayat 'shall' be 'mandatory' for grant of mining lease for minor minerals in scheduled areas.
- Consultation of Gram Sabha or Panchayat is needed before land acquisition for different projects.

### **Reservation**

- In proportion of population of communities to those reservation is sought to be given under Part IX of the Constitution.
- Reservation for STs shall not be less than half of total number of seats.
- All seats of chairpersons at all levels shall be reserved for STs.
- State government may nominate (not more than one – tenth of total elected members) such ST's which have no representation in Panchayats at intermediate or district level.

### **State Legislature**

- State shall endeavour to follow pattern of 6th schedule while designing administrative arrangements in Panchayats at district level in scheduled areas.
- Legislations passed by state shall contain safeguards to ensure Panchayats at higher level don't assume powers/ authority of Panchayats at lower level.

## **MUNICIPALITIES**

### **Historical Evolution**

Year	Events
1688	Madras- first Municipal Corporation was set up.
1726	Municipal Corporations set up in Bombay and Calcutta
1870	Lord Mayo Resolution on Financial decentralization
1882	Lord Ripon resolution known 'Magna Carta' of Local Self Government. Lord Ripon is known as Father of Local Self Governance.
1907	Royal commission on Decentralization
1919	Gol Act 1919 made Local Self Government became transferred subject
1924	Cantonments Acts was passed.
1935	Gol Act 1935: Local Governments a provincial subject

### **About Municipalities**

- **Definition:** System of 'Local self-government' in 'urban' areas
- **Establishment:** In all states by act of State Legislature
- **Objective:** To build 'democracy' at 'grassroot' level
- **Constitutionalized:** By the 74th constitutional amendment

### **74th Constitutional amendment:**

- Gave 'constitutional status' to the municipalities
- **Provisions added:** Part-IX A: Article 243 - P to 24 - ZG + **Schedule 12:** Contains 18 functional items of Municipalities.

### **Constitution of Municipalities (243 Q)**

Shall be constituted in every state:

- Nagar Panchayat: For a transitional area (Transition from rural → Urban)
- Municipal Council: For a smaller urban area
- Municipal Corporation: For a larger urban area
- Such specification into different area is done by the Governor.
- Factor while specifying region: 1) Population of the area 2) Density of the population 3) Revenue generated for local administration 4) Percentage of employment in non-agricultural activities 5) Economic importance 6) Other factors he deems fit.

- Exception: Municipality is not constituted → Urban area → Municipal services are being provided by Industrial establishment → Governor 'may' specify area as Industrial township.

### **Composition of Municipalities (243 R)**

- All members → Directly elected by the people of municipal area.
- Municipal area → divided into territorial constituencies → Wards (purpose of election).
- State 'may' provide for manner of election of chairperson
- State can also provide for representation of the following:
  - i) Persons having special knowledge or experience in Municipal administration (do not have right to vote).
  - ii) MP's of Lok Sabha + MLA's → Represent constituency that comprise whole/part of Municipal area.
  - iii) MP's of Rajya Sabha + MLC's → Registered as voters in Municipal area.
  - iv) Chairperson of committees other than ward committees.

### **Ward Committee (243 S)**

- It may consist of one or more wards within territorial area of municipality having population of 3 lakh or more.
- Composition and territorial area of ward committee – by state legislature.

### **Reservation (243 T)**

- Seats are reserved for SC and ST (based on population)
- Not less than 1/3rd seats shall be reserved for women (including seats reserved for SC/ST women).
- State Legislature → may provide Manner of reservation for Chairpersons (SC/ST)
- State 'may' provide for reservation of backward classes.

### **Duration of Municipalities (243 U)**

- Duration:** 5 years
- Elections:** 'Must' be held before completion of tenure.
- 'Dissolution' of Municipality:** If dissolved before five years, elections 'must' be held within 6 months. If period remaining is less than 6 months then no need for election for such term.
- Duration of the newly constituted Panchayat:** It continues 'only' for the remainder of the period.

### **Disqualifications for membership (243 V)**

- Can be disqualified under any law in force made by State Legislature.
- Provides minimum age for contesting i.e. 21 years of age
- Questions of disqualifications → shall be referred to authority (determined by State legislature).

### **Power and Functions of the Municipalities (243 W)**

- State Legislature by law 'may' endow Municipalities → Power + authority to enable them to function as institutions of self-government.
- 12th schedule: Contains 18 functions that can be transferred by state legislature to municipalities.

### **Finances (243 X)**

#### **State legislature 'may' by law**

- Authorize a Municipality → power to levy + collect + appropriate taxes, duties, tolls and fees.
- Assign a Municipality → taxes, duties, tolls and fees which are levied and collected by the State Government.
- Provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State.
- Provide for constitution of funds for crediting all moneys of the municipalities.

### **Finance commission (243Y)**

- Similar to Panchayats.

### **Audit of accounts of Municipalities (243 Z)**

- State Legislature may make a provision of accounts and audit of Municipalities.

### **Election to the Municipalities (243 ZA)**

- Superintendence, direction and control of elections → Election commission.

### **Application to Union territories (243 ZB)**

- Not automatically applicable to Union territories
- Applicable only when 'President' issues an order

### **Exempted areas (243 ZC)**

- Does not apply to scheduled area + tribal areas of the state
- Parliament 'may' extend the provisions to scheduled and tribal areas.
- Darjeeling Gorkha Hill Council of the West Bengal.

### **Committee for district planning (243 ZD)**

Parameters	Key Facts
District Planning Committee	<ul style="list-style-type: none"> <li>• Constituted at district level in every state</li> </ul>
Objective	<ul style="list-style-type: none"> <li>• Prepare a draft development plan (whole district)</li> </ul>
About Draft development plan	<ul style="list-style-type: none"> <li>• Prepared by consolidating plans prepared by Panchayats + Municipalities.</li> <li>• Takes into consideration matter of common interest b/w Panchayats and the Municipalities + Available resources + consult such institutions as Governor may specify.</li> </ul>
Composition of DPC	<ul style="list-style-type: none"> <li>• State Legislature <b>may</b> by law provide for           <ol style="list-style-type: none"> <li>1. Composition of District Planning Committees</li> <li>2. Manner in which seats in these committees shall be filled</li> <li>3. Manner in which Chairperson shall be chosen.</li> </ol> </li> <li>• But 4/5th members are elected by 'elected members' of district panchayat + municipalities in districts.</li> <li>• Representation of elected members in the committee shall be in proportion to rural - urban population</li> </ul>
Procedure after development plan is prepared	<ul style="list-style-type: none"> <li>• Chairperson → forward the plan to State Government.</li> </ul>

### **Committee for Metropolitan planning (243 ZE)**

Parameters	Key Facts
Metropolitan planning Committee	<ul style="list-style-type: none"> <li>• Constituted in every Metropolitan area</li> <li>• Area in the country where population is above 10 Lakh.</li> </ul>
Objective	<ul style="list-style-type: none"> <li>• Prepare a draft development plan</li> </ul>
About Draft development plan	<ul style="list-style-type: none"> <li>• Prepared by consolidating plans prepared by Panchayats + Municipalities.</li> <li>• Takes into consideration matter of common interest b/w Panchayats and the Municipalities + Overall aim and priorities of Govt. (both centre and state) + nature of investment and available resources + consult institutions which Governor may specify.</li> </ul>
Composition of DPC	<ul style="list-style-type: none"> <li>• State Legislature <b>may</b> by law provide for           <ol style="list-style-type: none"> <li>4. Composition of Metropolitan Planning Committees</li> <li>5. Manner in which seats in these committees shall be filled</li> <li>6. Manner in which Chairperson shall be chosen.</li> </ol> </li> <li>• But 2/3rd members are elected by 'elected members' of district panchayat + municipalities in districts.</li> <li>• Representation of elected members in the committee shall be in proportion to rural - urban population</li> </ul>

Parameters	Key Facts
Procedure after development plan is prepared	<ul style="list-style-type: none"> <li>Chairperson → forward the plan to State Government.</li> </ul>

### Bar to Interference by Courts in Electoral Matters (243 ZG)

- Validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court.
- Election Petition against Disputes** will be presented to such authority as determined by the State legislature.

### Types of Urban Government

Types	Purpose	Creation	Administrative framework
Municipal Corporation	Administration of Big cities. Ex. Mumbai	State Legislature UT's → Parliament	Council (headed by Mayor) + standing committees + Municipal commissioner.
Municipalities	Administration of towns and smaller cities.	State legislature	Council (headed by President, the standing committees, Chief executive officer).
Notified area committee	Fast developing towns. Regions which don't fulfill requirement of Municipality	Notification in government gazette	Entirely nominated body (all members are nominated by State Government).
Town area committee	Small town administration	State legislature.	Semi municipal authority with limited functions. Depends on State Government (wholly elected or wholly nominated or partly elected and partly nominated).
Cantonment Board	Civilian administration in cantonment area	Cantonments Act of 2006 enacted by Central government	Under defense ministry partly elected and partly nominated.
Township	To provide civic amenities to staff and workers large public enterprises	-	Town administrator appointed by the Public enterprise. No elected members.
Port Trust	Civil administration in and round ports + management and protection of ports	Act of Parliament	Both elected + nominated member.
Special Purpose Agency	Fulfils specific purpose i.e. function based organization not area based.	Statutory bodies by State legislature. Department by executive functions	Autonomous bodies Not subordinate to local municipal bodies.

### Central Council of Local Government

- Year: 1954
- Constituted under provision of Article 263 by the President.
- It deals with urban government only
- Only an advisory Body
- Members: Union Minister for Urban Development (Chairman) and ministers of Local self -Government Minister in states are the members.

## CHAPTER 23

# Union Territories

- **Article 1** describes the ‘Territory of India’.
- **Territory of India:** Comprises of Territories of State + Union Territories + Territories acquired by government at any time
- **Present position:** 28 States + 8 Union Territories
- **Union Territories:** Areas under ‘direct’ control and ‘administration’ of the Central Government.

### CREATION OF UNION TERRITORIES

- **Evolution:** Scheduled Districts (1874) → Chief commissioners provinces → Post -Independence placed in Part ‘C’ and Part ‘D’ territories → Union territories (1956) by the 7th constitutional amendment act.
- **Original constitution:** Union Territories were ‘not’ mentioned in the original constitution. The ‘original constitution’ had declared India as ‘union of states’. These were classified into A, B, C and D states.
- **7th constitutional amendment act:** ‘Removed’ the classification of A, B, C and D states. Led to the introduction of States (Part VI) + Union Territories (Part VIII)
- **Reasons for creation:** Can be created for ‘various’ reasons for example Political and Administrative reason (Delhi, Chandigarh) + Cultural distinctiveness (Puducherry, Dadra & Nagar Haveli, Daman and Diu) + Strategic importance (Andaman Nicobar, Lakshadweep).

### CONSTITUTIONAL PROVISIONS RELATED TO UNION TERRITORIES

- **Constitutional provisions:** Article 239 to 241 (Part VIII).

### ADMINISTRATION OF UNION TERRITORIES (ARTICLE 239)

- No uniformity exists in administrative system of different Union territories.
- Administration of UT’s → done by ‘President’ acting through an administrator.
- Administrator → Appointment by President + Designation decided by President.
- Designation as Lieutenant Governor → In case of J&K, Ladakh, Puducherry, Delhi, Andaman and Nicobar. For other union territories he is designated as an Administrator.
- Legislative power → Parliament can legislate on subjects in all three lists.
- Legislative power of Parliament remains unaffected even after establishment of local legislature (i.e. in case of Delhi, Puducherry and Jammu and Kashmir).
- Provisions for UT’s are applicable for ‘acquired territory.’

UT's with local legislature	State list	Concurrent list	Exceptions (cannot make law)
Delhi	Can make law	Can make law	Public order, police and land
J&K	Can make law	Can make law	Public order and Police
Puducherry	Can make law	Can make law	No exception

### Creation of local’ legislature or ‘council of Minister’ or ‘both’ for certain UT’s: (Article 239A)

- Added by the 14th constitutional amendment act, 1962
- Provides for creation of ‘local’ legislature or ‘council of Minister’ or ‘both’ for certain Union Territories.
- Local legislature is created by Parliament ‘may’ by law.
- Local Legislature can be partly elected + partly nominated or completely elected.

## **NCT OF DELHI (ARTICLE 239 AA)**

- Inserted by 69th constitutional amendment act, 1991.
- ‘Renamed’ Delhi as NCT (National capital territory), Delhi.
- Governance structure: State Legislative assembly + Lieutenant Governor (Head) + Council of Ministers headed by Chief Minister

### **Legislative Assembly of Delhi**

- Provides for ‘**State Legislative assembly**’ of Delhi.
- Seats → filled by ‘Direct elections’
- Total seats in Delhi Assembly → 70
- Election commission of India → conduct elections.
- Parliament → decides total Seats + reservation of seats
- Reservation → In ‘proportion’ of population of SC/ST’s
- Land, Police and public order → State list subjects not in control of Delhi legislature
- Laws on the above subjects are under Government of India.
- Conflict b/w State legislative law vs Parliament law → Parliament law ‘prevails’.

### **Executive**

- Total strength of council of ministers → Shouldn’t exceed 10% of total strength of the assembly (For states it is 15%).
- Appointment of CM → By President
- Other Ministers → By President on advice of CM (In case of other UTs it is done by the Lieutenant Governor).
- **Lieutenant Governor:** Possesses ordinance making power. Prior approval of President is necessary.
- Difference of opinion b/w LG and Ministers → Matter decided by ‘President’.

## **Provision in case of failure of constitutional machinery (Article 239 AB)**

- Provides for imposition of state of emergency in Delhi.
- By: President.

## **ORDINANCE MAKING POWER (ARTICLE 239 B)**

- The ‘administrator’ of Union Territory ‘shall’ have the power to ‘promulgate’ an ordinance.

## **REGULATIONS FOR UNION TERRITORIES (ARTICLE 240)**

- The provisions of article was changed by J&K reorganization act + Dadar and Nagar Haveli and Daman and Diu merger act.
- Allows President to make regulations for 1) peace 2) progress 3) good government’ of UTs of
  1. Andaman and Nicobar
  2. Lakshadweep
  3. Dadra Nagar Haveli and Daman & Diu
  4. Puducherry
  5. Ladakh (Added by J&K reorganization act).

## **UT's can have their own High court (Article 241)**

- Present situation: 2 UT's have their own High court (Delhi + Jammu & Kashmir).
- Other UT's: HC of one state can serve as a High court for another UT's (Bombay HC for Daman and Diu + Dadar & Nagar Havelli).

## COMPARISON BETWEEN STATES AND UNION TERRITORIES

Comparison	States	Union Territories
<b>Relation with Centre</b>	Federal	Unitary
<b>Distribution of Powers</b>	Exists	Does not exist
<b>Uniformity in Politics &amp; Administration</b>	Exists	Does not exist
<b>Governor</b>	Head of State	Agent of the Centre
<b>Parliamentary law w.r.t State list</b>	Only in exceptional circumstances	For all 3 lists

### Recent developments

#### **Dadra and Nagar Haveli and Daman and Diu (Merger of Union territories) act, 2020:**

- This act led to the merger of the two union territories of Dadra and Nagar Haveli and Daman and Diu. This was done to reduce duplication of services and reduce the cost of administration.

## **JAMMU AND KASHMIR REORGANISATION ACT 2019**

### **This Act made the following changes:**

- **Union territory of J&K and Ladakh:** This act created Union Territories of Jammu and Kashmir and Ladakh. This was the first time a state had been changed into a union Territory.
- **Allocation of seats:** There were 6 Lok Sabha seats with the state of Jammu and Kashmir. Of these six seats, 5 were given to the union territory of Jammu and Kashmir, while one was allotted to Ladakh.
- **Legislative Assembly:** Jammu and Kashmir to have a Legislative Assembly with a term of five years (unlike earlier term of six years). And Kashmir would have a Lieutenant Governor.
- **Powers of Assembly:** Unlike Delhi, the Jammu & Kashmir Assembly will have power to make laws related to land. But it has not been given the power to make laws on 'Police' or 'public order'
- **Ended certain privileges:** No more separate constitution, national anthem or flag like before. No more dual citizenship like before.
- **Article 360:** Financial Emergency would now be applicable in the state of Jammu and Kashmir. (Financial Emergency has never been declared in India.)
- **Penal code:** Indian Penal Code replaced Ranbir Penal Code of Jammu and Kashmir.
- **Article 35A repealed:** Article 35A was made null and void due to changes in Article 370.

## CHAPTER 24

# Scheduled and Tribal areas

- Constitutional Provisions: Articles 244 and 244 A deals with Scheduled and Tribal Areas.
- Part X deals with Scheduled and Tribal areas.

### REASON FOR A SEPARATE PART

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- Provisions of 'Part IX' are not applicable to 'Tribal areas' as it is difficult to have local administration in these regions due to the following reasons:
  - Difficult to form 'Gram Panchayat' in Tribal areas.
  - Distinct culture
  - Unique system of administration.
  - Protect the Tribal regions from exploitation (particularly tribal land).
- Thus, 'separate system of administration' is provided for Tribes via Schedule 5 + Schedule 6 + PESA.

### ARTICLE 244 (1): SCHEDULED AREAS AND SCHEDULED TRIBES

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#### Scheduled Area

- It applies to regions in the **fifth schedule**
- No definition** for scheduled area + **No criteria** for determining Scheduled area has been given in the constitution.
- Scheduled area** → Similar to 'partially' or 'fully' excluded areas under 'Gol Act 1935'. They are 'basically' Tribal areas.
- Powers of President**: Declare an area as Schedule area + Increase or decrease its area + alter its boundary + Revoke such designation in 'consultation' with the Governor.
- Powers of Governor**: Holds responsibility for a Scheduled Areas. He submits an annual report on the administration to the President + holds power to decide 'whether' a law (Parliament or State legislature) will be applicable to a scheduled area.
- Tribes Advisory council**: Assists the Governor on how to administer the schedule areas.
- Composition**: Tribal advisory council consists of Maximum of 20 members (3/4th members are elected from 'MLAs' from scheduled areas + 1/4th are nominated members).
- Commission**: Constitution requires President to appoint a commission (any time but mandatorily 10 years after commencement of constitution) on administration of scheduled areas.
- States with Scheduled Areas - Himachal Pradesh, Jharkhand, Chattisgarh, Odisha, Maharashtra, Gujarat, Andhra Pradesh, Tamil Nadu, Madhya Pradesh and Rajasthan.

### ARTICLE 244(2)

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- Applies to **Sixth Schedule areas** i.e. tribal areas of Assam, Mizoram, Meghalaya and Tripura.
- Tribal areas in the region → Constituted as autonomous districts.
- These regions do not fall under executive authority of state.
- Administration of these regions will be through 'District council' and 'Regional council'
- Powers of Governor → Organise and re – organise autonomous districts + increase or decrease their areas + change their names + define their boundaries.

### **Autonomous District council (ADC)/ Autonomous Regional council (ARC)**

- If population of a district is 'majorly' a Tribal population → District council established.
- If population of 'part' of the district → i.e. a 'region' consists of Tribal areas →Regional council established.
- District or Regional council is named after district or Region. The list is given below

States	Tribal areas
<b>Assam</b>	<ul style="list-style-type: none"> <li>• The North Cachar Hills District.</li> <li>• The Karbi Anglong District.</li> <li>• The Bodoland Territorial Areas District.</li> </ul>
<b>Meghalaya</b>	<ul style="list-style-type: none"> <li>• Khasi Hills District.</li> <li>• Jaintia Hills District.</li> <li>• The Garo Hills District.</li> </ul>
<b>Tripura</b>	<ul style="list-style-type: none"> <li>• Tripura Tribal Areas District.</li> </ul>
<b>Mizoram</b>	<ul style="list-style-type: none"> <li>• The Chakma District.</li> <li>• The Mara District.</li> <li>• The Lai District.</li> </ul>

- **Possess:** Legislative + Executive + Judicial powers
- **Legislative power:** Frame laws on certain 'specified matters' after 'consultation with the Governor'. Example they can frame laws – Land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs etc.
- **Executive power:** Various functions related to Primary schools, Dispensary, market, ferry, fisheries, roads etc.
- **Power to make regulations:** Make regulations with 'approval' from Governor for control over 'money lending' and trading by 'non-Tribals'
- **Judicial powers:** Resolution of conflict
- **Creation of Resolution Mechanism:** Autonomous District council or Autonomous regional council can constitute 'village councils' or 'courts' to resolve conflicts between tribes.
- **Appeal:** Lies with the Autonomous District council or Autonomous regional council.
- **Jurisdiction of High court** over the cases needs to be 'specified' by the Governor.

## CHAPTER 25

# Co-operative Societies

- **Constitutional Status Given By:** 97th Constitutional Amendment Act of 2011
- Changes done by 97th CAA:
  - ◆ Right to form co-operative societies became a fundamental right (**Article 19** ).
  - ◆ Included a new DPSP on promotion of co-operative societies (**Article 43-B** ).
  - ◆ Added a new **Part IX-B** in the Constitution which is entitled “The Co-operative Societies” (**Articles 243-ZH to 243-ZT**).

### **CONSTITUTIONAL PROVISIONS**

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- State legislature may make provisions related:
  - ◆ To form co-operative societies based on certain principles
  - ◆ To the total number of directors of a co-operative society; they shall not exceed twenty-one.
  - ◆ To the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on the board.
  - ◆ To make provisions for co-option of maximum 2 persons having experience in the field of banking, management, finance etc. as members of the board
  - ◆ To make provisions for the maintenance of accounts by the co-operative societies and the auditing of such accounts at least once a financial year.
  - ◆ To convene the annual general body meeting of every cooperative society within a period of six months of the close of the financial year.
  - ◆ To the offences relating to the co-operative societies and penalties for such offences.
- Term of office of elected members - 5 Years
- Election of a board shall be conducted before the expiry of the term of the board.
- In case of persistent default or negligence in the performance of duties etc. the board shall be superseded or kept under suspension for a period not exceeding six months.

### **REASONS FOR THE 97<sup>TH</sup> AMENDMENT**

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- To revitalise these institutions in order to ensure their contribution in the economic development.
- To ensure their autonomy, democratic functioning and professional management.
- To keep the co-operatives free from unnecessary outside interferences and also to ensure their autonomous organisational setup.
- To ensure the accountability of management towards the members and other stakeholders.

## CHAPTER 26

# Official Languages

- Dealt by Part XVII of Indian Constitution
- Articles 343 to 351.
- Its provisions are divided into four heads:
  1. Language of the Union,
  2. Regional languages,
  3. Language of the judiciary and texts of laws
  4. Special directives.

### LANGUAGE OF THE UNION

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- Official Language of the Union: Hindi written in Devanagari script.
- But Numerals to be used in international form.
- From 1950 to 1965: English language continued to be used for all official purposes.
- After that Parliament may provide for the continued use of English language
- Parliament enacted the Official Languages Act in 1963, for the continued use of English (even after 1965), in addition to Hindi, for all official purposes.
- In 1955 & then in 1960 the president should appoint a commission to make recommendations with regard to the progressive use of the Hindi language & other issues
- Parliament committee: To be constituted for examining the recommendations of the commission and to report its views on them to the president
- President appointed Language Commission under B.G. Kher in 1955
- In 1957, Parliament constituted a committee under Gobind Ballabh Pant to examine B.G. Kher Committee report.
- No Official Language Commission in 1960.
- Official Languages Act was amended in 1967 to make the use of English, in addition to Hindi, compulsory in certain cases.

### REGIONAL LANGUAGES

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- The Constitution does not specify the official language of different states.
- The state legislature may adopt any one or more languages as the official language of that state.
- The Official Languages Act (1963) states that English should be used for purposes of communication between the Union and the non-Hindi states
- But, two or more states are free to agree to use Hindi (instead of English) for communication between themselves.
- In order to protect the linguistic interests of minorities in the states, on a demand being made by a substantial proportion of the population of a state, President may direct that the demanded language shall also be officially recognised in that state.

### LANGUAGE OF THE JUDICIARY AND TEXTS OF LAWS

---

- Until Parliament provides otherwise, all proceedings in the Supreme Court and in every high court, The authoritative texts of all bills, acts etc. at the Central and state levels will be in English only.

- The governor of a state, with the previous consent of the president, can authorise the use of Hindi or any other official language of the state, in the proceedings in the high court of the state, but even after the president's consent, the judgements, decrees and orders passed by it should always be accompanied by an English translation.
- A state legislature can prescribe the use of any language (other than English) with respect to bills, acts etc, but their translation in the English language is to be published.

## SPECIAL DIRECTIVES

### **Protection of Linguistic Minorities**

- Aggrieved person has the right to submit a representation for the redress of any grievance to any officer/authority of the Union/state in any of the languages (official or non official) used in the Union or in the state.
- Every state and a local authority in the state should provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children from linguistic minority groups. The president can issue necessary directions for this purpose.
- The president should appoint a special officer for linguistic minorities to investigate all matters relating to the constitutional safeguards for linguistic minorities and to report to him.

## EIGHTH SCHEDULE

- Total number of official languages - 22
- Originally 14 languages: Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Odia , Punjabi, Sanskrit, Tamil, Telugu and Urdu.
- Sindhi: Added by the 21st Amendment Act of 1967;
- Konkani, Manipuri and Nepali : Added by the 71st Amendment Act of 1992;
- Bodo, Dongri, Maithili and Santhali : Added by the 92nd Amendment Act of 2003.

## CLASSICAL LANGUAGE STATUS

- 2004: GOI decided to create a new category of languages called "classical languages".
- 2006: GOI laid down the criteria for conferring classical language status.

### **Criteria for Classical Language**

- High antiquity of its early texts/recorded history over a period of 1500-2000 years;
- A body of ancient literature/texts, which is considered a valuable heritage by generations of speakers; The literary tradition be original and not borrowed from another speech community; The classical language and literature being distinct from modern, there may also be a discontinuity between the classical language and its later forms or its offshoots.

### **Benefits**

- Classical language gets financial assistance for setting up a centre of excellence for the study of that language
- Opens up an avenue for two major awards for scholars of eminence.
- University Grants Commission can be requested to create a certain number of professional chairs for classical languages for scholars of eminence in the language.

S.No.	Languages	Year of Declaration
1	Tamil	2004
2	Sanskrit	2005
3	Telugu	2008
4	Kannada	2008
5	Malayalam	2013
6	Odia	2014

## CHAPTER 27

# Special Provisions Relating to Certain Classes

### RATIONALE OF SPECIAL PROVISIONS

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Contained in **Part XVI** of the Constitution from **Articles 330 to 342A**.

They are related to the following:

1. Reservation in Legislatures
2. Special Representation in Legislatures
3. Reservation in Services and Posts
4. Educational Grants
5. Appointment of National Commissions
6. Appointment of Commissions of Investigation into conditions of backward classes.

### CLASSIFICATION OF SPECIAL PROVISIONS

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1. Permanent and Temporary
2. Protective and Developmental

### SPECIFICATION OF CLASSES

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- Constitution does not specify the castes or tribes which are to be called the SCs or the STs.
- President has the power to specify which castes or tribes in each state and union territory are to be treated as the SCs and STs.
- 102nd Amendment Act of 2018 empowered the President to specify the socially and educationally backward classes i.e. OBC in relation to a state or union territory.
- In case of the states, the President issues the notification after consulting the governor of the state. But, any inclusion or exclusion of any caste or tribe from Presidential notification can be done only by the Parliament and not by a subsequent Presidential notification.
- Lists of the SCs, STs or OBCs vary from state to state and union territory to union territory.
- Unlike in the case of SCs, STs and OBCs, the Constitution has defined the persons who belong to the Anglo-Indian community. Accordingly, '**an Anglo-Indian** means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only'.

### COMPONENTS OF SPECIAL PROVISIONS

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#### 1. Reservation for SCs and STs and Special Representation for Anglo-Indians in Legislatures:

- **Art 334:** On the basis of population ratios, seats are to be reserved for the SCs and STs in the Lok Sabha and the state legislative assemblies.
- There used to be reservation of seats in Lok Sabha & State Legislature both for Anglo-Indians but same has been removed by **104th Amendment Act**.
- No reservation of seats in Rajya Sabha or legislative councils

**2. Claims of SCs and STs to Services and Posts:**

- Without sacrificing the efficiency of administration, the claims of the SCs and STs are to be taken into consideration while making appointments to the public services of the Centre and the states.

**3. Special Provision in Services and Educational Grants for Anglo-Indians:**

- Anglo-Indian educational institutions were given certain special grants by the Centre and the states. Both the benefits came to an end in 1960.

**4. National Commissions for SCs and STs:**

- President** should set up a National Commission for the SCs to investigate all matters relating to the constitutional safeguards for the SCs and to report to him (Article 338).
- President should also set up a National Commission for the STs to investigate all matters relating to the Constitutional safeguards for the STs and to report to him (Article 338-A). **89th Amendment Act of 2003** bifurcated the combined commission for SCs & STs into two separate bodies.
- The President should place all such reports before the Parliament, along with the action taken memorandum.

**5. National Commission for BCs:**

- Set-up in 1993 by an Act of Parliament.
- 102nd Amendment Act of 2018 conferred a constitutional status on the commission and inserted a new Article **338-B added** in the constitution.
- President should set-up a National Commission for the socially and educationally BCs to investigate all matters relating to the constitutional safeguards for the socially and educationally BCs and to report to him.
- President should place all such reports before the Parliament, along with the action taken memorandum.

**6. Control of the Union over the Administration of Scheduled Areas and the Welfare of STs:**

- President is required to appoint a commission to report on the administration of the scheduled areas and the welfare of the STs in the states.
- President can appoint such a commission at any time but compulsorily after ten years of the commencement of the Constitution.
- Appointed Commissions:**  
**1960:** Headed by U.N. Dhebar  
**2002:** Headed by Dilip Singh Bhuria.

**7. Appointment of a Commission to Investigate the Conditions of BCs:**

- President may appoint a commission to investigate the conditions of socially and educationally backward classes and to recommend the steps to improve their condition.
- Appointed Commissions:

First backward classes commission (1953): Headed by Kaka Kalelkar.

Second Backward Classes Commission (1979): Headed by B.P. Mandal.

## CHAPTER 28

# Special Provisions For Some States

Parameters	Related Facts
<b>Constitutional provision</b>	<ul style="list-style-type: none"> <li>Part XXI - Articles 371 to 371-J (Special provisions for 12 states).</li> </ul>
<b>States</b>	<ul style="list-style-type: none"> <li>Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Telangana, Sikkim, Mizoram, Arunachal Pradesh, Goa and Karnataka</li> </ul>
<b>Objective</b>	<p>To give certain protections within the state:</p> <ol style="list-style-type: none"> <li>Meet the aspirations of the people of backward regions.</li> <li>Protect the cultural and economic interests of the tribal people</li> <li>To deal with the disturbed law and order condition (parts of state).</li> <li>To protect the interests of the local people.</li> </ol>
<b>Provisions for Maharashtra and Gujarat (Article 371)</b>	<ul style="list-style-type: none"> <li>Establish separate development boards for Vidarbha + Marathwada + rest of Maharashtra + Saurashtra + Kutch + rest of Gujarat</li> <li>Report of these Boards → State Legislative assembly.</li> <li>Equitable allocation of funds for developmental purposes.</li> <li>Provide facilities for education, vocational training etc.</li> </ul>
<b>Provisions for Nagaland (Article 371 – A)</b>	<ul style="list-style-type: none"> <li>Parliamentary Act don't apply unless SLA decides on matters of religious social practices, Customary laws and procedures, administration of civil and criminal justice. Ownership and transfer of land of Nagas.</li> <li>Governor → special responsibility with regards to Law &amp; Order in Nagaland, for peace in Tuensang region, constitute a regional council council for Tuensang district, ensure money given by central govt. for any specific purpose is demanded as a grant by SLA for that particular purpose and not any other.</li> </ul>
<b>Provisions for Assam (Article 371 B)</b>	<ul style="list-style-type: none"> <li>President → can create a committee of the Assam Legislative Assembly → Members selected from Tribal Areas.</li> </ul>
<b>Provisions for Manipur (Article 371 C)</b>	<ul style="list-style-type: none"> <li>President → can create a committee of Manipur legislative assembly → Members from hill areas of state.</li> <li>President → direct Governor has special responsibility to secure proper functioning of the committee.</li> <li>Governor submit report to President → regards to administration of Hill areas.</li> <li>CG → can give directions to SG as to administration of hill areas.</li> </ul>
<b>Provisions for Andhra Pradesh or Telangana (371D/371E)</b>	<ul style="list-style-type: none"> <li>President is empowered to provide Equal opportunities for Andhra, Telangana and Rayalaseema Regions.</li> <li>Local Area Reservations can be created in Education and Employment.</li> <li>Special Administrative Tribunal for Civil post in the state.</li> <li>Parliament is empowered to provide Central University in Andhra Pradesh</li> </ul>
<b>Provisions for Sikkim (371 F)</b>	<ul style="list-style-type: none"> <li>Representation: 30 member legislative assembly, one LS seat</li> <li>Reservations for different sections.</li> <li>Governor has special responsibility for equitable social and economic advancement of different sections of Sikkim population.</li> </ul>
<b>Provisions for Mizoram (371 G)</b>	<ul style="list-style-type: none"> <li>Parliament laws do not apply for socio religious practices, customary law and procedures, administration of civil and criminal justice, transfer of land of Mizo</li> <li>Representation: Mizo Assembly shall have minimum 40 members</li> </ul>
<b>Provisions for Arunachal Pradesh (371 H)</b>	<ul style="list-style-type: none"> <li>Governor has special Responsibilities for Law and Order.</li> <li>Representation: Assembly shall have minimum of 30 members.</li> </ul>
<b>Provisions for Goa (371 I)</b>	<ul style="list-style-type: none"> <li>Representation: Assembly shall have minimum of 30 members.</li> </ul>
<b>Provisions for Karnataka (371 J)</b>	<ul style="list-style-type: none"> <li>Special Provisions for Development: Development Board for Hyderabad Region (98thCAA)</li> </ul>

## CHAPTER 29

# Elections in India

### POLITICAL PARTIES

**Political parties:** Voluntary associations or organised groups of individuals who share the same political views and who try to gain political power through constitutional means and who desire to work for promoting the national interest.

#### Types of political parties in the modern democratic states

**Right Parties: Example: BJP**

1. **Reactionary Parties:** Believe in old socio-economic and political institutions;
2. **Conservative parties:** Believe in the status-quo;

**Centre Parties: Example: Congress**

3. **Liberal Parties:** Aim at reforming the existing institutions;

**Left Parties: Example: CPI & CPM**

4. **Radical Parties:** Aim at establishing a new order by overthrowing the existing institutions.

#### Party systems in the world

1. **One party system:** Only one ruling party exists and no opposition is permitted,  
Example: Former USSR China
2. **Two-party system:** Two major parties exist.  
Example: USA & Britain
3. **Multi-party system:** There are a number of political parties leading to the formation of coalition governments.  
Example: France, Switzerland and Italy.

#### Party System in India

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

#### Recognition of National And State Parties

- Election Commission → responsible for registering political parties for the purpose of elections + grants them recognition as national or state parties (based on their poll performance).
- Number of recognised parties keeps on changing on the basis of their performance in the general elections.
- AAP (Aam Aadmi Party) would become the 9th National party.

### **Conditions for Recognition as a National Party**

- Secures 6% of valid votes polled in any 4 or more states at a general election to the Lok Sabha or to the legislative assembly; and, in addition, it wins 4 seats in the Lok Sabha from any state or states; or
- It wins 2% of seats in the Lok Sabha at a general election; and these candidates are elected from three states; or
- It is recognised as a state party in four states.

### **Conditions for Recognition as a State Party**

- It secures 6% of the valid votes polled in the state at a general election to the legislative assembly of the state concerned; and, in addition, it wins 2 seats in the assembly of the state concerned; or
- It secures 6% of the valid votes polled in the state at a general election to the Lok Sabha from the state concerned; and, in addition, it wins 1 seat in the Lok Sabha from the state concerned; or
- It wins 3% of seats in the legislative assembly at a general election to the legislative assembly of the state concerned or 3 seats in the assembly, whichever is more; or
- It wins 1/25 seats in the Lok Sabha or any fraction thereof allotted to the state at a general election to the Lok Sabha from the state concerned; or
- It secures 8% of the total valid votes polled in the state at a General Election to the Lok Sabha from the state or to the legislative assembly of the state. **This condition was added in 2011.**

## **ELECTION LAWS**

### **Representation of The People Act, 1950**

- **Articles 81 of Indian Constitution** : Maximum number of seats in Parliament.
- **Article 170 of Indian Constitution:** Maximum number of seats in Legislative Assemblies of States
- **Article 171 of Indian Constitution:** Maximum and minimum number of seats in the Legislative Council of a State. But these acts have left the actual allocation of such seats to be provided by the law.  
Therefore, The Representation of the People Act, 1950, was enacted for:
  - Allocation of seats in the House of the People, the State Legislative Assemblies and the State Legislative Councils.
  - Delimitation of Parliamentary, Assembly and Council Constituencies. By the President after consultation with the Election Commission,
  - Election officers like chief electoral officers, district election officers, electoral registration officers and so on.
  - Electoral rolls for Parliamentary, Assembly and Council constituencies.
  - Manner of filling seats in the Council of States to be filled by representatives of union territories.
  - Local authorities for purposes of elections to the State Legislative Councils.
  - Barring the jurisdiction of civil courts.

### **Representation of The People Act, 1951**

- The Representation of the People Act, 1950 did not contain all the provisions relating to elections.
- The provisions for the actual conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, were all left to be made in a subsequent measure.
- Hence, the Representation of the People Act, 1951 was enacted. Which contains the provisions relating to the following electoral matters:
  1. Qualifications and disqualifications for membership of Parliament and State Legislatures
  2. Notification of general elections
  3. Administrative machinery for the conduct of elections
  4. Registration of political parties
  5. Conduct of elections
  6. Free supply of certain material to candidates of recognised political parties

7. Disputes regarding elections
8. Corrupt practices and electoral offences
9. Powers of Election Commission in connection with inquiries as to disqualifications of members.
10. Bye-elections and time limit for filling vacancies.
11. Miscellaneous provisions relating to elections.
12. Barring the jurisdiction of civil courts.

The conduct of elections include the following matters:

- Nomination of candidates
- Candidates and their agents
- General procedure at elections
- The poll (e) Counting of votes
- Multiple elections
- Publication of election results and nominations
- Declaration of assets and liabilities
- Election expenses

The provisions of the Act with respect to disputes regarding elections are related to the following matters:

- Presentation of election petitions to High Court
- Trial of election petitions
- Withdrawal and abatement of election petitions
- Appeals to Supreme Court
- Costs and security for costs

### **Delimitation Act, 2002**

- **Articles 82 and 170:** Provide for readjustment and the division of Parliamentary constituencies and Assembly constituencies on the basis of the 2001 census by such authority and in such manner as Parliament may, by law, determine.
- **Articles 330 and 332:** Provide for re-fixing the number of seats reserved for the Scheduled Castes and the Scheduled Tribes in the House of the People and Legislative Assemblies of the States on the basis of the 2001 census.
- The allocation of seats to Parliamentary and Assembly constituencies is based on the 1971 census.
- 4 Delimitation commissions have been set up so far — 1952, 1962, 1972 and 2002
- The present delimitation of parliamentary constituencies within states, has been done on the basis of the 2001 census, under the provisions of Delimitation Act, 2002.
- 84th amendment Act of the Constitution of India ensured that no inter-state delimitation of constituencies till 2026.
- Thus, the present constituencies carved out on the basis of the 2001 census shall continue to be in operation till 2026 and later it can be done on the basis of population 2021.

### **Other Acts Relating To Elections**

- Parliament (Prevention of Disqualification) Act, 1959: Declares that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as members of Parliament.
- Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976: Provides for the inclusion in, and the exclusion from, the lists of Scheduled Castes and Scheduled Tribes, of certain castes and tribes, for the readjustment of representation of parliamentary and assembly constituencies.
- Government of Union Territories Act, 1963.
- Government of National Capital Territory of Delhi Act, 1991.
- Presidential and Vice-Presidential Elections Act, 1952: Regulates certain matters relating to or connected with elections to the offices of the President and Vice-President of India.

### Rules relating to Elections

- Registration of electors Rules, 1960: Provide for the preparation and publication of electoral rolls.
- Conduct of Elections Rules, 1991: Facilitates conduct of fair and free elections to the Parliament and State Legislatures.
- Prohibition of Simultaneous Membership Rules, 1950.
- Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985.
- Members of Rajya Sabha (Disqualification on Ground of Defection) Rules, 1985.
- Presidential and Vice-Presidential Elections Rules, 1974.
- Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004.
- Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004.

### Orders relating To Elections

- Election Symbols (Reservation and Allotment) Order, 1968: Provides for the specification, reservation, choice and allotment of symbols at elections in parliamentary and assembly constituencies, for the recognition of political parties in relation thereto.
- Registration of Political Parties (Furnishing of Additional Particulars) Order, 1992: Provides for furnishing of additional particulars by associations or bodies of individual citizens of India seeking registration as a political party with the Election Commission of India.

## ANTI-DEFLECTION LAW

'Defection' refers to abandoning a position or association, often to join an opposing group. Parliament has brought the Anti-Defection Law to prevent political defections due to the lure of office or material benefits or other like considerations (like personal motive) etc.

Parameters	Related Facts
Origin	<ul style="list-style-type: none"> <li>• Inserted by the <b>52nd Amendment</b> (1985) → reinforced in 2002 (91st CA)</li> </ul>
52nd CA	<ul style="list-style-type: none"> <li>• <b>10th schedule</b> of Indian constitution</li> <li>• Made changes in four articles: Article 101, 102, 190 and 191</li> </ul>
91st CA	<ul style="list-style-type: none"> <li>• <b>Limited size of CoM:</b> Union/State CoM should not be more than 15% of total strength of LS/State legislative assembly. State CoM shall not be less than 12.</li> <li>• MP/MLA (any political party) disqualified on ground of defection cannot become <b>minister</b>.</li> <li>• MP/MLA (any political party) disqualified on ground of defection cannot hold <b>remunerative posts</b>.</li> <li>• Exemption from disqualification under defection in case of split (1/3rd members) was done away with.</li> </ul>
Applicability	<ul style="list-style-type: none"> <li>• Both Parliament + state assemblies</li> </ul>
Grounds for disqualification under defection	<ul style="list-style-type: none"> <li>• Elected member → Voluntarily gives up his membership of a political party.</li> <li>• Member contradicts to any direction issued by his political party (in case of voting or abstains from voting)</li> <li>• Independently elected member → joins any party</li> <li>• Nominated member → joins any political party after the end of 6 months</li> </ul>
Exceptions	<ul style="list-style-type: none"> <li>• 2/3rd legislators of a political party merge into another party → no disqualification of any member.</li> <li>• Person elected as chairman or speaker can resign from his party without getting disqualified. Later he can rejoin the party in case he demits the position.</li> </ul>
Presiding officer	<ul style="list-style-type: none"> <li>• Final decision on disqualification questions on the ground of defection → Speaker/Chairman of the house.</li> <li>• No time limit exists to decide on a plea for disqualification.</li> <li>• Power is subject to Judicial review: Kihoto Hollohan case (2002)</li> <li>• President is empowered to make Rules for giving effect to provisions of Anti defection</li> </ul>
Dinesh Goswami Committee	<ul style="list-style-type: none"> <li>• Important committee on Anti – defection law</li> </ul>
Proceedings	<ul style="list-style-type: none"> <li>• All disqualification proceedings under 10th Schedule are considered to be proceedings in Parliament or the Legislature of a state.</li> </ul>

### **Disqualification of MP's**

<b>Source</b>	<b>Authority</b>	<b>Grounds</b>
<b>Constitution provisions (Art 102)</b>	President in consultation with Election commission	1) Office of Profit 2) Unsound mind (declared by the court as such) 3) Undischarged insolvent 4) Acquires Foreign citizenship
<b>Absent from house without Information.</b>	President in consultation with Election commission	Absence for 60 days without permission can be disqualified. (During calculation if house prorogued or is adjourned for 4 consecutive days these will not be taken into account).
<b>Representation of Peoples act (RPA), 1951</b>	President in consultation with Election commission	Corruption/Electoral Offenses/ Social crimes such as Untouchability etc. / Conviction for more than 2 years
<b>Anti - defection</b>	Presiding officer	Elected member → Voluntarily gives up his membership of a political party. Member contradicts to any direction issued by his political party (in case of voting or abstains from voting) Independently elected member → joins any party Nominated member → joins any political party after the end of 6 months



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# Constitutional bodies

# Non - Constitutional bodies

Parameters	Election commission of India	UPSC	SPSC	JSPSC	Finance commission	National commission for SC/ST/BC	Special officer for linguistic minorities	CAG	Attorney/ Advocate general	
Articles	324	315 – 323	315 – 323	315(Although mentioned in constitution it is a statutory body.)	280	338/338A/ 338B	350B (7th CAA)	148 - 151	76/165	
Composition	CEC + Other Election commissioners + President can appoint regional commissioner	Chairman + Other members as determined by the President	Chairman + Other members as determined by the Governor	Similar to UPSC	Chairman + 4 other members	Chairman + Vice chairman+ 3 members	Single member	Single member	Single member	
Appointment	President: Also determines size of EC.	President	Governor	President	President	President by warrant under his hand and seal	President	President by warrant under his hand and seal	President/ Governor	
Qualifications	Not prescribed	Half of the members should have experience under the govt of India or state govt for 10 years.	Half of the members should have experience under the govt of India or state govt for 10 years	Similar to UPSC	Determined by Parliament	No qualifications prescribed.	Constitution Does not give any qualifications	Not mentioned in the constitution	Qualified to be appointed as a SC Judge (Attorney General) / High Court Judge (advocate general)	
Tenure	65 years or 6 years whichever is earlier, determined by president.	65 or 6 years. (for both members and chairman)	62 or 6 years.	Appointed once in 5 years	Determined by president of India. (it is normally for 3 years)	Nothing mentioned in Constitution	65 or 6 years	At the pleasure of president/ governor.		
Removal	CEC – As like Judge of SC. Grounds: proved misbehavior or incapacity Others by President in consultation with CEC.	By President. Grounds: adjudged as insolvent, infirmity of mind or body, engages in employment outside office. SC Inquiry is needed if removal is on grounds of misbehaviour	By President (although appointed by Governor) Grounds of removal are same as UPSC	Similar to UPSC	Temporary body	President	Nothing mentioned in Constitution	President on basis of Parliament resolution. Process is similar as a judge of Supreme court.	No procedures. In case of Attorney General power lies with President and for advocate general Governor has the power to make decisions.	
Report submission	Not applicable	President	Governor	Governors of the states	President	President	President	President	Not applicable	
Post retirement practice	No restrictions	Not eligible for employment outside UPSC, Member can be appointed as chairman of UPSC or SPSC. No provision for reappointment for UPSC chairman	Not eligible for re appointment or any other job under Govt. Member can become chairman of the same or any other SPSC or UPSC Chairman or member. Chairman of SPSC can become Chairman of any other SPSC or member/chairman of UPSC	Chairman can be appointed as member/ Chairman UPSC + Member JSPSC can be appointed as Chairman of SPSC + 'Chairman/member of UPSC'	No restrictions	No limitations	Nothing mentioned in the constitution	Not eligible for any job under union or state govt.	Not debarred from private legal practice.	
Other important facts	Functions include preparation of voter list + conducting elections for Parliament + State legislature + President + Vice President.			JSPSC is mentioned in article 315. Two or more states need to pass a resolution requesting for JSPSC+Parliament by law creates them (Simple majority required).		Quasi Judicial bodies + Advisory function + Hold powers of a 'civil court'. Evolution: Original constitution: Article 338+Provided special officer for SC/ST's. 65th amendment: replaced special officer with National commission for SC and ST. 89th amendment: Separated NCSC & ST into NCSC (Article 338) and NCST (338 A).	CAG – 1) Friend philosopher and guide to 'public account committee'. 2) chief guardian' of public purse. 3) Heads India audit and accounts department. 4) Cannot participate in proceedings of Parliament.	1) Chief legal advisor - to the Government of India (GoI)/ Government of State. 2) Prez. + Governor don't seek advise of these bodies. Governor takes advise from President. President from Supreme court. 3) Enjoys all privilege + immunities of MP/MLA. 4) Cannot advise against Government + cannot defend a criminal case. 5) Can be a member of any legislative committee with no right to vote.		

Parameters	NITI Ayog	NHRC	SHRC	CIC	SIC	CVC	NGT	Lokpal and Lokayukta
Origin & Status	Executive order	Protection of Human rights act, 1993.Statutory	Protection of Human rights act, 1993. Statutory	RTI act, 2005. Statutory	RTI act, 2005. Statutory	CVC act, 2003. Statutory	NGT Act, 2010. Statutory	Lokpal and Lokayukta act, 2013. Statutory
Composition	PM (chairs) + Vice chairperson(PM elects) + Governing council(CM's + LG of UT's) + Regional councils + experts + Part time member (2)+ ex officio (4) + CEO	Total 5: 1 + 1 + 3 + 7 ex- officio members	Chairperson + 2 persons.	CIC (Chief Information commissioner) + 10 Information commissioner	SIC (State information commissioner) + 10 Information commissioner	1(Central vigilance ) + 2 (Vigilance commissioner)	10 to 20 Judicial members + 10 to 20 Expert members	Chairperson + Maximum 8 member(50 judicial members) + Minimum 50% members shall be from SCs, STs, OBCs, Minorities and Woman.
Qualifications	Executive determines	Chairperson: CJ/ Judge SC. Other members: 1 member is serving or retired CJ –HC. 3 members should have knowledge or practical experience in human rights. Ex – officio members (National commission on – Minorities + SC + ST + BC + women + Protection of child rights + Chief commissioner for PwD's.	Chairperson: CJ – HC or Judge of HC. Members: Judge of HC (serving or retired) or District Judge (7 years' work experience + knowledge or experience related to Human Rights).	Person of eminence and knowledge + Cannot be appointed if - MP/MLA/ Office of Profit	Person of eminence and knowledge + Cannot be appointed if - MP/MLA/ Office of Profit		Chairperson – Either a serving or retired Judge of Supreme court or Chief Justice of High court. Appointed by GoI (based on recommendation of selection committee appointed by the Ministry of Environment and forests)	Chairperson: serving or retired Judge of Supreme court or CJ – High court. Members: Non Judicial members should have minimum 25 year experience in matters of anti – corruption, vigilance, finance etc.
Appointment	-	By President based on recommendation of a committee consisting of 6 members i.e. PM + Speaker (LS) + Deputy Chairman (RS) + Leader of opposition (LS & RS both) + Union Home minister.	By Governor based on recommendation of a committee consisting of (in case of bicameral legislature) CM + Speaker (SLA) + Deputy Chairman (SLC) + Leader of opposition (SLA & SLC both) + State Home minister.	By 'President' on 'recommendation' of a committee Consisting of PM (Chairperson) + Union Cabinet Minister (Nominated by CM) + Leader of opposition in Lok Sabha	By Governor on recommendation of a committee consisting of CM (Chairperson) + State Cabinet Minister (Nominated by CM) + Leader of opposition in Legislative assembly.	'President' by warrant under his hand seal (on basis of recommendations of a selection committee). Composition: 1) Prime Minister + 2) Leader of Opposition (LS) + 3) Union Home Minister.	By Central Govt. (in consultation with CJ)	Lokpal members are appointed by President based on the recommendations of selection committee headed by PM consisting of Speaker – Lok Sabha + Leader of opposition – LS + CJ or SC Judge (nominated by CJ) + eminent Jurist recommended by other 4 members. Selection committee is assisted by search committee (to identify candidates). Lokayukta by Governor.
Tenure and service conditions	Executive determines	70 years/ 3 years. Can be re – appointed. Salary etc. is determined by Central Govt.	70 years/3 year/ Reappointment – Yes. Salary etc. is determined by State Govt.	As prescribed by central government/ 65 years/ not eligible for reappointment	As prescribed by central government/ 65 years/ not eligible for reappointment	'4 year' or '65 years'/ not eligible for reappointment	Different retirement age - Chairperson – 70 Judicial - 67 Non Judicial - 65 or 5 years	Both minimum (45 years) and maximum (70 years) age is prescribed. Tenure – 5 years. No reappointment.
Removal	Executive determined	President can removed in the case of 1) insolvency 2) paid employment outside office 3) Infirmitiy of body and mind 4) unsound mind 5) convicted and sentenced to imprisonment 6) misbehaviour or incapacity ( President has to refer to the matter of SC).	President can removed in the case of 1) insolvency 2) paid employment outside office 3) Infirmitiy of body and mind 4) unsound mind 5) convicted and sentenced to imprisonment 6) misbehaviour or incapacity ( President has to refer to the matter of SC).	By President – Procedure is similar to NHRC.	By Governor – Procedure is similar to NHRC.	By President – Procedure is similar to NHRC.	-	By President if insolvent, engages in paid employment and unfit due to infirmity of mind or body or guilty of misbehaviour (in this case petition signed by 100 MP's→President sends it to SC for reference→if SC recommends removal President passes an order.
Suo motu powers	-	YES	YES	YES	YES	YES	YES	NO
Quasi – Judicial powers	NO	YES	YES	YES	YES	YES	YES	NO
Annual Report	-	Central Govt.	State Govt.	Central Govt.	State Govt.	Central Govt.	-	-
Other points	-	A) In case of violations by armed force – Can only seek report from Government of India B) Matters cannot be taken by NHRC – Service matters + Sub Judice + Anonymous + Frivolous + Over 1 year. C) Secretary General was provided by '2019' amendment – responsible for administrative + Financial powers.	A) Violation of human Right w.r.t subject in state + Concurrent list + UT's (If central Government confers it. B) Exception: UT of Delhi comes under National Human Rightscommission.			A) 'S.K Santhanam' committee recommendations B) Evolution – Initially 'Extra-legal' body later became a 'statutory body' (2003). C) Objective - Investigate into allegation of corruption against 'certain' officers (not all – scope of CVC is much narrow compared to Lokpal). D) CVC position = chairman of UPSC VC position = member of UPSC	A) HQ – Delhi Branches – Bhopal, Pune, Kolkata and Chennai. B) Disposal of cases – Mandated to dispose cases within 6 months. C) Appeal against NGT Judgment – Supreme court D) Non - compliance with order of NGT – Fine(upto 10 crore) or 3 years jail. E) Governed – by principle of 'Natural Justice' (not bound by code of civil procedure or Indian evidence act).	A) PM + Ministers + MP's + Officer (Group A/B/C/D) + Officials of central Government + NGO's (who receive donations from foreign source in excess of 10 lakh). All authorities - Constitutional/Statutory extra-legal/ all authorities funded by Govt. come under its Jurisdiction. B) Immunities to PM: Jurisdiction of Lokpal 'does not' extend to Prime Minister w.r.t 5 fields – 1) Atomic Energ 2) Security 3) International Relations 4) Space 5) Public order. C) Superintendence over CBI + Power to give directions to CBI + Powers of civil court + Power of confiscation of material obtained via corruption + Recommend transfer/ suspension of a public servant etc.

## National commission for Women:

- In sync with provisions of CEDAW - Convention on eliminations of all forms of discrimination against women.
- Status: Statutory + Quasi – Judicial + Advisory body
- Appointment & Report: Government of India
- Composition: 1 + 5 + 1, Chaired by Women, Not an all women body, 1 SC/ST - Member
- Suo motu Power: Yes
- Function: Fund litigation, visit jail, remand home etc.

## National commission on Minorites:

- Look into concerns and issues of Religious minorities.
- Status: Statutory + Quasi – Judicial + advisory body.
- Appointment: By Government of India
- Chairman: 1 + 1 + 6 - Chairman + Vice chairman + Members
- Recently, status was given to NCPNR as an ex officio member in NHRC
- Commission works under Ministry of Women and Child Development

## National commission on Protection of Child Rights (NCPNR)

- It fulfils India's commitment under UNCRC - United Nation convention on Rights of child.
- Derives powers from Delhi special police establishment act,1946
- Director of CBI is appointed by committee consisting of PM + leader of opposition in LS + Chief Justice of India.
- Tenure of Director – 2 years.
- GoI can appoint officers above rank of SP on recommendations of committee headed by CVC, Vigilance commissioners, secretary of home and Personnel.

## Central Bureau of Investigation

- Not a statutory body.
- Established by executive resolution of union home ministry.
- Derives powers from Delhi special police establishment act,1946
- Director of CBI is appointed by committee consisting of PM + leader of opposition in LS + Chief Justice of India.
- Tenure of Director – 2 years.
- GoI can appoint officers above rank of SP on recommendations of committee headed by CVC, Vigilance commissioners, secretary of home and Personnel.